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SCHEDULES

SCHEDULE 6

Sections 36 and 50.

ELIGIBILITY TO APPLY FOR NEW TENANCY UNDER PART IV OF THIS ACT

PART I

“ELIGIBLE PERSON”: SUPPLEMENTARY PROVISIONS

Preliminary

- 1 (1) In this Schedule—
- “the livelihood condition” means paragraph (a) of the definition of “eligible person” in section 36(3) of this Act;
 - “the occupancy condition” means paragraph (b) of that definition.
- (2) For the purposes of the Schedule a body corporate is controlled by a close relative of the deceased if he or his spouse [^{F1}or his civil partner], or he and his spouse together [^{F2}or he and his civil partner together], have the power to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or
 - (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,
- that the affairs of that body corporate are conducted in accordance with his, her or their wishes, respectively.
- (3) Any reference in this Schedule to the spouse of a close relative of the deceased does not apply in relation to any time when the relative’s marriage is the subject of a decree of judicial separation or a decree nisi of divorce or of nullity of marriage.
- [^{F3}(4) Any reference in this Schedule to the civil partner of a close relative of the deceased does not apply in relation to any time when the relative’s civil partnership is subject to—
- (a) a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004, or
 - (b) a dissolution order, nullity order or presumption of death order that is a conditional order under that Chapter.]

Textual Amendments

F1 Words in Sch. 6 para. 1(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\), Sch. 8 para. 39\(2\)\(a\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}

F2 Words in Sch. 6 para. 1(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\), Sch. 8 para. 39\(2\)\(b\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}

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- F3** Sch. 6 para. 1(4) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), Sch. 8 para. 39(3); S.I. 2005/3175, {art. 2(1), Sch. 1}

The livelihood condition

- 2 For the purposes of the livelihood condition, any period during which a close relative of the deceased was, in the period of seven years mentioned in that condition, attending a full-time course at a university, college or other [F4 establishment of higher or further education] shall be treated as a period throughout which his only or principal source of livelihood derived from his agricultural work on the holding; but not more than three years in all shall be so treated by virtue of this paragraph.

Textual Amendments

- F4** Words substituted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237, Sch. 12 para. 96

Commercial unit of agricultural land

- 3 (1) In the occupancy condition “commercial unit of agricultural land” means a unit of agricultural land which is capable, when farmed under competent management, of producing a net annual income of an amount not less than the aggregate of the average annual earnings of two full-time, male agricultural workers aged twenty or over.
- (2) In so far as any units of production for the time being prescribed by an order under paragraph 4 below are relevant to the assessment of the productive capacity of a unit of agricultural land when farmed as aforesaid, the net annual income which that unit is capable of producing for the purposes of this paragraph shall be ascertained by reference to the provisions of that order.
- 4 The Minister shall by order—
- (a) prescribe such units of production relating to agricultural land as he considers appropriate, being units framed by reference to any circumstances whatever and designed for the assessment of the productive capacity of such land, and
 - (b) for any period of twelve months specified in the order, determine in relation to any unit of production so prescribed the amount which is to be regarded for the purposes of paragraph 3 above as the net annual income from that unit in that period.

Ministerial statements as to net annual income of land

- 5 (1) For the purposes of any proceedings under sections 36 to 48 of this Act in relation to the holding, the Minister shall—
- (a) at the request of any of the following persons, namely any close relative of the deceased, the landlord or F5... the Tribunal, and
 - (b) in relation to any relevant land,
- determine by reference to the provisions of any order for the time being in force under paragraph 4 above the net annual income which, in his view, the land is capable of

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producing for the purposes of paragraph 3 above, and shall issue a written statement of his view and the grounds for it to the person making the request.

- (2) In sub-paragraph (1) above “relevant land” means agricultural land which is—
- (a) occupied (or, by virtue of section 58 of this Act or this Part of this Schedule, deemed to be occupied) by any close relative of the deceased (whether he is, where the request is made by such a relative, the person making the request or not), or
 - (b) the subject of an application made under section 39 of this Act by any such relative.
- (3) Where—
- (a) for the purposes of any proceedings under sections 36 to 48 of this Act the Minister has issued a statement to any person containing a determination under sub-paragraph (1) above made by reference to the provisions of an order under paragraph 4 above, and
 - (b) before any hearing by the Tribunal in those proceedings is due to begin it appears to him that any subsequent order under that paragraph has affected any matter on which that determination was based,
- he shall make a revised determination under sub-paragraph (1) above and shall issue a written statement of his view and the grounds for it to the person in question.
- (4) Any statement issued by the Minister in pursuance of this paragraph shall be evidence of any facts stated in it as facts on which his view is based.
- (5) Any document purporting to be a statement issued by the Minister in pursuance of this paragraph and to be signed for or on behalf of the Minister shall be taken to be such a statement unless the contrary is shown.

Textual Amendments

- F5** Words in [Sch. 6 para. 5](#) omitted (1.7.2013) by virtue of [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 210](#) (with [Sch. 3](#))

Occupation to be disregarded for purposes of occupancy condition

- 6 (1) Occupation by a close relative of the deceased of any agricultural land shall be disregarded for the purposes of the occupancy condition if he occupies it only—
- (a) under a tenancy approved by the Minister under subsection (1) of section 2 of this Act or under a tenancy falling within subsection (3) (a) of that section,
 - (b) under a tenancy for more than one year but less than two years,
 - (c) under a tenancy not falling within paragraph (a) or (b) above and not having effect as a contract of tenancy,
 - (d) under a tenancy to which section 3 of this Act does not apply by virtue of section 5 of this Act,
 - [^{F6}(dd) under a farm business tenancy, within the meaning of the Agricultural Tenancies Act 1995, for less than five years (including a farm business tenancy which is a periodic tenancy),]
 - (e) as a licensee, or
 - (f) as an executor, administrator, trustee in bankruptcy or person otherwise deriving title from another person by operation of law.

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- (2) Paragraphs (a) to (e) of sub-paragraph (1) above do not apply in the case of a tenancy or licence granted to a close relative of the deceased by his spouse [^{F7}or civil partner] or by a body corporate controlled by him.
- (3) References in the following provisions of this Schedule to the occupation of land by any person do not include occupation under a tenancy, or in a capacity, falling within paragraphs (a) to (f) of that sub-paragraph.

Textual Amendments

- F6** Sch. 6 para. 6(1)(dd) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 32** (with s. 37).
- F7** Words in Sch. 6 para. 6(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 8 para. 39(4)**; S.I. 2005/3175, {art. 2(1), Sch. 1}

Joint occupation

- 7 (1) Where any agricultural land is jointly occupied by a close relative of the deceased and one or more other persons as—
- (a) beneficial joint tenants,
 - (b) tenants in common,
 - (c) joint tenants under a tenancy, or
 - (d) joint licensees,
- the relative shall be treated for the purposes of the occupancy condition as occupying the whole of the land.
- (2) If, however, the Tribunal in proceedings under section 39 of this Act determine on the application of the close relative that his appropriate share of the net annual income which the land is, or was at any time, capable of producing for the purposes of paragraph 3 above is or was then less than the aggregate of the earnings referred to in that paragraph, then, for the purpose of determining whether the occupancy condition is or was then satisfied in his case, the net annual income which the land is, or (as the case may be) was, capable of so producing shall be treated as limited to his appropriate share.
- (3) For the purposes of sub-paragraph (2) above the appropriate share of the close relative shall be ascertained—
- (a) where he is a beneficial or other joint tenant or a joint licensee, by dividing the net annual income which the land is or was at the time in question capable of producing for the purposes of paragraph 3 above by the total number of joint tenants or joint licensees for the time being,
 - (b) where he is a tenant in common, by dividing the said net annual income in such a way as to attribute to him and to the other tenant or tenants in common shares of the income proportionate to the extent for the time being of their respective undivided shares in the land.

Deemed occupation in case of Tribunal direction

- 8 (1) Where a close relative of the deceased is, by virtue of a direction of the Tribunal under section 39 of this Act, for the time being entitled (whether or not with any other person) to a tenancy of the whole or part of any agricultural holding held by the deceased at the date of death other than the holding, he shall, for the purposes

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of the occupancy condition, be deemed to be in occupation of the land comprised in that holding or (as the case may be) in that part of that holding.

- (2) Where by virtue of sub-paragraph (1) above any land is deemed to be occupied by each of two or more close relatives of the deceased as a result of a direction entitling them to a joint tenancy of the land, the provisions of paragraph 7 above shall apply to each of the relatives as if the land were jointly occupied by him and the other relative or relatives as joint tenants under that tenancy.

Occupation by spouse ^{F8}, civil partner] or controlled company

Textual Amendments

- F8** Words in cross-heading preceding Sch. 6 para. 9 inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\)](#), [Sch. 8 para. 39\(8\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}

- 9 (1) For the purposes of the occupancy condition and of paragraph 7 above, occupation—
- (a) by the spouse ^{F9}, or civil partner,] of a close relative of the deceased, or
 - (b) by a body corporate controlled by a close relative of the deceased,
- shall be treated as occupation by the relative.
- (2) Where, in accordance with sub-paragraph (1) above, paragraph 7 above applies to a close relative of the deceased in relation to any time by virtue of the ^{F10} joint occupation of land by—
- (a) his spouse or civil partner or a body corporate, and
 - (b) any other person or persons,
- sub-paragraphs] (2) and (3) of that paragraph shall apply to the relative as if he were the holder of the interest in the land for the time being held by his spouse ^{F11} or civil partner,] or the body corporate, as the case may be.

Textual Amendments

- F9** Words in Sch. 6 para. 9(1)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\)](#), [Sch. 8 para. 39\(5\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}
- F10** Words in Sch. 6 para. 9(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\)](#), [Sch. 8 para. 39\(6\)\(a\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}
- F11** Words in Sch. 6 para. 9(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\)](#), [Sch. 8 para. 39\(6\)\(b\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}

Deemed occupation in case of tenancy or licence granted by close relative, spouse ^{F12}, civil partner] or controlled company

Textual Amendments

- F12** Words in cross-heading preceding Sch. 6 para. 10 inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\)](#), [Sch. 8 para. 39\(8\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}

- 10 (1) Where—

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- (a) any agricultural land is occupied by any person under such a tenancy as is mentioned in paragraphs (a) to (d) of paragraph 6(1) above or as a licensee, and
- (b) that tenancy or licence was granted by a close relative of the deceased or a connected person (or both), being at the time it was granted a person or persons entitled to occupy the land otherwise than under a tenancy, or in a capacity, falling within paragraphs (a) to (f) of paragraph 6(1),

then, unless sub-paragraph (2) below applies, the close relative shall, for the purposes of the occupancy condition, be deemed to be in occupation of the whole of the land.

(2) Where the tenancy or licence referred to in sub-paragraph (1) above was granted by the person or persons there referred to and one or more other persons who were at the time it was granted entitled to occupy the land as mentioned in paragraph (b) of that sub-paragraph, sub-paragraphs (2) and (3) of paragraph 7 above shall apply to the close relative as if the land were jointly occupied by him and the said other person or persons as holders of their respective interests for the time being in the land.

(3) In this paragraph “connected person”, in relation to a close relative of the deceased, means—

- (a) the relative’s spouse [^{F13}or civil partner], or
- (b) a body corporate controlled by the relative;

and for the purposes of sub-paragraph (2) above and the provisions of paragraph 7 there mentioned any interest in the land for the time being held by a connected person by whom the tenancy or licence was granted shall be attributed to the relative.

Textual Amendments

F13 Words in [Sch. 6 para. 10\(3\)\(a\)](#) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(2), [Sch. 8 para. 39\(7\)](#); [S.I. 2005/3175](#), {art. 2(1), Sch. 1}

PART II

MODIFICATIONS OF PART I OF THIS SCHEDULE IN ITS APPLICATION TO SUCCESSION ON RETIREMENT

- 11 The modifications of Part I of this Schedule referred to in section 50(4) of this Act are as follows.
- 12 The reference in paragraph 1(1) to section 36(3) of this Act shall be read as a reference to section 50(2) of this Act.
- 13 References to a close relative of the deceased shall be read as references to the nominated successor.
- 14 In paragraph 5—
 - (a) references to sections 36 to 48 of this Act shall be read as references to sections 50 to 58 of this Act,
 - (b) the reference in sub-paragraph (1) to any close relative of the deceased shall be read as a reference to the nominated successor, and
 - (c) for sub-paragraph (2) there shall be substituted—

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“(2) In sub-paragraph (1) above ”relevant land’ means agricultural land which is occupied (or, by virtue of this Part of this Schedule, is deemed to be occupied) by the nominated successor.”

15 The reference in paragraph 7(2) to section 39 of this Act shall be read as a reference to section 53 of this Act.

16 For paragraph 8 there shall be substituted—

“8 Where the nominated successor is, by virtue of a direction of the Tribunal under section 53(7) of this Act, for the time being entitled to a tenancy of any agricultural holding held by the retiring tenant other than the holding he shall, for the purposes of the occupancy condition, be deemed to be in occupation of that holding.”

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