

## SCHEDULES

### SCHEDULE 2

Section 14.

#### TENANTS' COMPENSATION FOR MILK QUOTA: SCOTLAND

##### *Interpretation*

- 1 (1) In this Schedule, except where the context otherwise requires or provision is made to the contrary—
- " allocated quota " has the meaning given in paragraph 2(1) below;
  - " holding " has the same meaning as in the 1986 Regulations;
  - " landlord " means—
    - (a) in the case of an agricultural holding to which the 1949 Act applies, the landlord within the meaning of section 93(1) of that Act;
    - (b) in the case of a croft within the meaning of the 1955 Act, the landlord within the meaning of section 37(1) of that Act;
    - (c) in the case of a holding within the meaning of the 1911 Act to which the 1949 Act does not apply, the same as it means in the 1911 Act;
  - " milk quota " means—
    - (a) in the case of a tenant registered in the direct sales register maintained under the 1986 Regulations, a direct sales quota within the meaning of those Regulations; and
    - (b) in the case of a tenant registered in the wholesale register maintained under those Regulations, a wholesale quota within the meaning of those Regulations;
  - " registered ", in relation to milk quota, means—
    - (a) in the case of direct sales quota within the meaning of the 1986 Regulations, registered in the direct sales register maintained under those Regulations; and
    - (b) in the case of a wholesale quota within the meaning of those Regulations, registered in a wholesale register maintained under those Regulations;
  - " relevant quota " has the meaning given in paragraph 2(2) below;
  - " standard quota " means standard quota as calculated under paragraph 6 below;
  - " tenancy " means, as the case may be—
    - (a) the agricultural holding, within the meaning of section 1 of the 1949 Act;
    - (b) the croft within the meaning of section 3(1) of the 1955 Act;
    - (c) the holding within the meaning of section 2 of the 1911 Act;
    - (d) the holding of a statutory small tenant under section 32 of the 1911 Act;
    - (e) any part of a tenancy which is treated as a separate entity for purposes of succession, assignation or subletting;

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" tenant " means—

- (a) in the case of an agricultural holding to which the 1949 Act applies, the tenant within the meaning of section 93(1) of that Act;
- (b) in the case of a croft within the meaning of the 1955 Act, the crofter within the meaning of section 3(2) of that Act;
- (c) in the case of a holding within the meaning of the 1911 Act to which the 1949 Act does not apply, the landholder within the meaning of section 2(2) of the 1911 Act;

" tenant's fraction " has the meaning given in paragraph 7 below;

" termination " means the resumption of possession of the whole or part of the tenancy by the landlord by virtue of any enactment, rule of law or term of the lease which makes provision for removal of or renunciation by a tenant, or resumption of possession by a landlord, and in particular includes resumption of possession following—

- (a) vacancy arising under section 11(5) of the 1955 Act;
- (b) termination of a lease in pursuance of section 16(3) of the Succession (Scotland) Act 1964;

" transferred quota " has the meaning given in paragraph 2(2) below;

" the 1886 Act " means the Crofters Holdings (Scotland) Act 1886;

" the 1911 Act " means the Small Landholders (Scotland) Act 1911;

" the 1949 Act " means the Agricultural Holdings (Scotland) Act 1949;

" the 1955 Act " means the Crofters (Scotland) Act 1955;

" the 1986 Regulations " means the Dairy Produce Quotas Regulations 1986.

- (2) For the purposes of this Schedule, the designations of landlord and tenant shall continue to apply to the parties to any proceedings taken under or in pursuance of it until the conclusion of those proceedings.

#### *Tenant's right to compensation*

- 2 (1) Subject to this Schedule, where, on the termination of the lease, the tenant has milk quota registered as his in relation to a holding consisting of or including the tenancy, he shall be entitled, on quitting the tenancy, to obtain from his landlord a payment—
  - (a) if the tenant had milk quota allocated to him in relation to a holding consisting of or including the tenancy (" allocated quota "), in respect of so much of the relevant quota as consists of allocated quota; and
  - (b) if the tenant had quota allocated to him as aforesaid or was in occupation of the tenancy as a tenant on 2nd April 1984 (whether or not under the lease which is terminating), in respect of so much of the relevant quota as consists of transferred quota by virtue of a transaction the cost of which was borne wholly or partly by him.
- (2) In sub-paragraph (1) above—
  - " the relevant quota " means—
    - (a) where the holding consists only of the tenancy, the milk quota registered in relation to the holding; and
    - (b) otherwise, such part of that milk quota as falls to be apportioned to the tenancy on the termination of the lease;

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" transferred quota " means milk quota transferred to the tenant by virtue of the transfer to him of the whole or part of a holding.

- (3) A tenant shall not be entitled to more than one payment under this paragraph in respect of the same tenancy.
- (4) Nothing in this paragraph shall prejudice the right of a tenant to claim any compensation to which he may be entitled under an agreement in writing, in lieu of any payment provided by this paragraph.

#### *Succession to lease of tenancy*

- 3 (1) This paragraph applies where a person (the successor) has acquired right to the lease of the tenancy after 2nd April 1984—
- (a) under section 16 of the Succession (Scotland) Act 1964;
  - (b) as a legatee, under section 20 of the 1949 Act or under section 16 of the 1886 Act;
  - (c) under a bequest of a croft under section 10 of the 1955 Act, or following nomination under section 11 of that Act;
  - (d) under a lawful assignation of the lease,
- and the person whom he succeeded or, as the case may be, who assigned the lease to him is described in this paragraph as his " predecessor ".
- (2) Where this paragraph applies—
- (a) any milk quota allocated or transferred to the predecessor (or treated as having been allocated or transferred to him) in respect of the tenancy shall be treated as if it had been allocated or transferred to his successor;
  - (b) where, under (a) above, milk quota is treated as having been transferred to the successor, he shall be treated as if he had paid so much of the cost of the transaction by virtue of which the milk quota was transferred as his predecessor bore (or is treated as having borne).

#### *Sub-tenants*

- 4 In the case of a tenancy which is sub-let, if the sub-tenant quits the tenancy—
- (a) paragraph 2 above shall apply so as to entitle the sub-tenant to obtain payment from the head tenant, and for that purpose, references to the landlord and the tenant in this Schedule shall be respectively construed as references to the head tenant and the sub-tenant; and
  - (b) for the purposes of the application of paragraph 2 above as between the original landlord and the head tenant—
    - (i) the head tenant shall be deemed to have had the relevant quota allocated to him, and to have been in occupation of the tenancy as a tenant on 2nd April 1984; and
    - (ii) if the head tenant does not take up occupation of the tenancy when the sub-tenant quits, the head tenant shall be treated as if he had quitted the tenancy when the sub-tenant quitted it.

#### *Calculation of payment*

- 5 (1) The amount of the payment to which a tenant is entitled under paragraph 2 above on the termination of the lease shall be determined in accordance with this paragraph.

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- (2) The amount of the payment in respect of allocated quota shall be equal to the value of—
- (a) where the allocated quota exceeds the standard quota for the tenancy—
    - (i) the tenant's fraction of so much of the allocated quota as does not exceed the standard quota; together with
    - (ii) the amount of the excess;
  - (b) where the allocated quota is equal to the standard quota, the tenant's fraction of the allocated quota;
  - (c) where the allocated quota is less than the standard quota, such proportion of the tenant's fraction of the allocated quota as the allocated quota bears to the standard quota.
- (3) The amount of the payment in respect of transferred quota shall be equal to the value of—
- (a) where the tenant bore the whole of the cost of the transaction by virtue of which the transferred quota was transferred to him, the transferred quota; and
  - (b) where the tenant bore only part of that cost, the corresponding part of the transferred quota.

#### *Standard quota*

- 6 (1) Subject to this paragraph, the " standard quota " for any tenancy for the purposes of this Schedule shall be calculated by multiplying the relevant number of hectares by the standard yield per hectare.
- (2) Where by virtue of the quality of the land in question or of climatic conditions in the area the amount of milk which could reasonably be expected to have been produced from one hectare of the tenancy during the relevant period (" the reasonable amount ") is greater or less than the average yield per hectare then sub-paragraph (1) above shall not apply and the standard quota shall be calculated by multiplying the relevant number of hectares by such proportion of the standard yield per hectare as the reasonable amount bears to the average yield per hectare; and the Secretary of State shall by order prescribe the amount of milk to be taken as the average yield per hectare for the purposes of this sub-paragraph.
- (3) Where the relevant quota includes milk quota allocated in pursuance of an award of quota made by the Dairy Produce Quota Tribunal for Scotland which has not been allocated in full, the standard quota shall be reduced by the amount by which the milk quota allocated in pursuance of the award falls short of the amount awarded (or, in the case where only part of the milk quota allocated in pursuance of the award is included in the relevant quota, by the corresponding proportion of that shortfall).
- (4) In sub-paragraph (3) above the references to milk quota allocated in pursuance of an award of quota include references to quota allocated by virtue of the amount awarded not originally having been allocated in full.
- (5) For the purposes of this paragraph—
- (a) " the relevant number of hectares " means the average number of hectares of the tenancy used during the relevant period for the feeding of dairy cows kept on the tenancy or, if different, the average number of hectares of the tenancy which could reasonably be expected to have been so used (having

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- regard to the number of grazing animals other than dairy cows kept on the tenancy during that period); and
- (b) " the standard yield per hectare " means such number of litres as the Secretary of State may from time to time by order prescribe for the purposes of this sub-paragraph.
- (6) In this and in paragraph 7 below—
- (a) references to the area of a tenancy used for the feeding of dairy cows kept on the tenancy do not include references to land used for growing cereal crops for feeding to dairy cows in the form of loose grain; and
- (b) " dairy cows " means milking cows and calved heifers.
- (7) An order under this paragraph may make different provision for different cases.
- (8) The powers to make an order under this paragraph shall be exercisable by statutory instrument and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### *Tenant's fraction*

- 7 (1) For the purposes of this Schedule " the tenant's fraction " means the fraction of which—
- (a) the numerator is the annual rental value at the end of the relevant period of the tenant's dairy improvements and fixed equipment; and
- (b) the denominator is the sum of that value and such part of the rent payable by the tenant in respect of the relevant period as is attributable to the land used in that period for the feeding, accommodation or milking of dairy cows kept on the tenancy.
- (2) For the purposes of sub-paragraph (1)(a) above, in the case of an agricultural holding within the meaning of the 1949 Act, the annual rental value of the tenant's dairy improvements and fixed equipment shall be taken to be the amount which would be disregarded, on a reference to arbitration made in respect of the tenancy under section 7 of the 1949 Act (variation of rent), as being—
- (a) an increase in annual rental value due to dairy improvements at the tenant's expense (in terms of subsection (2)(a) of that section); or
- (b) the value of tenant's fixed equipment and therefore not relevant to the fixing of rent under that section,
- so far as that amount is attributable to tenant's dairy improvements and fixed equipment which are relevant to the feeding, accommodation or milking of dairy cows kept on the tenancy.
- (3) Where—
- (a) the relevant period is less than or greater than 12 months; or
- (b) rent was payable by the tenant in respect of only part of the relevant period, the average rent payable in respect of one month in the relevant period or, as the case may be, in that part shall be determined and the rent referred to in sub-paragraph (1) (b) above shall be taken to be the corresponding annual amount.
- (4) For the purposes of this paragraph—
- (a) " dairy improvement "—

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- (i) in the case of an agricultural holding or a statutory small tenancy, means a " new improvement " or an " old improvement " within the meaning of section 93 of the 1949 Act;
  - (ii) in the case of a croft, means a " permanent improvement " within the meaning of section 37 of the 1955 Act;
  - (iii) in the case of a holding under the 1911 Act to which the 1949 Act does not apply, means a " permanent improvement " within the meaning of section 34 of the 1886 Act,
- so far as relevant to the feeding, accommodation or milking of dairy cows kept on the tenancy;
- (b) " fixed equipment " means fixed equipment, within the meaning of section 93 of the 1949 Act, so far as relevant to the feeding, accommodation or milking of dairy cows kept on the tenancy;
  - (c) all dairy improvements and fixed equipment provided by the tenant shall be taken into account for the purposes of sub-paragraph (1)(a) above, except for such improvements and fixed equipment in respect of which he has, before the end of the relevant period, received full compensation directly related to their value.
- (5) For the purposes of this paragraph—
- (a) any allowance made or benefit given by the landlord after the end of the relevant period in consideration of the execution of dairy improvements or fixed equipment wholly or partly at the expense of the tenant shall be disregarded;
  - (b) any compensation received by the tenant after the end of the relevant period in respect of any dairy improvement or fixed equipment shall be disregarded; and
  - (c) where paragraph 3 above applies, dairy improvements or fixed equipment which would be regarded as tenant's dairy improvements or fixed equipment on the termination of a former tenant's lease (if he were entitled to a payment under this Schedule in respect of the land) shall be regarded as the new tenant's dairy improvements or fixed equipment.

#### *Relevant period*

- 8 In this Schedule " the relevant period " means—
- (a) the period in relation to which the allocated quota was determined; or
  - (b) where it was determined in relation to more than one period, the period in relation to which the majority was determined or, if equal amounts were determined in relation to different periods, the later of those periods.

#### *Valuation of milk quota*

- 9 The value of milk quota to be taken into account for the purposes of paragraph 5 above is the value of the milk quota at the time of the termination of the lease and in determining that value there shall be taken into account such evidence as is available, including evidence as to the sums being paid for interests in land—
- (a) in cases where milk quota is registered in relation to land; and
  - (b) in cases where no milk quota is so registered.

*Determination of standard quota and tenant's fraction before end of lease*

- 10 (1) Where it appears that on the termination of a lease, the tenant may be entitled to a payment under paragraph 2 above, the landlord or tenant may at any time before the termination of the lease by notice in writing served on the other demand that the determination of the standard quota for the land or the tenant's fraction shall be referred—
- (a) in the case of an agricultural holding within the meaning of the 1949 Act to arbitration under that Act or, under section 78 of that Act, to the Scottish Land Court;
  - (b) in any other case, to the Scottish Land Court, for determination by that court, and where (a) above applies, section 75 (or, where the circumstances require, sections 77 and 87) of the 1949 Act shall apply, as if the matters mentioned in sub-paragraph (1) above were required by that Act to be determined by arbitration.
- (2) On a reference under this paragraph the arbiter or, as the case may be, the Scottish Land Court shall determine the standard quota for the land or, as the case may be, the tenant's fraction (as nearly as is practicable at the end of the relevant period).

*Settlement of tenant's claim on termination of lease*

- 11 (1) Subject to this paragraph, any claim arising under paragraph 2 above shall be determined—
- (a) in the case of an agricultural holding within the meaning of the 1949 Act by arbitration under that Act or, under section 78 of that Act, by the Scottish Land Court;
  - (b) in any other case, by the Scottish Land Court,
- and no such claim shall be enforceable unless before the expiry of the period of 2 months from the termination of the lease the tenant has served notice in writing on the landlord of his intention to make the claim, specifying the nature of the claim.
- (2) The landlord and tenant may within the period of 8 months from the termination of the lease by agreement in writing settle the claim but where the claim has not been settled during that period it shall be determined as provided in sub-paragraph (1) above.
- (3) Where a tenant lawfully remains in occupation of part of the tenancy after the termination of the lease, the references in subparagraphs (1) and (2) above to the termination of the lease shall be construed as references to the termination of the occupation.
- (4) In the case of an arbitration under this paragraph, section 75 (or, where the circumstances require, sections 77 and 87) of the 1949 Act (arbitrations) shall apply as if the requirements of this paragraph were requirements of that Act, but paragraph 13 of the Sixth Schedule to that Act (arbitration awards to fix day for payment not later than one month after award) shall have effect for the purposes of this paragraph with the substitution for the words " one month " of the words " three months ".
- (5) In the case of an arbitration under this paragraph, section 61 of the 1949 Act (determination of claims for compensation where landlord's interest is divided) shall apply, where the circumstances require, as if compensation payable under paragraph 2 above were compensation payable under that Act.
- (6) Where—

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- (a) before the termination of the lease of any land the landlord and tenant have agreed in writing the amount of the standard quota for the land or the tenant's fraction or the value of milk quota which is to be used for the purpose of calculating the payment to which the tenant will be entitled under this Schedule on the termination of the lease; or
- (b) the standard quota or the tenant's fraction has been determined by arbitration in pursuance of paragraph 10 above,

the arbiter or, as the case may be, the Scottish Land Court in determining the claim under this paragraph shall, subject to subparagraph (7) below, award payment in accordance with that agreement or determination.

- (7) Where it appears to the arbiter or, as the case may be, the Scottish Land Court that any circumstances relevant to the agreement or determination mentioned in subparagraph (6) above were materially different at the time of the termination of the lease from those at the time the agreement or determination was made, he shall disregard so much of the agreement or determination as appears to him to be affected by the change in circumstances.

#### *Enforcement*

- 12 Section 69 of the 1949 Act (enforcement) and section 70 of that Act (power of tenant to obtain charge on holding) shall apply to any sum which becomes due to a tenant by virtue of this Schedule as they apply to the sums mentioned in those sections.

#### *Powers of limited owners*

- 13 Whatever his interest in the tenancy, the landlord may, for the purposes of this Schedule, do or have done to him anything which might be so done if he were absolute owner of the tenancy.

#### *Notices*

- 14 (1) Any notice or other document required or authorised by this Schedule to be served on any person shall be duly served if it is delivered to him, or left at his proper address, or sent to him by post in a recorded delivery letter or a registered letter.
- (2) In the case of an incorporated company or body, any such document shall be duly served if served on the secretary or clerk of the company or body.
- (3) Any such document to be served by or on a landlord or tenant shall be duly served if served by or on any agent of the landlord or tenant.
- (4) For the purposes of this paragraph and of section 7 of the Interpretation Act 1978, the proper address of a person is—
- (a) in the case of a secretary or clerk to a company or body, that of the registered or principal office of the company or body;
  - (b) in any other case, the person's last known address.
- (5) Unless and until the tenant receives notice of a change of landlord, any document served by him on the person previously known to him as landlord shall be deemed to be duly served on the landlord under the tenancy.



*Crown land*

- 15 (1) This Schedule shall apply to land belonging to Her Majesty in right of the Crown, subject to such modifications as may be prescribed; and for the purposes of this Schedule the Crown Estates Commissioners or other proper officer or body having charge of the land for the time being or, if there is no such officer or body, such person as Her Majesty may appoint in writing under the Royal Sign Manual, shall represent Her Majesty and shall be deemed to be the landlord.
- (2) Without prejudice to sub-paragraph (1) above, subject to such modifications as may be prescribed, section 14 of this Act and this Schedule shall apply to land where the interest of the landlord or of the tenant belongs to a government department or is held on behalf of Her Majesty for the purposes of a government department.