

SCHEDULE 6

article 6(2)

FINAL PAYMENT: CALCULATION

PART 1

Interpretation

1. In this Schedule—

“qualifying clearance costs” means non-income losses of the kind referred to in paragraph 2(c) of Schedule 2;

“qualifying contractual liability” means non-income losses of the kind referred to in paragraph 2(d) of Schedule 2;

“qualifying equipment losses” means non-income losses of the kind referred to in paragraph 2(b) of Schedule 2;

“qualifying income losses” means income losses of the kind referred to in paragraph 1 of Schedule 2; and

“qualifying redundancy payments” means non-income losses of the kind referred to in paragraph 2(a) of Schedule 2.

PART 2

Compensation

Compensation for income losses and non-income losses

2. The compensation payable to an entitled applicant shall be the amount produced by the formula $Q - G$, where—

Q equals the sum of the following amounts—

- (a) the amount (if any) calculated in accordance with Part 3 of this Schedule, payable in respect of any qualifying income losses sustained by the entitled applicant;
- (b) the amount (if any) calculated in accordance with Part 4 of this Schedule, payable in respect of any qualifying redundancy payments made by the entitled applicant;
- (c) the amount (if any) calculated in accordance with Part 5 of this Schedule, payable in respect of any qualifying equipment losses sustained by the entitled applicant,
- (d) the amount (if any) calculated in accordance with Part 6 of this Schedule, payable in respect of any qualifying clearance costs sustained by the entitled applicant; and
- (e) the amount (if any) calculated in accordance with Part 7 of this Schedule, payable in respect of any qualifying contractual liability sustained by the entitled applicant; and
- (f) the amount (if any) calculated in accordance with Part 8 of this Schedule, payable in respect of any professional fees incurred by the entitled applicant; and

G equals the amount (if any) calculated in accordance with Part 9 of this Schedule, to be deducted from any compensation payable to the entitled applicant in respect of any relevant planning gain made by the entitled applicant or by any associate of the entitled applicant.

Status: This is the original version (as it was originally made).

No compensation for excluded or other losses

3. Compensation shall not be payable in respect of any losses other than those specified in Schedule 2.

4. Compensation shall not be payable in respect of any non-income loss which is excluded for the purposes of paragraph 2 of Schedule 2 by virtue of paragraph 3 of that Schedule.

PART 3

Qualifying Income Losses

Compensation for qualifying income losses

5. The amount payable to an entitled applicant in respect of any qualifying income losses sustained by him shall be the amount produced by the formula $P \times 7.4$, where—

P equals the average net trading profits of his qualifying business, calculated in accordance with paragraph 6 and subject to any adjustment made in accordance with paragraph 7 to 9.

Calculation of average net trading profits

6. For the purposes of calculating P in paragraph 5 —

(a) subject to paragraphs 7 to 9, the average net trading profits of an entitled applicant's qualifying business shall be the amount produced by the formula $T \div 5$, where—

T equals the total of the net trading profits of that qualifying business for each of the accounting periods comprising the reference period;

(b) for each accounting period, the net trading profits of the qualifying business shall be the net trading profits of that business assessed in accordance with UK GAAP;

(c) where, during an accounting period, a business carried on by an entitled applicant consisted partly of a qualifying business and partly of a non-qualifying business, the net trading profits of the qualifying business for that accounting period shall exclude any element of revenue or costs so far as it related to the non-qualifying business; and

(d) where, in any accounting period, any revenue or costs related partly to a qualifying business and partly to a non-qualifying business, such revenue or costs shall be apportioned between the qualifying business and the non-qualifying business in accordance with—

(i) UK GAAP; and

(ii) accepted costing practice.

Change of accounting date during reference period

7. Where the accounting date for an entitled applicant's qualifying business changed during the reference period and one or more accounting periods during the reference period were more or less than a year in length, the Secretary of State shall, subject to paragraphs 8 and 9, calculate P for the purposes of paragraph 5 on the basis of the average net trading profits of the qualifying business arrived at in accordance with paragraph 6 but by using a reasonable estimate of what the net trading profits for any such accounting period would have been had it been a year in length instead of the actual net trading profits for that accounting period.

Accounting periods affected by illegal activity

8. The Secretary of State may, if she thinks fit in a particular case, exclude an accounting period from the calculation of the average net trading profits of a qualifying business in accordance with paragraph 6, where—

- (a) she is satisfied that the net trading profits of the qualifying business for that accounting period have adversely been affected by the theft or unlawful release of mink, criminal damage or other illegal activity on the part of any person (whether or not that person's identity is known); and
- (b) she is satisfied that the illegal activity referred to in sub-paragraph (a) was not carried out by an associate or an employee of the entitled applicant.

9. Where an accounting period is excluded in accordance with paragraph 8, the Secretary of State shall calculate P for the purposes of paragraph 5 on the basis of the average net trading profits of the qualifying business arrived at in accordance with paragraph 6 but by using a reasonable estimate of what the net trading profits for the excluded accounting period would have been but for the illegal activity on the basis of which it was excluded instead of the actual net trading profits for that accounting period.

PART 4

Qualifying Redundancy Payments

Compensation for qualifying redundancy payments

10. Subject to paragraph 11, the amount payable to an entitled applicant in respect of any qualifying redundancy payments made by him shall be the total amount of any redundancy payments paid by him in accordance with Part 9 of the Employment Rights Act 1996(1) to employees who—

- (a) had been engaged solely or primarily in the entitled applicant's qualifying business; and
- (b) were made redundant as a result of the entitled applicant ceasing, by reason of the enactment or coming into force of section 1 of the Act, to carry on his qualifying business.

11.—(1) No payment shall be made to an entitled applicant in respect of any redundancy payment which—

- (a) subject to sub-paragraph (2) , was made to an employee who—
 - (i) is an associate of the entitled applicant,
 - (ii) has been re-engaged by the entitled applicant; or
 - (iii) has been employed by an associate of the entitled applicant after having been made redundant by the entitled applicant; or
- (b) is recoverable from any other source.

(2) The Secretary of State may, if she thinks fit in an appropriate case, waive any exclusion that would otherwise operate by virtue of sub-paragraph (1)(a).

(1) 1996 c. 18.

PART 5

Qualifying Equipment Losses

Compensation for qualifying equipment losses

12. Subject to paragraph 13, the amount payable to an entitled applicant in respect of any qualifying equipment losses sustained by him shall be the amount of any loss reasonably sustained by that entitled applicant on the sale or disposal (to any person other than an associate of the entitled applicant) of equipment formerly used by him solely or primarily in his qualifying business for less than the discounted replacement cost of that equipment.

13. No payment shall be made to an entitled applicant in respect of any equipment purchased after 2nd March 1999, unless that equipment was purchased by him in order to comply with either—

- (a) any requirement to which he was subject as a condition of any licence issued to him under the Mink Keeping Order 1997 or the Mink Keeping (England) Order 2000⁽²⁾; or
- (b) any other statutory requirement to which he was subject.

PART 6

Qualifying Clearance Costs

Compensation for qualifying clearance costs

14. The amount payable to an entitled applicant in respect of any qualifying clearance costs incurred by him shall be the total of—

- (a) subject to paragraph 15, any reasonable amount paid by the entitled applicant to any person (other than an associate of the entitled applicant) in respect of the removal or disposal (or both) of asbestos from specialised buildings, if the use to which the asbestos was being put immediately prior to its removal or disposal—
 - (i) was not prohibited by the Asbestos (Prohibitions) Regulations 1992⁽³⁾, but
 - (ii) would have been prohibited by the Asbestos (Prohibitions) Regulations 1992 if that use had commenced at the time the removal or disposal (as the case may be) took place; and
- (b) a reasonable amount (which shall not exceed the amount that would have been payable for that work in accordance with sub-paragraph (a)) for the work carried out, where the removal or disposal (or both) are wholly or partly carried out by one or more of the following—
 - (i) the entitled applicant;
 - (ii) an employee of the entitled applicant; or
 - (iii) an associate of the entitled applicant.

15. Any amount payable in accordance with paragraph 14(a) shall be limited to the amount of the lowest estimate obtained by the entitled applicant from any person for the work of removing and disposing of any asbestos from specialised buildings, unless the Secretary of State is satisfied that it was reasonable in all of the circumstances for the entitled applicant to engage someone other than the person who provided the lowest estimate.

(2) S.I.2000/3402.

(3) S.I. 1992/3067 as amended by S.I. 1999/2373, S.I. 1999/2977 & S.I. 2003/1889.

PART 7

Qualifying Contractual Liability

Compensation for qualifying contractual liability

16. Subject to paragraph 17, the amount payable to an entitled applicant in respect of any qualifying contractual liability sustained by him shall be either—

- (a) the amount of any judgment or arbitral award made against an entitled applicant in respect of any contractual liability sustained by an entitled applicant as a result of having ceased, by reason of the enactment or coming into force of section 1 of the Act, to carry on a qualifying business; or
- (b) the amount of any reasonable settlement made by an entitled applicant in respect of a claim against him for such contractual liability.

17.—(1) No payment shall be made to an entitled applicant in accordance with paragraph 16 —

- (a) subject to sub-paragraph (2), in respect of any liability to an associate of the entitled applicant;
- (b) where the liability was incurred under a contract which was entered into after 2nd March 1999;
- (c) to the extent that any judgment or arbitral award made against an entitled applicant would be unenforceable in England;
- (d) to the extent that the liability is recoverable from any other source.

(2) The Secretary of State may, if she thinks fit in an appropriate case, waive any exclusion that would otherwise operate by virtue of sub-paragraph (1)(a).

PART 8

Professional Fees

Reimbursement of professional fees

18. The amount payable to an entitled applicant in respect of professional fees shall be the amount of any reasonable professional fees paid by that entitled applicant.

PART 9

Relevant Planning Gain

Deduction for relevant planning gain

19. Subject to paragraph 20, the amount to be deducted from any compensation otherwise payable to an entitled applicant in respect of any relevant planning gain made by the entitled applicant or by any associate of the entitled applicant shall be 50 per cent of the amount of any such relevant planning gain.

20. The Secretary of State shall waive any deduction that would otherwise apply under paragraph 19 if she is satisfied that the restricted property had no connection with the entitled applicant's qualifying business.

Status: *This is the original version (as it was originally made).*