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*Status: Point in time view as at 27/11/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, SEVENTH SCHEDULE. (See end of Document for details)*

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## SCHEDULES

### SEVENTH SCHEDULE

Section 37.

#### ADJUSTMENTS BETWEEN LANDLORDS AND TENANTS AND IN RESPECT OF MORTGAGES AND MINING LEASES AND ORDERS

#### PART I

##### AGRICULTURAL HOLDINGS

- 1 (1) The provisions of this paragraph shall have effect where—
- (a) the land comprised in a compulsory rights order consists of or includes land falling within paragraphs (a) and (b) of subsection (1) of section twenty-four of this Act, and
  - (b) the tenancy under which the tenant could have claimed compensation for the improvements or special system of farming in question, or a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation, terminates on or after the date of entry, but before the end of the period of occupation, without being succeeded by another such subsequent tenancy.
- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of the [<sup>F1</sup>Act of 1986] as to compensation for long-term improvements, and as to compensation for a special system of farming,—
- (a) shall apply, in relation to the tenancy terminating as mentioned in that sub-paragraph, as if, at the termination of that tenancy, the land in question were in the state in which it was immediately before the date of entry, and
  - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
- (3) Subsection (5) of section twenty-four of this Act shall apply for the purposes of sub-paragraph (1) of this paragraph as it applies for the purposes mentioned in that subsection; and subsection (6) of that section shall apply in relation to the last preceding sub-paragraph as it applies in relation to subsection (2) of that section.

#### Textual Amendments

- F1** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 33\(2\)](#)

- [<sup>F2</sup>1A (1) The provisions of this paragraph shall have effect where—
- (a) paragraphs (a) and (b) of subsection (1) of section 25A of this Act apply, and
  - (b) the farm business tenancy at the end of which the tenant could have claimed compensation for tenant's improvements terminates on or after the date

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of entry, but before the end of the period of occupation, without being succeeded by another such subsequent tenancy.

- (2) In the circumstances specified in sub-paragraph (1) of this paragraph, the provisions of Part III of the Act of 1995—
- (a) shall apply, in relation to the tenancy mentioned in that sub-paragraph, as if, at the termination of that tenancy, the land in question were in the state in which it was immediately before the date of entry, and
  - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
- (3) In sub-paragraph (2) of this paragraph, “holding”, in relation to a farm business tenancy, and “termination”, in relation to a tenancy, have the same meaning as in the Act of 1995.]

#### Textual Amendments

**F2** Sch. 7 para. 1A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 20(1)(2) (with s. 37)

- 2 (1) The provisions of this paragraph shall have effect where land comprised in an agricultural holding [<sup>F3</sup>held under a tenancy in relation to which the Act of 1986 applies]is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
- (a) before the date of entry long-term improvements qualifying for compensation under the [<sup>F4</sup>Act of 1986] (in this Act referred to as “the former improvements”) had been carried out on the land in question, or a special system of farming qualifying for compensation under that Act (in this paragraph referred to as “the former system”) had been adopted on that land, and
  - (b) at the end of the period of occupation the circumstances are such that the provisions of the [<sup>F4</sup>Act of 1986] referred to in subsection (2) of section twenty-four of this Act (as extended by subsection (6) of that section) would have applied as mentioned in subsection (3) of that section, but for the fact that the benefit of the former improvements, or the increased value attributable to the former system, as the case may be, has been replaced or regained, on the restoration of the land, by works (in this paragraph referred to as “the new improvements”) or the continuous adoption of a system of farming (in this paragraph referred to as “the new system”) of comparable benefit to the land.
- (2) In the circumstances specified in the preceding sub-paragraph, the said provisions of the [<sup>F4</sup>Act of 1986] shall have effect in relation to the new improvements or the new system, as the case may be, as if those improvements had been carried out, or that system had been adopted, by the person who carried out or adopted the former improvements or the former system.
- (3) Subsections (7) and (8) of section twenty-four of this Act shall apply for the purposes of this paragraph as they apply for the purposes of that section.
- [<sup>F5</sup>(3A) The references in sub-paragraph (1)(a) of this paragraph to the Act of 1986 include references to the Act of 1948.]

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#### Textual Amendments

- F3** Words in [Sch. 7 para. 2\(1\)](#) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), [Sch. para. 20\(3\)](#) (with s. 37)
- F4** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, [Sch. 13 para. 3](#), [Sch. 14 para. 33\(3\)\(a\)](#)
- F5** [Sch. 7 para. 2\(3A\)](#) inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, [Sch. 13 para. 3](#), [Sch. 14 para. 33\(3\)\(b\)](#)

- [<sup>F6</sup>2A (1) The provisions of this paragraph shall have effect where land comprised in a farm business tenancy is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
- (a) before the date of entry there had been provided in relation to the land in question tenant’s improvements (in this paragraph referred to as “the former tenant’s improvements”) in respect of which, immediately before that date, the tenant had a prospective right to compensation under section 16 of the Act of 1995 on quitting the holding on the termination of the tenancy, and
  - (b) at the end of the period of occupation the circumstances are such that Part III of that Act would have applied as mentioned in subsections (3) and (4) of section 25A of this Act, but for the fact that the benefit of the former tenant’s improvements has been replaced, on the restoration of the land, by other improvements (in this paragraph referred to as “the new improvements”) of comparable benefit to the land.
- (2) In the circumstances specified in sub-paragraph (1) of this paragraph, Part III of the Act of 1995 shall have effect in relation to the new improvements as if those improvements were tenant’s improvements.
- (3) Subsections (2) and (6) of section 25A of this Act shall apply for the purposes of this paragraph as they apply for the purposes of that section.]

#### Textual Amendments

- F6** [Sch. 7 para. 2A](#) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), [Sch. para. 20\(4\)](#) (with s. 37)

- 3 (1) Where by virtue of section twenty-four of this Act a tenant is entitled to compensation for long-term improvements or for a special system of farming, as mentioned in that section, and—
- (a) after the end of the period of occupation expenses are incurred in replacing the benefit of the improvements by other long-term improvements of comparable benefit to the land, or in regaining the increased value attributable to that system of farming by the continuous adoption of a special system of farming of comparable benefit to the land, as the case may be, and
  - (b) the person incurring those expenses (whether he is the landlord or not) is entitled to compensation in respect of those expenses under section twenty-two of this Act,
- the provisions of the [<sup>F7</sup>Act of 1986] shall apply as if the works in respect of which those expenses are incurred were improvements carried out by the landlord at the request of the tenant, if apart from this paragraph they would not constitute such improvements.

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- (2) Subsection (8) of section fourteen of this Act shall not affect the operation of [F8 section 13 of the Act of 1986 in so far as the said section 13] applies in accordance with the preceding sub-paragraph.

**Textual Amendments**

- F7** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, [Sch. 13 para. 3](#), [Sch. 14 para. 33\(4\)\(a\)](#)
- F8** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, [Sch. 13 para. 3](#), [Sch. 14 para. 33\(4\)\(b\)](#)

- [F9]3A Where by virtue of section 25A of this Act a tenant is entitled to compensation for tenant's improvements as mentioned in that section and—
- (a) after the end of the period of occupation expenses are incurred in replacing the benefit of the tenant's improvements by other improvements of comparable benefit to the land, and
  - (b) the person incurring those expenses (whether he is the landlord or not) is entitled to compensation in respect of those expenses under section 22 of this Act,
- section 13 of the Act of 1995 shall apply as if the works in respect of which those expenses are incurred were not tenant's improvements, if apart from this paragraph they would constitute such improvements.]

**Textual Amendments**

- F9** [Sch. 7 para. 3A](#) inserted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), [Sch. para. 20\(5\)](#) (with s. 37)

- 4 (1) The provisions of this paragraph shall apply where—
- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order consisted of or included an agricultural holding or part of an agricultural holding, and
  - (b) the tenancy relating to that holding continues until after the end of the period of occupation.
- (2) The landlord or the tenant of the agricultural holding may, by notice in writing served on his tenant or landlord, demand a reference to arbitration under the [F10 Act of 1986] of the question whether any of the terms and conditions of the contract of tenancy (including any term or condition relating to rent) should be varied in consequence of any change in the state of the land resulting from the occupation or use of the land in the exercise of rights conferred by the order.
- (3) On a reference under this paragraph the arbitrator shall determine what variations (if any) should be made in the terms and conditions of the contract of tenancy, as mentioned in the last preceding sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the contract of tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the arbitrator under this paragraph.

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- (4) [<sup>F11</sup>section 84 of the Act of 1986] shall apply to references to arbitration by virtue of this paragraph as it applies to matters which by virtue of the [<sup>F11</sup>Act of 1986] are required to be determined by arbitration thereunder.
- (5) The provisions of this paragraph shall not affect any right of the landlord or the tenant, or the jurisdiction of the arbitrator, under [<sup>F12</sup>section 12 or section 13 of the Act of 1986]; but where there is a reference to arbitration under either of those sections and under this paragraph in respect of the same agricultural holding, and it appears to the arbitrator that the reference under that section relates wholly or mainly to the consequences of the occupation or use of the land in the exercise of rights conferred by the order, he may direct that proceedings on the two references shall be taken concurrently.
- (6) In the last preceding sub-paragraph references to [<sup>F13</sup>section 13 of the Act of 1986] include references to the provisions of that section as applied by paragraph 3 of this Schedule.
- [<sup>F14</sup>(7) In this paragraph “agricultural holding” does not include an agricultural holding held under a farm business tenancy.]

#### Textual Amendments

- F10** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(a)**
- F11** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(b)**
- F12** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(c)**
- F13** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(d)**
- F14** [Sch. 7 para. 4\(7\)](#) added (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), **Sch. para. 20(6)** (with s. 37)

- [<sup>F15</sup>4A (1) The provisions of this paragraph shall apply where—
- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order is subject to a farm business tenancy, and
  - (b) that tenancy continues until after the end of the period of occupation.
- (2) The landlord or tenant under the tenancy may, by notice in writing served on his tenant or landlord, demand a reference to arbitration of the question whether any of the terms and conditions of the tenancy (including any term or condition relating to rent) should be varied in consequence of any change in the state of the land resulting from the occupation or use of the land in the exercise of rights conferred by the order; and subsection (3) of section 28 of the Act of 1995 shall apply in relation to a notice under this sub-paragraph as it applies in relation to a notice under subsection (2) of that section.
- (3) On a reference by virtue of this paragraph, the arbitrator shall determine what variations (if any) should be made in the terms and conditions of the tenancy, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the arbitrator under this paragraph.

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- (4) The provisions of this paragraph shall not affect any right of the landlord or the tenant, or the jurisdiction of the arbitrator, under Part II of the Act of 1995; but where—
- (a) there is a reference by virtue of this paragraph and a reference under Part II of that Act in respect of the same tenancy, and
  - (b) it appears to the arbitrator that the reference under Part II of that Act relates wholly or mainly to the consequences of the occupation or use of the land in the exercise of rights conferred by the order,
- he may direct that proceedings on the two references shall be taken concurrently.]

#### Textual Amendments

**F15** Sch. 7 para. 4A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 20(7) (with s. 37)

- 5 (1) Where the land comprised in a compulsory rights order consists of or includes the whole or part of an agricultural holding [<sup>F16</sup>held under a tenancy in relation to which the Act of 1986 applies] , [<sup>F17</sup>section 10 of the Act of 1986] (which relates to the removal of fixtures and buildings) shall have effect in relation to the holding subject to the following provisions of this paragraph.
- (2) In relation to the service of a notice by the tenant on or after the operative date of the order, in respect of a fixture or building on a part of the holding which is within the land comprised in the order, paragraph (b) of [<sup>F18</sup>subsection (3)] of that section (under which the tenant is required to give at least one month’s notice of his intention to remove a fixture or building) shall apply with the substitution, for the words “one month”, of the words “fourteen days”.
- (3) Where the tenant has given to the landlord notice under the said [<sup>F19</sup>subsection (3)] (or under that subsection as modified by the last preceding sub-paragraph) of his intention to remove a fixture or building on a part of the holding which is within the land comprised in the order, and that notice is given on or after the operative date of the order, or, if given before that date, expires on or after that date, [<sup>F19</sup>subsection (4)] of that section (under which the landlord can elect to purchase a fixture or building which the tenant has signified his intention of removing) shall not apply to that fixture or building.
- (4) The last preceding sub-paragraph shall have effect in relation to a notice served before the operative date of the order notwithstanding that the landlord has given a counter-notice in respect of the fixture or building before the operative date.
- (5) In this paragraph any reference to [<sup>F20</sup>section 10 of the Act of 1986] includes a reference to the provisions of that section as extended by [<sup>F20</sup>sub-section (3) of section 79] of that Act (which relates to market gardens).

#### Textual Amendments

**F16** Words in Sch. 7 para. 5(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 20(8) (with s. 37)

**F17** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 33(6)(a)

**F18** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 33(6)(b)

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**F19** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(6)(c)**

**F20** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(6)(d)**

6 (1) Where <sup>F21</sup>—

- (a) an agricultural holding held under a tenancy in relation to which the Act of 1986 applies, or
- (b) a holding under a farm business tenancy,]

consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work.

(2) Nothing in the preceding sub-paragraph shall affect any right exercisable by virtue of <sup>F22</sup>section 23 of the Act of 1986] (which confers rights of entry for the purposes therein mentioned).

<sup>F23</sup>(2A) In sub-paragraph (1) of this paragraph, “holding”, in relation to a farm business tenancy, has the same meaning as in the Act of 1995.]

#### Textual Amendments

**F21** Sch. 7 para. 6(1)(a)(b) and the preceding hyphen substituted (1.9.1995) for words in Sch. 7 para. 6(1) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(9)(a)** (with s. 37)

**F22** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(7)**

**F23** Sch. 7 para. 6(2A) added (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(9)(b)** (with s. 37)

7 The provisions of <sup>F24</sup>sub-paragraphs (1) to (6) of]paragraph 4 of this Schedule shall apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference in <sup>F25</sup>those sub-paragraphs] to such a contract, or to a tenancy, were a reference to a mortgage, and any reference to land consisting of or including an agricultural holding or part of an agricultural holding were a reference to agricultural land subject to a mortgage <sup>F26</sup>but not comprised in a farm business tenancy], and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.

#### Textual Amendments

**F24** Words in [Sch. 7 para. 7](#) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(10)(a)** (with s. 37)

**F25** Words in [Sch. 7 para. 7](#) substituted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(10)(b)** (with s. 37)

**F26** Words in [Sch. 7 para. 7](#) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(10)(c)** (with s. 37)

<sup>F27</sup>7A The provisions of paragraph 4A of this Schedule shall apply in relation to mortgages of land comprised in farm business tenancies as they apply in relation to such tenancies, as if any reference in that paragraph to such a tenancy were a reference to such a mortgage, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.]

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### Textual Amendments

**F27** Sch. 7 para. 7A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(11)** (with s. 37)

## PART II

### OTHER LAND

- 8 (1) The provisions of this paragraph shall have effect where—
- (a) the land comprised in a compulsory rights order consists of or includes land falling within paragraphs (a) and (b) of subsection (1) of section thirty of this Act, and
  - (b) the tenancy under which the tenant could have claimed compensation for the improvements terminates on or after the date of entry, but before the end of the period of occupation.
- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of the Act of 1927 as to compensation for improvements—
- (a) shall apply, in relation to that tenancy, as if at the termination thereof the land in question were in the state in which it was immediately before the date of entry, and
  - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
- (3) Subsection (5) of section thirty of this Act shall apply for the purposes of this paragraph with the substitution, for references to subsection (2) of that section, of references to the last preceding sub-paragraph.
- (4) In this Part of this Schedule “the Act of 1927” means the <sup>M1</sup>Landlord and Tenant Act 1927, and “improvement” includes the erection of a building.

### Marginal Citations

**M1** 1927 c. 36.

- 9 (1) The provisions of this paragraph shall have effect where land comprised in a holding to which Part I of the said Act of 1927 applies is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
- (a) the tenancy under which that holding was held immediately before the operative date continues until after the end of the period of occupation, and
  - (b) before the operative date improvements (in this paragraph referred to as “the former improvements”) had been carried out on the land in question, and
  - (c) at the end of the period of occupation the circumstances are such that compensation would be payable in respect of the former improvements under section thirty of this Act, but for the fact that the benefit of those improvements has been replaced, on the restoration of the land, by works (in this paragraph referred to as “the new improvements”) of comparable benefit to the land.



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- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of Part I of the said Act of 1927 as to compensation for improvements shall apply to the new improvements as if they had been carried out by the person who carried out the former improvements.
- 10 Where a compulsory rights order comprises the whole or part of a holding to which section twenty-nine of this Act applies, and after the end of the period of occupation the tenant carries out improvements thereon, and, in respect of expenses incurred in carrying out those improvements, is entitled to compensation under section twenty-two of this Act as applied by section twenty-nine of this Act, those improvements shall be treated for the purposes of the Act of 1927, and for the purposes of Part II of the <sup>M2</sup>Landlord and Tenant Act 1954, as if they had been carried out by the landlord.

**Marginal Citations**

**M2** 1954 c. 56.

- 11 (1) Where a holding to which Part I of the Act of 1927 applies consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work.
- (2) Nothing in the preceding sub-paragraph shall affect any right exercisable by virtue of section ten of the Act of 1927 (which confers rights of entry for the purposes therein mentioned).
- 12 (1) The provisions of this paragraph shall apply where—
- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order was subject to a tenancy, but [<sup>F28</sup>was not comprised in a tenancy in relation to which the Act of 1986 applies or in a farm business tenancy], and
  - (b) the tenancy continues until after the end of the period of occupation.
- (2) The landlord or the tenant of the holding may, by notice in writing served on his tenant or landlord, demand a reference to the court of the question whether any of the terms and conditions of the contract of tenancy (including any term or condition as to rent) should be varied in consequence of any change in the state of the holding resulting from the occupation or use of the land in the exercise of rights conferred by the compulsory rights order.
- (3) On a reference under this paragraph the court shall determine what variations (if any) should be made in the terms and conditions of the contract of tenancy, as mentioned in the last preceding sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the contract of tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the court under this paragraph.
- (4) In this paragraph “the court” means the court exercising, in accordance with the provisions of section sixty-three of the <sup>M3</sup>Landlord and Tenant Act 1954, the jurisdiction conferred on the tribunal by Part I of the <sup>M4</sup>Landlord and Tenant Act

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1927; and the provisions of the said section sixty-three shall apply, in relation to references under this paragraph, as they apply in relation to matters which, by virtue of the said Part I, are required to be determined by the tribunal thereunder.

**Textual Amendments**

**F28** Words in [Sch. 7 para. 12\(1\)\(a\)](#) substituted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), [Sch. para. 20\(12\)](#) (with [s. 37](#))

**Marginal Citations**

**M3** [1954 c. 56.](#)

**M4** [1927 c. 36.](#)

- 13 The provisions of the last preceding paragraph shall apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference to such a contract, or to a tenancy [<sup>F29</sup>(other than a reference to a tenancy in relation to which the Act of 1986 applies or a farm business tenancy)], were a reference to a mortgage, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.

**Textual Amendments**

**F29** Words in [Sch. 7 para. 13](#) inserted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), [Sch. para. 20\(13\)](#) (with [s. 37](#))

### PART III

#### *GENERAL PROVISIONS FOR PROTECTION IN RESPECT OF TENANCIES AND MORTGAGES*

- 14 Where any land comprised in a compulsory rights order is subject to a tenancy or mortgage, and—
- (a) any obligation or restriction imposed by the terms and conditions of the tenancy or mortgage would (apart from this Act) fall to be performed or observed at a time within the period of occupation, whether by the landlord or the tenant, or by the mortgagee or the mortgagor, as the case may be, and
  - (b) in consequence of the rights conferred by the order, or of anything done in the exercise of those rights, that obligation or restriction cannot be so performed or observed at that time,
- the failure to perform or observe the obligation or restriction at that time shall be deemed not to be a breach of any of the terms and conditions of the tenancy or mortgage.
- 15 (1) Where at any time while any land was comprised in a compulsory rights order it was subject to a tenancy or mortgage which continues until after the end of the period of occupation, and at any time within twelve months after the end of that period proceedings are brought to enforce a right of re-entry, forfeiture or foreclosure, or a right to damages or any other remedy, in respect of any failure after the end of that period to comply with any of the terms and conditions of the tenancy or mortgage, the person against whom the proceedings are brought may apply in those proceedings for relief under this paragraph.

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- (2) If, in a case where application is made for relief under this paragraph, the court to which the application is made is satisfied that the failure to comply with the term or condition in question was attributable to a change in the state of the land resulting from the occupation and use thereof in the exercise of rights conferred by the compulsory rights order, the court may grant such relief, in respect of the matters to which the proceedings relate, as the court may consider reasonable in the circumstances.
- 16 The provisions of paragraphs 14 and 15 of this Schedule shall be without prejudice to the provisions of paragraph 4 or paragraph 12 of this Schedule, or to any of those provisions as applied in relation to mortgages by paragraph 7 or paragraph 13 thereof.

#### PART IV

##### PROVISIONS AS TO MINING LEASES AND ORDERS

- 17 (1) The provisions of this Part of this Schedule shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the operative date of the order, is subject to a mining lease or order conferring working rights the benefit of which is held for the purposes of a mineral undertaking.
- (2) In this Part of this Schedule “the mineral operator” and “the relevant rights and facilities”, in relation to such a mining lease or order as is mentioned in the preceding sub-paragraph, have the same meanings as in the Fifth Schedule to this Act.
- 18 The provisions of the mining lease or order shall have effect subject to the provision that the aggregate amount of the rent, royalties and other sums payable by the mineral operator by virtue of the lease or order for any year which is either—
- (a) the year beginning with the operative date of the compulsory rights order, or
  - (b) a year beginning with an anniversary of that date and falling within the period of occupation,
- shall not exceed the aggregate amount of the rent, royalties and other sums which would have been payable by the mineral operator thereunder for that year if the compulsory rights order had not been made, and he had exercised the relevant rights and facilities in the manner in which, and to the extent to which, he might reasonably have been expected to exercise them in those circumstances.

#### PART V

##### SPECIAL PROVISIONS AS TO BUSINESS, PROFESSIONAL AND OTHER TENANTS

- 19 (1) The provisions of this Part of this Schedule shall have effect where any of the land comprised in a compulsory rights order is land which, immediately before the operative date of the order, was subject to a tenancy to which Part II of the Act of 1954 applied; and any reference in this Part of this Schedule to a tenancy to which this Part of this Schedule applies is a reference to a tenancy which—
- (a) immediately before the operative date of such an order, was a tenancy to which Part II of that Act applied, and
  - (b) comprises the whole or part of the land comprised in that order.

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- (2) In this Part of this Schedule “the Act of 1954” means the <sup>M5</sup>Landlord and Tenant Act 1954, and “business” has the same meaning as in Part II of that Act.
- (3) Sub-paragraph (4) of paragraph 12 of this Schedule shall apply for the purposes of this Part of this Schedule as it applies for the purposes of that paragraph.

**Marginal Citations**

**M5** 1954 c. 56.

- 20 (1) As from the operative date of the order and so long thereafter as the tenancy continues and the order continues to have effect, so much of the land comprised in the order as—
- (a) is comprised in the tenancy, and
  - (b) immediately before the operative date was occupied by the tenant for the purposes of the relevant business (or for those and other purposes) or was occupied by a person employed by the tenant for the purposes of the relevant business, and
  - (c) is not for the time being so occupied by the tenant or by such a person,
- shall be treated for the purposes of Part II of the Act of 1954 as if it had continued to be so occupied.
- (2) In this paragraph “the relevant business” means the business by reason of which, immediately before the operative date, the tenancy was a tenancy to which Part II of the Act of 1954 applied.
- 21 (1) For the purposes mentioned in the next following sub-paragraph, in relation to a tenancy to which this Part of this Schedule applies, paragraphs (f) and (g) of subsection (1) of section thirty of the Act of 1954 (which specify certain grounds on which a landlord may oppose an application for a new tenancy) shall apply as if any reference to the termination of the current tenancy were a reference to the end of the period of occupation.
- (2) The said purposes are—
- (a) the purposes of the operation of subsection (6) of section twenty-five of the Act of 1954 (which requires a notice by the landlord terminating a tenancy to state whether the landlord would oppose an application for a new tenancy, and, if so, on which of the grounds mentioned in section thirty of the Act he would do so) in relation to the service of a notice under the said section twenty-five at any time on or after the operative date of the order in question and before the end of the period of occupation;
  - (b) the purposes of the operation of subsection (6) of section twenty-six of that Act (which enables a landlord, where the tenant has requested a new tenancy, to give notice that he will oppose an application for a new tenancy, and requires him to state on which of the grounds mentioned in section thirty of that Act he will do so) in relation to the service of a notice under that subsection at any such time;
  - (c) the purposes of the operation of the said section thirty and of section thirty-one of that Act (which relates to the dismissal of an application for a new tenancy where the landlord successfully opposes it) in relation to the determination by the court of an application for a new tenancy, where that application falls to be determined at any such time.

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- 22 (1) Where an application made under subsection (1) of section twenty-four of the Act of 1954 (whether before or after the commencement of this Act) falls to be determined by the court at a time when the current tenancy is a tenancy to which this Part of this Schedule applies (being a time on or after the operative date of the order in question and before the end of the period of occupation) and on that application an order for the grant of a new tenancy is made under section twenty-nine of that Act, the following provisions of this paragraph shall have effect.
- (2) If it falls to the court to determine the rent payable under the new tenancy, the court shall determine that rent as if the compulsory rights order had not been made, and as if so much of the property comprised in the current tenancy as is comprised in the compulsory rights order were in the state in which it was immediately before the operative date.
- (3) If it falls to the court to determine any of the terms and conditions of the new tenancy (other than any term or condition as to the rent payable thereunder) the court shall determine those terms or conditions as if the compulsory rights order had not been made; but, in so far as any such terms or conditions of the new tenancy impose an obligation or restriction in respect of land comprised in the compulsory rights order, the court may suspend the operation of that obligation or restriction during the period of occupation.
- (4) If the new tenancy continues until after the end of the period of occupation, the landlord or the tenant may, by notice in writing served on his tenant or landlord, demand a reference to the court of the question whether any of the terms and conditions of the tenancy (including any term or condition as to rent) should be varied, having regard to the state of the land and other circumstances existing at the time when the reference is determined by the court:
- Provided that the court shall not entertain such a reference unless the proceedings are begun within twelve months after the end of the period of occupation.
- (5) On a reference under the last preceding sub-paragraph, the court shall determine what variations (if any) should be made in the terms and conditions of the tenancy, as mentioned in that sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the court under this paragraph.
- 23 (1) The provisions of this paragraph shall have effect, in the case of a tenancy to which this Part of this Schedule applies, where an application under subsection (1) of section twenty-four of the Act of 1954—
- (a) is made by the tenant before the end of the period of occupation, but falls to be determined by the court after the end of that period, or
- (b) is made by the tenant within twelve months after the end of that period,
- and the landlord opposes the application on grounds consisting of or including any of the grounds specified in paragraphs (a) and (c) of subsection (1) of section thirty of that Act (which relate respectively to the state of repair of the holding and to the tenant's use or management of the holding during the current tenancy).
- (2) If the court is satisfied that the matters to which the objection in question relates are attributable to a change in the state of the land resulting from the occupation and use thereof in the exercise of rights conferred by the compulsory rights order, the court,

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in so far as it considers it reasonable to do so in the circumstances, may disregard those matters in determining whether to make an order for the grant of a new tenancy.

- (3) The provisions of the last preceding sub-paragraph shall be without prejudice to the operation of paragraph 14 of this Schedule in relation to things done or omitted during the period of occupation.
- 24 (1) In relation to an application made under subsection (1) of section twenty-four of the Act of 1954 (whether before or after the commencement of this Act) which falls to be determined by the court at a time when the current tenancy is a tenancy to which this Part of this Schedule applies (being a time on or after the operative date of the order in question and before the end of the period of occupation) section thirty-seven of that Act (under which a tenant is entitled to compensation from the landlord if an order for the grant of a new tenancy is precluded on certain grounds therein mentioned) shall apply subject to the following provisions of this paragraph.
- (2) In subsection (1) of that section—
- (a) the reference to paragraphs (f) and (g) of subsection (1) of section thirty of that Act shall be construed as a reference to those paragraphs as modified by sub-paragraph (1) of paragraph 21 of this Schedule;
  - (b) the reference to quitting the holding shall be construed as a reference to the termination of the current tenancy.
- (3) In subsection (2) of that section, for any reference to the rateable value of the holding there shall be substituted a reference to the amount which would have been the rateable value of the holding on the material date if—
- (a) the compulsory rights order in question had not been made, and the [F30opencast planning permission] referred to in that order had not been granted and no application [F31for opencast planning permission had been made], and
  - (b) so much of the land comprised in the order as is comprised in the current tenancy had remained in the state in which it was immediately before the operative date of the order.
- (4) Paragraphs (a) to (c) of subsection (5) of that section shall not apply; but—
- (a) the amount which, in the circumstances mentioned in the last preceding sub-paragraph, would have been the rateable value of the holding on the material date shall be taken to be the value which, in those circumstances, and apart from any exemption from assessment to rates, would on a proper assessment have been the value to be entered in the valuation list as the annual value of the holding; and
  - (b) the provisions of subsection (5) of that section as to the determination of disputes and as to appeals, and the provisions of subsection (6) of that section (which authorises the Commissioners of Inland Revenue to make rules as to procedure) shall apply in relation to any dispute or reference relating to that amount as they apply in relation to any such dispute or reference as is mentioned in those provisions.
- (5) The modifications of the said section thirty-seven specified in the preceding provisions of this paragraph shall apply without prejudice to the operation, in relation to that section, of paragraph 20 of this Schedule.
- (6) In this paragraph “the material date”, in relation to an application under subsection (1) of section twenty-four of the Act of 1954, means the date of the landlord’s notice

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under section twenty-five of that Act or under subsection (6) of section twenty-six of that Act, as the case may be, and “annual value” has the same meaning as in section thirty-seven of that Act.

#### Textual Amendments

**F30** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 17\(a\)](#)

**F31** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 17\(b\)](#)

## PART VI

### APPLICATION TO SCOTLAND

- 25 In the application of this Schedule to Scotland—
- <sup>F32</sup>[( a) [<sup>F33</sup>subject to sub-paragraphs (ba), (bc), (bd)(i) and (be) of this paragraph,]]for references—
- (i) [<sup>F34</sup>to the Act of 1986 and to sections 12, 13 and 84 of that Act there shall be substituted respectively references to (as the case may be)—
- (A) the Scottish Act of 1991 and to sections 13, 15 and 61 of that Act; or
- (B) the Scottish Act of 2003 and to sections 9, 10 and 77 or 78 of that Act; and
- (ia) to section 23 of the Act of 1986 there shall be substituted a reference to section 10 of the Scottish Act of 1991; and]
- (ii) to section 10 of the Act of 1986 and to subsections (3) and (4) of that section there shall be substituted respectively references to section 18 of the Scottish Act of 1991 and to subsections (2) and (3) of that section; and
- (iii) to subsection (3) of section 79 of the Act of 1986 there shall be substituted references to section 40(4)(a) of the Scottish Act of 1991.
- (b) [<sup>F35</sup>for references to an arbitrator there shall be substituted references to an arbiter or, as the case may be, to the Scottish Land Court.]
- <sup>F36</sup>(ba) in sub-paragraph (1) of paragraph 2, the words “held under a tenancy in relation to which the Act of 1986 applies” shall be omitted;
- (bb) sub-paragraph (7) of paragraph 4 shall be omitted;
- (bc) in sub-paragraph (1) of paragraph 5, the words “held under a tenancy in relation to which the Act of 1986 applies” shall be omitted;
- (bd) in paragraph (6)—
- (i) for paragraphs (a) and (b) of sub-paragraph (1) there shall be substituted the words “an agricultural holding”; and
- (ii) sub-paragraph (2A) shall be omitted;
- (be) in sub-paragraph (1)(a) of paragraph 12, for the words “was not comprised in a tenancy in relation to which the Act of 1986 applies or in a farm business tenancy” there shall be substituted the words “did not constitute or form part of an agricultural holding”;
- (c) paragraphs [<sup>F37</sup>1A, 2A, 3A, 4A, 7, 7A] and 13 shall be omitted;

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- (d) for any reference to a holding to which Part I of the <sup>M6</sup>Landlord and Tenant Act 1927, applies there shall be substituted a reference to a holding the tenant of which is entitled by the terms of his lease to claim compensation in respect of improvements, and any reference to the said Part I or to a tenant entitled to compensation thereunder shall be construed accordingly;
- (e) in paragraph 12 for sub-paragraph (4) there shall be substituted the following sub-paragraph:—
- “(4) In this paragraph ”the court’ means the sheriff having jurisdiction in the place where the holding, or any part of it, is situated”
- (f) in Part III references to a mortgage shall be omitted;
- (g) Part V shall be omitted.

#### Textual Amendments

- F32** Sch. 7 para. 25(a) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), [Sch. 11 para.21](#) (with s. 45(3), Sch. 12 para. 3)
- F33** Words in Sch. 7 para. 25(a) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), [Sch. para. 20\(14\)\(a\)](#) (with s. 37)
- F34** Sch. SEVENTH para. 25(a)(i)(ia) substituted for Sch. SEVENTH para. 25(a)(i) (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 7\(a\)](#)
- F35** Sch. SEVENTH para. 25(b) substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 7\(b\)](#)
- F36** Sch. 7 para. 25(ba)-(be) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), [Sch. para. 20\(14\)\(b\)](#) (with s. 37)
- F37** Words in Sch. 7 para. 25(c) substituted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), [Sch. para. 20\(14\)\(c\)](#) (with s. 37)

#### Marginal Citations

- M6** 1927 c. 36.



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