

## SCHEDULE 5

### Environmental permits

## PART 2

### Compensation in relation to conditions affecting certain interests in land

#### Interpretation

**1.** In this Part—

“grantor” means a person who grants the operator rights pursuant to regulation 15(2);

“relevant interest” means an interest in land out of which rights have been granted pursuant to regulation 15(2);

“rights” means the rights granted by the grantor.

#### Entitlement to compensation

**2.** A grantor is entitled to be paid compensation under this Part by the operator.

#### Loss and damage for which compensation is payable

**3.—(1)** Subject to paragraph 6(3) and (5)(b), compensation is payable for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;
- (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
  - (i) is attributable to the grant of the rights or the exercise of them,
  - (ii) does not consist of depreciation in the value of that interest, and
  - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance if the circumstances specified in sub-paragraph (2) applied;
- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which—
  - (i) is not a relevant interest, and
  - (ii) results from the grant of the rights or the exercise of them;
- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.

**(2)** For the purpose of sub-paragraph (1)(c)(iii), the circumstances are that the relevant interest was acquired compulsorily—

- (a) under the Acquisition of Land Act 1981(1), and
- (b) in pursuance of a notice to treat served on the date on which the rights were granted.

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(1) 1981 c. 67.

#### **Date when entitlement to compensation arises**

- 4.—(1) An entitlement to compensation under this Part arises on the date of the grant of the rights.
- (2) But if an appeal against the conditions of the environmental permit which rendered the grant of rights necessary is refused, the entitlement to compensation arises on the date the appeal is determined.

#### **Application for compensation**

- 5.—(1) An application for compensation under this Part must be made by the grantor—
- (a) within 12 months after the date on which the entitlement to compensation arises, or
  - (b) within 6 months after the date on which the rights are first exercised.
- (2) An application must be—
- (a) made in writing,
  - (b) made to the operator to whom the rights were granted, and
  - (c) delivered at or sent by pre-paid post to the last known address for correspondence of that operator.
- (3) The application must contain, or be accompanied by—
- (a) a copy of the grant of rights in respect of which the grantor's entitlement arises and any plans attached to that grant,
  - (b) a description of the exact nature of any interest in land in respect of which compensation is applied for,
  - (c) a statement of the amount of compensation applied for—
    - (i) distinguishing the amounts applied for under each of paragraph 3(1)(a) to (e), and
    - (ii) showing how the amount applied for under each paragraph has been calculated, and
  - (d) if the date on which the entitlement to compensation arises is ascertained in accordance with paragraph 4(2), a copy of the notice of the final determination of the appeal.

#### **Assessment of the amount to be paid by way of compensation**

- 6.—(1) The amount to be paid by way of compensation under this Part must be assessed in accordance with this paragraph.
- (2) The rules set out in section 5 of the Land Compensation Act 1961<sup>(2)</sup> have effect for the purposes of this paragraph as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land, so far as applicable and subject to any necessary modifications.
- (3) No account is to be taken of any enhancement of the value of an interest in land by reason of any building erected, work done, or improvement or alteration made on land in which the grantor is, or was at the time the building or other work was carried out, directly or indirectly concerned, if the work carried out—
- (a) was not reasonably necessary, and
  - (b) was undertaken with a view to obtaining compensation or increased compensation.
- (4) In calculating the amount of a loss under paragraph 3(1)(e), expenditure incurred in the preparation of plans or on other similar preparatory matters is to be taken into account.

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(2) 1961 c. 33; section 5 was amended by paragraph 1 of Schedule 15, and Part 3 of Schedule 19, to the Planning and Compensation Act 1991 (c. 34), and by S.I. 2009/1307.

(5) Where the interest in respect of which compensation is to be assessed is subject to a mortgage—

- (a) the compensation must be assessed as if the interest were not subject to the mortgage, and
- (b) no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage).

(6) Compensation must include an amount equal to the grantor's reasonable valuation and legal expenses incurred as a result of making the application under paragraph 5 to which the compensation relates.

### **Payment of compensation**

7.—(1) Compensation in respect of an interest which is subject to a mortgage must be paid—

- (a) to the mortgagee, or
- (b) if there is more than one mortgagee, to the first mortgagee,

and must, in either case, be applied by the mortgagee as if it were proceeds of sale.

(2) Amounts of compensation determined under this Part are payable—

- (a) where the operator and either the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date;
- (b) where the operator and either the grantor or mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment;
- (c) in any other case, subject to any direction of the Upper Tribunal or the court, as soon as reasonably practicable after the amount of the compensation has been determined.

(3) Any question of the application of paragraph 6(3) or dispute as to the amount of compensation must be referred to and determined by the Upper Tribunal.

(4) In relation to the determination of such a question, section 4 of the Land Compensation Act 1961(3) applies as if the reference in section 4(A1) of that Act to section 1 of that Act(4) were a reference to sub-paragraph (3) of this paragraph.

### **Interest payable on compensation**

8.—(1) Compensation payable under this Part carries interest at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 from the date specified in sub-paragraph (2) to payment.

(2) The date is—

- (a) in the case of compensation payable under paragraph 3(1)(a) or (b), the date of depreciation;
- (b) in the case of compensation payable under paragraph 3(1)(c), (d) or (e), the date on which the loss is sustained, the damage is done, or the injurious affection occurs, as the case may be;
- (c) in the case of compensation payable under paragraph 6(6), the date on which the expenses become payable.

(3) If it appears to a person ("A") that A may become liable to pay to another person ("B") compensation under this Schedule or interest under this paragraph, on the written request of B, A may make one or more payments on account of such compensation or interest.

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(3) Section 4 was amended by [S.I. 2009/1307](#).

(4) Section 1 was amended by [S.I. 2009/1307](#).

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

- (4) A may recover the payment or excess if, after A makes a payment under sub-paragraph (3)—
  - (a) it is agreed or determined that A is not liable to pay compensation or interest, or
  - (b) by reason of any agreement or determination, the payment is shown to be excessive.