

SCHEDULE 2

Regulation 11

PROVISIONS FOR DETERMINING RENTCHARGE PAYMENTS

Definitions

1. In this Schedule—

“the relevant decision” means the planning decision in respect of which the right to claim compensation under Part VII of the Act becomes exercisable; and

“the material time” means the date of the relevant planning decision determined in accordance with the provisions of section 290(4) of the Act.

Entitlement to rentcharge payment

2.—(1) Where the right to claim any compensation under Part VII of the Act is exercisable by reference to an interest in land (being either a fee simple or a tenancy granted for a term of one hundred years or more) and—

(a) there was subsisting at the material time a rentcharge created either before 1st July 1948, or on or after 1st January 1955 and created out of part or the whole of the area of land by reference to which the said right is exercisable, or out of that land together with other land; and

(b) the amount of the rentcharge so far as attributable to the land subject thereto by reference to which the said right is exercisable (in this Schedule referred to as “the charged land”) exceeds the available annual limited value of the charged land ascertained in accordance with paragraph 6 of this Schedule,

then, subject to paragraph 4 of this Schedule, that rentcharge owner shall be entitled, if he makes a rentcharge claim, to receive from the Secretary of State, out of the compensation which falls to be paid under Part VII of the Act, a sum equal to the capital equivalent of the excess:

Provided that the said sum shall not exceed the amount of the said compensation.

(2) Where the interest in land by reference to which the right to claim compensation is exercisable was subject at the material time to more than one such rentcharge as is mentioned in the preceding sub-paragraph, then—

(a) where more than one rentcharge owner has made a rentcharge claim the rentcharge payment to each of them who has so claimed shall be so paid out of the compensation that each rentcharge owner receives the payment to which he is entitled, or so much thereof as can be satisfied out of the compensation after rentcharge payments have been made to owners of any rentcharge having priority;

(b) where a rentcharge owner fails to make a rentcharge claim he shall not be entitled to the payment of any sum under this Schedule but the foregoing provisions of this paragraph shall have effect to enable such rentcharge payments to be made to other rentcharge owners as would have been payable if he had made such a claim.

Extinguishment of part of rentcharge

3. Where a rentcharge owner receives any sum under paragraph 2 of this Schedule, so much of the rentcharge as is equal to the annual equivalent of the said sum shall be extinguished on the date on which the said sum is paid, and as between the persons interested in the charged land on the one hand and any other land subject to the rentcharge on the other hand, the proper share of the persons interested in the charged land of the liability for the residue of the rentcharge in respect of any period

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after the extinguishment shall be treated as being the rentcharge attributable to the charged land, less the annual equivalent of the sum so paid.

Priority between rentcharges and mortgages

4. Where a rentcharge owner makes a rentcharge claim and the right to receive the compensation in respect of the interest in land out of which (or out of which together with any other interest) the rentcharge was created is vested by virtue of the provisions of regulation 9 of these regulations in a mortgagee of that interest, then—

- (a) if the rentcharge had priority to the mortgage, the sum payable to the mortgagee under regulation 9 shall be reduced by the amount required for giving effect to the right conferred upon the rentcharge owner under paragraph 2 of this Schedule; and
- (b) if the mortgage had priority to the rentcharge, the Secretary of State shall, when making the payment of any compensation to a mortgagee in pursuance of regulation 9, give to that mortgagee notice of—
 - (i) the name and address of the rentcharge owner who has claimed the rentcharge payment, or, if that owner has appointed any agent to act for him in connection with the payment of such a sum, the name and address of that agent; and
 - (ii) the amount of the rentcharge payment which the Secretary of State, or the Lands Tribunal if any dispute has been referred to them, has determined to be payable to the rentcharge owner out of compensation,

and the mortgagee to whom the compensation is paid under regulation 9 shall give effect to the right conferred by paragraph 2 of this Schedule on the rentcharge owner out of the sum to which the person who would have been entitled to the compensation apart from regulation 9 will become entitled under the provisions of paragraph (5) of regulation 9 relating to a mortgagee accounting for any compensation as if it were proceeds of a sale.

Provisions as to registered land

5. In cases in which the title to a rentcharge or to land subject thereto is registered under the Land Registration Act 1925, such provision may, without prejudice to the generality of section 144 of that Act, be made by rules under that section as may be expedient in consequence of the provisions of this Schedule, and in particular for securing (by the imposition of conditions as to the exercise of the right thereby conferred or otherwise) that the extinguishment of any part of a rentcharge by virtue of this Schedule shall not take effect without notice thereof being entered in the register.

Computation of rentcharge payment

6. The following provisions of this paragraph shall have effect for the purpose of ascertaining the amounts and values mentioned in the foregoing paragraphs of this Schedule, that is to say—

- (a) the annual limited value of the charged land shall—
 - (i) if the charged land is co-terminous with or greater in area than the land by reference to which compensation under Part VII of the Act falls to be paid, be taken to be five per cent. of the value of that land after the relevant decision;
 - (ii) if the charged land is part of the land by reference to which the said compensation falls to be paid, be determined by apportioning to the charged land the appropriate part of the said percentage of the said value, and, in either case, the charged land shall be treated as if it were free from incumbrances, but subject to any easement or other restriction affecting the land at the material time;

- (b) the available annual limited value of the charged land shall be taken to be the annual limited value thereof less the amount so far as attributable to any of the charged land, of—
- (i) any rentcharge having priority to the rentcharge in question to which the fee simple in the charged land was subject at the material time, or, where that rentcharge was created out of a tenancy of the land, to which either the fee simple therein or that tenancy or any superior tenancy thereof was subject at that time; and
 - (ii) where that rentcharge was created out of a tenancy of the charged land, the rent reserved by the lease for the year current at the material time:
Provided that in ascertaining the available annual limited value of the charged land no deduction shall be made from the annual limited value thereof in respect of any such amount as aforesaid, in so far as the owner of the rentcharge in question is liable for the payment of that amount as between himself and the owner of the interest out of which the rentcharge was created;
- (c) the amount attributable to any land of a rentcharge, or of rent reserved by a lease, shall, where at the material time that land was the only land subject to the rentcharge, or out of which the rent issued, be taken to be the whole amount of the rentcharge payable or of the rent reserved for the year current at the said time, and where the charged land was not the only land subject to the rentcharge, shall be determined by apportioning or allocating to that land so much (if any) of the whole amount as may be appropriate having regard—
- (i) primarily to any apportionment or allocation of that rentcharge or rent which may have been made otherwise than so as to be binding on the owner of that rentcharge or on the landlord, as the case may be, before the material time; and
 - (ii) subject as aforesaid, to the proportion borne by the annual value of that land immediately before the relevant decision to the annual value of the other land subject to the rentcharge or rent immediately before that decision;
- (d) the capital equivalent of the excess of the amount of the rentcharge so far as attributable to the charged land over the available annual limited value of that land shall be taken to be that excess multiplied by the number of years purchase which the rentcharge might have been expected to realise on a sale thereof made in the open market immediately after the relevant decision if at that time the relevant decision had been a decision to the contrary effect.