

2004 No. 1964

ANIMALS, ENGLAND

**The Fur Farming (Compensation Scheme) (England) Order
2004**

<i>Made</i> - - - -	<i>23rd July 2004</i>
<i>Laid before Parliament</i>	<i>27th July 2004</i>
<i>Coming into force</i> - -	<i>31st August 2004</i>

The Secretary of State^(a), in exercise of the powers conferred upon her by section 5 of the Fur Farming (Prohibition) Act 2000^(b), and having consulted with such persons as appear to her to be likely to be entitled to payments under the following scheme and such organisations as appear to her to represent such persons, makes the following Order:

Title, commencement and application

1. This Order, which applies to England, may be cited as the Fur Farming (Compensation Scheme) (England) Order 2004 and shall come into force on 31st August 2004.

Interpretation

2.—(1) In this Order—

“the 2002 Order” means the Fur Farming (Compensation Scheme) (England) Order 2002^(c);

“the Act” means the Fur Farming (Prohibition) Act 2000;

“agricultural occupancy condition” means a condition either imposed or having effect under section 70 of the Town and Country Planning Act 1990^(d) by virtue of which the occupation of a dwelling is limited to a category of persons which includes persons solely or mainly working in the locality for the purposes of agriculture;

“applicant” means a person claiming to be entitled to compensation in accordance with this Order and “application” shall be construed accordingly;

“asbestos” means amosite, crocidolite, chrysotile, fibrous actinolite, fibrous anthophyllite, fibrous tremolite and any mixture containing one or more of those minerals;

“associate” has the meaning ascribed to it in Schedule 1;

“determination as to amount” means a determination made by the Secretary of State under article 6 as to the amount of compensation payable to an entitled applicant;

(a) The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).
(b) 2000 c.33. See section 6 for the definition of “appropriate authority”.
(c) S.I. 2002/221.
(d) 1990 c. 8. See also section 2(2) of the Planning (Consequential Provisions) Act 1990 (c. 11).

“determination of entitlement” means a determination made by the Secretary of State under article 5 that an applicant is entitled to compensation under this Order;

“discounted replacement cost” means (in relation to an item of equipment) the reasonable cost of replacing that item less a reasonable allowance in respect of depreciation which—

- (a) takes into account both—
 - (i) the age, condition and expected useful life of the item, and
 - (ii) any other factors that are relevant, and
- (b) is arrived at in accordance with UK GAAP;

“entitled applicant” means a person in respect of whom a determination of entitlement has been made;

“equipment” includes—

- (a) equipment which is attached to any land or building (as well as equipment which is not),
- (b) specialised buildings, and
- (c) security installations;

“mink” means an animal of the species *Mustela vison*;

“non-qualifying business” means a business carried on (or formerly carried on) so far as it consists (or consisted) of activities other than keeping mink for one or more of the relevant purposes;

“professional fees” means any fees paid by an applicant to an accountant or to a surveyor or valuer (or both) in respect of the work carried out by them in preparing an application;

“qualifying business” means a business carried on (or formerly carried on) so far as it consists (or consisted) of keeping mink for one or more of the relevant purposes;

“reference date” means (in relation to a qualifying business) the date on which the last complete accounting period prior to the cessation of the qualifying business ended;

“reference period” means (in relation to a qualifying business) the period of five years ending on the reference date for that qualifying business;

“relevant planning gain” means any increase in the value of a restricted property which—

- (a) results from the removal of the agricultural occupancy condition from that property following the cessation of a qualifying business, and
- (b) is realised on the sale of the property within three years of the date on which the entitled person ceased to carry on his qualifying business;

“relevant purposes” means (in relation to the keeping of mink) the following purposes—

- (a) slaughter (whether by the keeper of the mink or by any other person) solely or primarily for the value of their fur, and
- (b) sale for such slaughter;

“restricted property” means any property—

- (c) in which an entitled person (or any associate of that entitled person) had a freehold or leasehold interest at any time between 23rd November 2000 and the date on which the entitled person ceased to carry on his qualifying business, and
- (d) which was subject to an agricultural occupancy condition at any time during that period;

“Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“security installation” means any device, fence or structure installed or erected in order to retain mink within an area or to exclude any trespassers from entering an area in which mink are kept or housed;

“specialised building” means any building or structure which—

- (a) has been used solely or primarily in a qualifying business, and
- (b) cannot reasonably be used for any other purpose; and

“UK GAAP” means generally accepted accounting practice in the United Kingdom.

Compensation

3. The Secretary of State shall pay compensation in accordance with the following provisions of this Order to any applicant who satisfies her that—

- (a) on 2nd March 1999, he—
 - (i) was carrying on a qualifying business, and
 - (ii) held a licence to keep mink in accordance with the Mink Keeping Order 1997^(a);
- (b) not later than 31st December 2002, he had ceased, by reason of the enactment or coming into force of section 1 of the Act, to carry on his qualifying business; and
- (c) as a result, he has incurred any income losses or non-income losses (or both) of the kind specified in Schedule 2.

Application for compensation

4. Schedule 3 shall apply in relation to an application.

Determination of entitlement to compensation

5.—(1) Schedule 4 shall apply in relation to a determination of entitlement.

(2) The Secretary of State shall make a determination of entitlement in respect of any applicant where, on the basis of the information provided in that applicant’s application and any other relevant information available to her, it appears to her that he fulfils the requirements set out in article 3.

(3) The Secretary of State shall also make a determination of entitlement in respect of an applicant if either—

- (a) an arbitrator finds in favour of the applicant following a reference by agreement in accordance with section 5(5) of the Act; or
- (b) the Lands Tribunal finds in favour of the applicant following a reference in accordance with section 5(6) of the Act.

(4) The Secretary of State may revoke a determination of entitlement at any time within six years of the date on which it was originally made if—

- (a) either—
 - (i) she believes that any information supplied to her in support of an application was inaccurate in any material respect, or
 - (ii) new information, which is relevant and material to an application, becomes available to her; and
- (b) she is satisfied that the person in respect of whom the determination of entitlement was made does not fulfil the requirements set out in article 3.

(5) Where the Secretary of State either—

- (a) does not make a determination of entitlement in respect of an applicant, or
- (b) revokes a determination of entitlement in respect of any person,

she may, if she is satisfied that the person fulfils the requirements set out in paragraphs (a) and (b) of article 3, make a payment to that person in respect of any reasonable professional fees paid by him.

(a) S.I. 1997/3002.

Determination as to amount

6.—(1) Schedule 5 shall apply in relation to a determination as to amount.

(2) The Secretary of State shall make a determination as to amount in respect of an entitled applicant specifying the amount which, on the basis of the information provided in that entitled applicant's application and any other relevant information available to her, she considers is due to that entitled applicant in accordance with the provisions of Schedule 6.

(3) The Secretary of State may revise a determination as to amount either—

- (a) in accordance with paragraph 6(1)(a) of Schedule 5;
- (b) following an arbitration in accordance with section 5(5) of the Act; or
- (c) following a reference to the Lands Tribunal in accordance with section 5(6) of the Act.

(4) The Secretary of State shall revise a determination as to amount in accordance with paragraph (3) to the extent (if any) that either—

- (a) an arbitrator finds in favour of the applicant following a reference by agreement in accordance with section 5(5) of the Act; or
- (b) the Lands Tribunal finds in favour of the applicant following a reference in accordance with section 5(6) of the Act.

(5) The Secretary of State may also revise a determination as to amount at any time within six years of the date on which it was originally made if—

- (a) either—
 - (i) she believes that any information supplied to her in support of an application was inaccurate in any material respect, or
 - (ii) new information (including information relating to a change in circumstances), which is relevant and material to an application, becomes available to her; and
- (b) she is satisfied that the amount payable to the person in respect of whom the determination as to amount was made is different from the amount specified in the determination as to amount.

(6) Where there has been a change of circumstances which is relevant and material to an application, the Secretary of State may revise a determination as to amount under paragraph (5), irrespective of whether or not—

- (a) the information provided in the application was correct at the time when it was submitted to her, or
- (b) the amount specified in the original determination as to amount was correctly calculated on the basis of the information provided in the application and any other relevant information available to her at the time.

(7) Where the Secretary of State revises a determination as to amount in accordance with this article, she shall notify the person in respect of whom the determination as to amount was made that she has done so and paragraphs 4 to 9 of Schedule 5 shall apply.

(8) Where—

- (a) a person in respect of whom a determination as to amount has been made subsequently realises a relevant planning gain on the sale of a restricted property, and
- (b) the amount to be deducted in accordance with Part 9 of Schedule 6 from the compensation otherwise payable to that entitled applicant is equal to or exceeds the amount payable in accordance with Parts 3 to 8 of Schedule 6,

the Secretary of State shall specify in her revised determination as to amount that the amount of compensation payable to that person is zero.

(9) A determination as to amount made in respect of any person whose determination of entitlement is revoked in accordance with article 5(4) shall automatically be revoked.

Payment of compensation

7.—(1) The Secretary of State shall, within six weeks of the date on which she receives written notification under paragraph 4(1) of Schedule 5 or paragraph 7(1) of Schedule 5 (as the case may be) that a determination as to amount has been accepted, pay to the person in respect of whom it was made the amount specified in the determination as to amount.

(2) If, after nine months has elapsed from the date on which the Secretary of State first notifies an entitled applicant in accordance with paragraph 1(b) of Schedule 5 or paragraph 3 of Schedule 5 (as the case may be) of her determination as to amount, the Secretary of State has not received written notification under paragraph 4(1) of Schedule 5 or paragraph 7(1) of Schedule 5 (as the case may be) from that entitled applicant as to whether or not he accepts the determination as to amount, the Secretary of State may pay to the entitled applicant the amount specified in the determination as to amount.

Recovery of any overpayment

8.—(1) Subject to paragraph (3), where a determination of entitlement is revoked by the Secretary of State in accordance with article 5(4), the amount paid to that person by the Secretary of State under article 7 shall immediately become payable to the Secretary of State by the person in respect of whom the determination of entitlement had been made.

(2) Subject to paragraph (3), where a determination as to amount is revised by the Secretary of State in accordance with article 6(5) and the amount specified in the revised determination as to amount (“the revised amount”) is less than the amount specified in the original determination as to amount (“the original amount”), the difference between the original amount and the revised amount shall immediately become payable to the Secretary of State by the person in respect of whom the determination as to amount had been made.

(3) The Secretary of State shall not take any steps to enforce payment of any amount payable to her under this article until the procedures set out in Schedule 4 or Schedule 5 (as the case may be) have been exhausted.

Power to extend time limits

9.—(1) The Secretary of State may, if she thinks fit in a particular case, extend any of the time limits provided for in the following provisions of this Order—

(a) paragraphs 2, 4(1), 4(2) and 6 of Schedule 4; and

(b) paragraphs 2, 4(1), 4(2), 5(1), 5(2), 7(1), 7(2), 8(1) and 8(2) of Schedule 5.

(2) The Secretary of State may extend a time limit in accordance with paragraph (1) even if it has already expired.

Transitional provisions for applications made under the 2002 Order

10.—(1) Any application made in accordance with the 2002 Order shall be treated as if it had been made in accordance with this Order.

(2) Any payment made to an entitled applicant pursuant to article 6(a) of the 2002 Order shall be deemed to comprise part of the determination of amount under this Order.

(3) Where paragraph (1) applies, the application shall be deemed to have been made and received by the Secretary of State on the date of coming into force of this Order.

Revocation of the 2002 Order

11. The 2002 Order is revoked.

SCHEDULE 1

article 2

MEANING OF “ASSOCIATE”

- 1.—(1) “Associate” means any of the following—
- (a) in relation to a natural person—
 - (i) that person’s spouse or any of that person’s relatives;
 - (ii) any person with whom that person, that person’s spouse or any of that person’s relatives is in partnership; or
 - (iii) any body corporate of which that person, that person’s spouse or any of that person’s relatives is a director or controller;
 - (b) in relation to a body corporate—
 - (i) any of its directors or controllers;
 - (ii) any subsidiary of the body corporate;
 - (iii) any of the directors or controllers of such a subsidiary;
 - (iv) if the body corporate is itself a subsidiary, any other subsidiary of the holding company they have in common;
 - (v) any director or controller of any such other subsidiary; or
 - (vi) any person with whom that body corporate is in partnership; or
 - (c) in relation to any person, the spouse or any of the relatives of any of the natural persons identified as associates elsewhere in this definition;
- (2) For the purposes of the definition specified in paragraph (1) —
- “acting in concert” means acting in accordance with an agreement or arrangement with respect to either—
- (a) the acquisition, holding or disposal of shares or other interests in a body corporate; or
 - (b) the exercise of voting power in a body corporate;
- “controller” means (in relation to a body corporate) any person—
- (a) in accordance with whose directions or instructions the directors of that body corporate or of any other body corporate which is its controller are accustomed to act; or
 - (b) who (either alone or with any associate or with any person with whom he is acting in concert) is entitled to exercise or control the exercise of at least one-third of the voting power at any general meeting of that body corporate or of any other body corporate which is its controller;
- “director” means—
- (a) in relation to a body corporate whose affairs are managed by a board of directors or similar body, a member of that board or body;
 - (b) in relation to a body corporate whose affairs are managed by a single director or similar person, that director or person; or
 - (c) in relation to a body corporate whose affairs are managed by the members themselves, a member of the body corporate;

“holding company” means a holding company within the meaning of section 736(1) of the Companies Act 1985(a);

“relative” means parent (or step-parent), child (or step-child), brother, sister, uncle, aunt, nephew, niece, grandparent or grandchild; and

“subsidiary” means a subsidiary within the meaning of section 736(1) of the Companies Act 1985.

SCHEDULE 2

article 3(c)

INCOME LOSSES AND NON-INCOME LOSSES

Income losses

1. The income losses for which compensation shall be payable in accordance with the remaining provisions of this Order shall be net trading profits lost as a result of ceasing, by reason of the enactment or coming into force of section 1 of the Act, to carry on a qualifying business.

Non-income losses

2. Subject to paragraph 3, the non-income losses for which compensation shall be payable in accordance with the remaining provisions of this Order shall be the following—

- (a) any statutory redundancy payments paid to employees formerly engaged solely or primarily in a qualifying business;
- (b) any loss sustained on the sale or disposal of equipment used solely or primarily in a qualifying business where the proceeds of the sale or disposal are less than the discounted replacement cost of the equipment;
- (c) the cost of removing and disposing of asbestos from any specialised building; and
- (d) any contractual liability to a third party sustained as a result of having ceased to carry on a qualifying business

3. Non-income losses shall be excluded for the purposes of paragraph 2 to the extent that—

- (a) they were sustained or incurred otherwise than as a result of ceasing, by reason of the enactment or coming into force of section 1 of the Act, to carry on a qualifying business;
- (b) they were not reasonably sustained or incurred; or
- (c) they are recoverable from any other source.

SCHEDULE 3

article 4

APPLICATION REQUIREMENTS

Interpretation

1. In this Schedule, “signed statement” means a statement which is either—

- (a) signed by the applicant; or
- (b) signed on the applicant’s behalf by a person with authority to bind the applicant.

(a) 1985 c. 6.

Essential application information

- 2.—(1) An application shall be made in writing and shall contain the following—
- (a) in the case of a sole trader, that person’s name and home address;
 - (b) in the case of a partnership, the names and home addresses of the partners;
 - (c) in the case of a body corporate—
 - (i) the body corporate’s registered name, place of registration, registered address and any registration number; and
 - (ii) the names and addresses of the directors and any controllers of the body corporate;
 - (d) the address of the applicant’s principal place of business and, if different, any address at which he kept mink for one or more of the relevant purposes within the last five years;
 - (e) the address to which any correspondence relating to the application should be sent;
 - (f) any trading name used by the applicant within the last five years;
 - (g) the date on which the applicant ceased to carry on his qualifying business;
 - (h) the reason for the applicant ceasing to carry on his qualifying business;
 - (i) the name and address of the applicant’s book-keeper or accountant (if any);
 - (j) the total amount claimed by the applicant in accordance with Schedule 6; and
 - (k) the net trading profits of the applicant’s qualifying business for each of the accounting periods comprising the reference period.
- (2) The application shall as appropriate also contain the following information—
- (a) the amount claimed by the applicant in accordance with each of Parts 3 to 8 of Schedule 6;
 - (b) any amount to be deducted in accordance with Part 9 of Schedule 6 from the compensation otherwise payable to the applicant;
 - (c) details of any theft or unlawful release of mink, criminal damage or other illegal activity adversely affecting the applicant’s net trading profits during that period;
 - (d) the amounts of any redundancy payments made to employees formerly engaged by the applicant, specifying in relation to each employee to whom redundancy payments were made—
 - (i) that employee’s date of birth and length of service,
 - (ii) the nature of the work for which he was formerly engaged, and
 - (iii) the reason why he was made redundant;
 - (e) an inventory of any equipment for which the applicant is claiming compensation in accordance with Part 5 of Schedule 6, specifying in relation to each item of equipment—
 - (i) the original cost of that item,
 - (ii) its age and expected useful life,
 - (iii) its current replacement cost,
 - (iv) its discounted replacement cost;
 - (v) details of any factors other than the age and expected useful life of the item taken into account when calculating its discounted replacement cost; and
 - (vi) the amount of any proceeds from the sale or disposal of that item;
 - (f) details of any work carried out in relation to the removal or disposal (or both) of asbestos from any specialised buildings, together with details of—
 - (i) any amounts paid by the applicant for that work and the names and addresses of any persons to whom such amounts were paid,
 - (ii) any such work carried out by the applicant, any of his employees or any of his associates, and

- (iii) all estimates (numbering not less than three) obtained by the applicant for the work;
 - (g) details of any contractual liability sustained by the applicant as a result of having ceased to carry on a qualifying business;
 - (h) details of any professional fees incurred by the applicant;
 - (i) details of any property which is subject to an agricultural occupancy restriction and in which the applicant (or any associate of the applicant) had an interest at any time between 23rd November 2000 and the date on which the applicant ceased to carry on his qualifying business, together with details of—
 - (i) any relevant planning gain made in respect of that property prior to the date on which the application is made, and
 - (ii) details of any pending application to a local planning authority (as defined in section 1 of the Town and Country Planning Act 1990(a)) to have the agricultural occupancy restriction lifted; and
 - (j) any other information that the applicant considers to be relevant and material to his application.
- (3) An application shall be accompanied by a signed statement that—
- (a) the information contained in the application is true to the best of the applicant's knowledge and belief;
 - (b) the applicant consents to the Secretary of State making such inquiries as she thinks fit in connection with the applicant's application, including (without limitation)—
 - (i) inspection of the applicant's business premises and records, and
 - (ii) obtaining information from the Inland Revenue, Customs and Excise and any local authority; and
 - (c) the applicant undertakes to inform the Secretary of State within one month of any new information (including any change of circumstances) coming to his knowledge, if—
 - (i) it is relevant and material to his application, and
 - (ii) it comes to his knowledge within six years of the date on which the application is made.

SCHEDULE 4

article 5(1)

PROCEDURE TO DETERMINE ENTITLEMENT

Initial decision by Secretary of State

1. The Secretary of State shall, within three months of the date on which she receives an application either—
- (a) make a written request to the applicant requiring him to provide additional information in support of his application, specifying—
 - (i) the nature of the information requested; and
 - (ii) her reasons for making the request;
 - (b) make a determination of entitlement in respect of the applicant and notify the applicant in writing that she has done so; or
 - (c) notify the applicant in writing that his application has been unsuccessful, specifying the reasons why she considers that the applicant does not fulfil the requirements set out in article 3.

(a) 1990 c.8.

Request for further information

2. If the Secretary of State makes a written request for further information in accordance with paragraph 1(a), the applicant shall, within three months from the date on which the request is made, provide—

- (a) the further information requested; and
- (b) a signed statement that the further information provided is true to the best of the applicant's knowledge and belief.

3. The Secretary of State shall, within three months of the date on which either she receives the information requested in accordance with paragraph 1(a) or the date on which the period referred to in paragraph 2 expires (as the case may be), either—

- (a) make a determination of entitlement in respect of the applicant and notify the applicant in writing that she has done so; or
- (b) notify the applicant in writing that his application has been unsuccessful, specifying the reasons why she considers that the applicant does not fulfil the requirements set out in article 3.

Reconsideration of initial decision

4.—(1) If the Secretary of State does not make a determination of entitlement in respect of an applicant and notifies him in accordance with paragraph 1(c) or paragraph 3(b) (as the case may be) that his application has been unsuccessful, the applicant may, within three months of the date on which the Secretary of State so notifies him, request the Secretary of State to reconsider her decision.

(2) If the Secretary of State revokes a determination of entitlement and notifies the person in respect of whom the determination of entitlement had been made in accordance with article 5(4) that she has done so, the applicant may, within three months of the date on which the Secretary of State so notifies him, request the Secretary of State to reconsider her decision.

(3) A request for reconsideration made in accordance with sub-paragraph (1) or sub-paragraph (2)—

- (a) shall be made in writing;
- (b) shall specify the grounds upon which the applicant wishes the Secretary of State to reconsider her decision;
- (c) may be supported by any additional information which is relevant and material to the request for reconsideration; and
- (d) shall be accompanied by a signed statement that any information contained in or supporting the request for reconsideration is true to the best of the applicant's knowledge and belief.

5. The Secretary of State shall, within three months of the date on which she receives a request for reconsideration made in accordance with paragraph 4(1) or paragraph 4(2) (as the case may be), either—

- (a) make a determination of entitlement in respect of the applicant and notify the applicant of her decision; or
- (b) notify the applicant in writing that his request for reconsideration has been unsuccessful, specifying the reasons why she considers that the applicant does not fulfil the requirements set out in article 3.

Dispute resolution

6. If the Secretary of State—

- (a) notifies a person in respect of whom a declaration of entitlement had been made in accordance with article 5(4) that she has revoked the declaration of entitlement;

- (b) notifies an applicant in accordance with paragraph 1(c) that his application has been unsuccessful;
- (c) notifies an applicant in accordance with paragraph 3(b) that his application has been unsuccessful; or
- (d) notifies an applicant in accordance with paragraph 5(b) that his request for reconsideration has been unsuccessful,

the person in respect of whom the declaration of entitlement had been made or the applicant (as the case may be) may, within one month of the date on which the Secretary of State so notifies him, give notice to the Secretary of State in writing that he disputes the determination of his entitlement to compensation under this Order.

7. If a person in respect of whom a declaration of entitlement has been made and subsequently revoked or an applicant (as the case may be) gives notice in accordance with paragraph 6, he and the Secretary of State may agree in accordance with section 5(5) of the Act to refer the dispute to arbitration, conducted in such manner as may be agreed between them.

SCHEDULE 5

article 6(1)

DETERMINATION AS TO AMOUNT: PROCEDURE

Initial decision by Secretary of State

1. The Secretary of State shall, within three months of the date on which she makes a determination of entitlement in respect of an applicant either—

- (a) make a written request to the entitled applicant requiring him to provide additional information in support of his application, specifying—
 - (i) the nature of the information requested; and
 - (ii) her reasons for making the request; or
- (b) make a determination as to the amount in respect of the entitled applicant and notify him in writing that she has done so, specifying—
 - (i) the total amount payable to that entitled applicant in accordance with the provisions of Schedule 6;
 - (ii) the amount payable to that entitled applicant in accordance with each of Parts 3 to 8 of Schedule 6;
 - (iii) any amount to be deducted in accordance with Part 9 of Schedule 6 from the compensation otherwise payable to that entitled applicant; and
 - (iv) where the amount payable or to be deducted (as the case may be) in accordance with any Part of Schedule 6 differs from the corresponding amount in the entitled applicant's claim, the reasons for the difference.

Request for further information

2. If the Secretary of State makes a written request for further information in accordance with paragraph 1(a), the entitled applicant shall, within three months from the date on which the request is made, provide—

- (a) the further information requested; and
- (b) a signed statement that the further information provided is true to the best of the applicant's knowledge and belief.

3. The Secretary of State shall, within three months of the date on which either she receives the information requested in accordance with paragraph 1(a) or the date on which the period referred

to in paragraph 2 expires (as the case may be), make a determination as to amount in respect of the entitled applicant and notify him in writing that she has done so, specifying—

- (a) the total amount payable to that entitled applicant in accordance with the provisions of Schedule 6;
- (b) the amount payable to that entitled applicant in accordance with each of Parts 3 to 8 of Schedule 6;
- (c) any amount to be deducted in accordance with Part 9 of Schedule 6 from the compensation otherwise payable to that entitled applicant; and
- (d) where the amount payable or to be deducted (as the case may be) in accordance with any Part of Schedule 6 differs from the corresponding amount in the entitled applicant's claim the reasons for the difference.

Acceptance of determination

4.—(1) An entitled applicant shall, within three months from the date on which the Secretary of State makes a determination as to amount in accordance with paragraph 1(b) or paragraph 3 (as the case may be), notify the Secretary of State in writing as to whether or not he accepts that determination.

(2) A person in respect of whom a revised determination as to amount is made in accordance with article 6(5) shall, within one month from the date on which the Secretary of State notifies him of her revised determination as to amount in accordance with article 6(7), notify the Secretary of State in writing as to whether or not he accepts that revised determination.

Reconsideration of initial decision

5.—(1) If an entitled applicant does not accept the determination as to amount made in respect of him, he may, within three months of the date on which the Secretary of State notifies him of her determination as to amount, request the Secretary of State to reconsider her decision.

(2) If a person in respect of whom a revised determination as to amount is made in accordance with article 6(5) does not accept that revised determination, he may, within one month of the date on which the Secretary of State notifies him in accordance with article 6(7) of her revised determination as to amount, request the Secretary of State to reconsider her decision.

(3) A request for reconsideration made in accordance with sub-paragraph (1) or sub-paragraph (2)—

- (a) shall be made in writing;
- (b) shall specify the grounds upon which the entitled applicant wishes the Secretary of State to reconsider her decision;
- (c) may be supported by any additional information which is relevant and material to the request for reconsideration; and
- (d) shall be accompanied by a signed statement that any information contained in or supporting the request for reconsideration is true to the best of the entitled applicant's knowledge and belief.

6.—(1) The Secretary of State shall, within three months of the date on which she receives a request for reconsideration made in accordance with paragraph 5(1) either—

- (a) make a revised determination as to amount in respect of the entitled applicant and notify him in writing that she has done so, specifying—
 - (i) the extent to which she has revised the determination as to amount she made in accordance with paragraph 1(b) or paragraph 3 (as the case may be); and
 - (ii) where the revised amount payable or to be deducted (as the case may be) in accordance with any Part of Schedule 6 differs from the corresponding amount in the entitled applicant's original claim, the reasons for the difference; or

- (b) confirm the determination as to amount she made in accordance with paragraph 1(b) or paragraph 3 (as the case may be) and notify the entitled applicant in writing that his request for reconsideration has been unsuccessful, specifying the reasons why she has not revised her determination as to amount.

(2) The Secretary of State shall, within three months of the date on which she receives a request for reconsideration made in accordance with paragraph 5(2), either—

- (a) make a further revised determination as to amount in respect of the person in respect of whom a revised determination as to amount had been made in accordance with article 6(5) and notify him in writing that she had done so, specifying—
 - (i) the extent to which she has further revised the determination as to amount in accordance with article 6(5), and
 - (ii) where the further revised amount payable or to be deducted (as the case may be) in accordance with any Part of Schedule 6 differs from the corresponding amount in the revised determination as to amount, the reasons for the difference; or
- (b) confirm her revised determination as to amount made in accordance with article 6(5) and notify the entitled applicant in writing that his request for reconsideration has been unsuccessful, specifying the reasons why she has not further revised her determination as to amount.

Acceptance of determination following reconsideration

7.—(1) An entitled applicant shall, within one month from the date on which the Secretary of State—

- (a) notifies him that she has made a revised determination as to amount in accordance with paragraph 6(1)(a); or
- (b) notifies him that she has confirmed her original determination as to amount in accordance with paragraph 6(1)(b),

notify the Secretary of State as to whether or not he accepts that determination or revised determination (as the case may be).

(2) A person in respect of whom a revised determination as to amount had been made shall, within one month from the date on which the Secretary of State—

- (a) notifies him that she has further revised her determination as to amount in accordance with paragraph 6(2)(a);
- (b) notifies him that she has confirmed her revised determination as to amount in accordance with paragraph 6(2)(b),

notify the Secretary of State as to whether or not he accepts that revised determination or further revised determination (as the case may be).

Dispute resolution

8.—(1) If an entitled applicant does not accept a determination as to amount which has been, as the case may be—

- (a) made by the Secretary of State in accordance with paragraph 1(b),
- (b) made by the Secretary of State in accordance with paragraph 3,
- (c) revised by the Secretary of State in accordance with paragraph 6(1)(a), or
- (d) confirmed by the Secretary of State in accordance with paragraph 6(1)(b)

he may, within one month of the date on which the Secretary of State notifies him of her decision, give notice to the Secretary of State in writing that there is a dispute to be resolved between them regarding the amount of compensation payable to him under this Order.

(2) If a person in respect of whom a revised determination as to amount has been made in accordance with article 6(5) does not accept a revised determination as to amount which has been, as the case may be—

- (a) made by the Secretary of State in accordance with article 6(5),
- (b) further revised by the Secretary of State in accordance with paragraph 6(2)(a),
- (c) confirmed by the Secretary of State in accordance with paragraph 6(2)(b)

he may, within on month of the date on which the Secretary of State notifies him of her decision, give notice to the Secretary of State in writing that there is a dispute to be resolved between them regarding the amount of compensation payable to him under this Order.

9. If an entitled applicant or a person in respect of whom a revised determination as to amount is made in accordance with article 6(5) gives notice in accordance with paragraph 8(1) or 8(2), he and the Secretary of State may agree in accordance with section 5(5) of the Act to refer the dispute to arbitration, conducted in such manner as may be agreed between them.

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.

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(a) 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.

(a) 1996 c. 18.

(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 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(a); 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(b), 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

(a) S.I. 2000/3402.

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

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.

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.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies to England, revokes and replaces the Fur Farming (Compensation) (England) Order 2002 (S.I. 2002/221) (“the 2002 Order”).

The Order establishes a compensation scheme for mink farmers affected by section 1 of the Fur Farming (Prohibition) Act 2000, Section 1 of the Act, which prohibits anyone from keeping animals solely or primarily for the value of their fur or in order to breed animals for that purpose, came into force on 1st January 2003.

Article 3 sets the conditions for entitlement to compensation under the Order and Schedule 2 sets out the categories of income losses and non-income losses for which compensation is payable.

The remainder of the Order provides for the procedure by which former fur farmers may make claims for compensation and for the Secretary of State to deal with such claims.

Article 4 and Schedule 3 set out the requirements for an application.

Article 5 and Schedule 4 explains the procedure by which the Secretary of State will make a determination of entitlement in respect of an applicant.

Article 6 and Schedule 5 explains the procedure by which the Secretary of State will determine the amount due to an applicant in respect of whom a determination of entitlement has been made.

Articles 7 and 8 provide for payment of the compensation and for recovery by the Secretary of State in the event of wrongful or overpayment.

Article 9 empowers the Secretary of State to extend any of the time limits specified in the Order and which apply to applicants.

Article 10 makes transitional provisions to permit applications made under the 2002 Order (which is revoked by article 11) to be deemed to have been made under this Order and for any payments which were made under that Order to form part of the determination of amount under this Order.

STATUTORY INSTRUMENTS

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