



# Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951

1951 CHAPTER 65 14 and 15 Geo 6

## PART I

### PROTECTION AGAINST CERTAIN LEGAL REMEDIES

#### *Provisions as to England and Wales*

#### **1 Application of sections two to six.**

The five next following sections shall apply to England and Wales only.

#### **2 General restrictions on execution and other remedies.**

- (1) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, to proceed, except with the leave of the appropriate court, to execution on, or otherwise to the enforcement of, a judgment or order of any court other than a county court (whether given or made before or after the commencement of this Act) for the payment or recovery of a sum of money:

Provided that nothing in this subsection shall apply to—

- (a) a judgment for the recovery of damages for tort;
- (b) a judgment or order for the recovery of a debt which has become due by virtue of a contract made after the relevant date;
- (c) a judgment or order under which no sum of money is recoverable otherwise than in respect of costs;
- [<sup>F1</sup>(d) an order for alimony, maintenance or other payment made under sections 21 to 33 of the Matrimonial Causes Act 1973 or made, or having effect as if made, under Schedule 1 to the Children Act 1989.]
- (e) an order made in criminal proceedings, or an order made in proceedings for the recovery of a penalty in respect of a contravention of, or failure to comply

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with, any provisions of an Act; or to the enforcement of any other judgment or order by judgment summons.

- (2) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, except with the leave of the appropriate court—
- (a) to proceed to exercise any remedy which is available to him by way of—
    - the levying of distress;
    - the taking of possession of any property;
    - the appointment of a receiver of any property;
    - re-entry upon land;
    - the realisation of a security; or
    - the forfeiture of a deposit; or
  - (b) to institute proceedings for foreclosure or for sale in lieu of foreclosure, or for the recovery of possession of mortgaged property, or to take any step in any such proceedings instituted before the relevant date:

Provided that this subsection shall not apply to any remedy or proceedings available in consequence of default in the payment of a debt arising by virtue of a contract made after the relevant date or the performance of an obligation so arising; and nothing in this subsection shall affect—

- (i) a power of sale of a mortgagee of land or an interest in land who is in possession of the mortgaged property at the relevant date, or who before that date has appointed a receiver who at that date is in possession, or in receipt of the rents and profits, of the mortgaged property; or
  - (ii) a power of sale of a mortgagee in possession of property other than land or some interest in land, where the power of sale has arisen and notice of the intended sale has been given before the relevant date; or
  - (iii) a right or power of a pawnbroker to deal with a pledge; or
  - (iv) any right or power of a person to sell goods in his custody as a bailee, being a right or power arising by reason of default in the payment of a debt; or
  - (v) the institution or prosecution of proceedings for the appointment by the court of a receiver of any property.
- (3) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, to proceed, except with the leave of the appropriate court, to execution on, or otherwise to the enforcement of, a judgment or order of any court (whether given or made before or after the commencement of this Act) for the recovery of possession of land in default of payment of rent or for the delivery of any property other than mortgaged property by reason of a default in the payment of money:

Provided that nothing in this subsection shall apply to a judgment given or order made in proceedings for the enforcement of a contract made after the relevant date.

- (4) If, on any application for such leave as is required under this section for the exercise of any of the rights and remedies mentioned in subsections (1), (2) and (3) of this section, the appropriate court is of opinion that the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is unable immediately to do so by reason of circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service, the court may, subject to the provisions of this Part of this Act, refuse leave for the

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exercise of that right or remedy, or give leave therefor subject to such restrictions and conditions as the court thinks proper.

(5) The appropriate court, in determining for the purpose of the last foregoing subsection whether a person is unable immediately to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question by reason of any such circumstances as are mentioned in that subsection, or in determining the restrictions and conditions (if any) subject to which leave is to be given under that subsection, may take account of other liabilities, whether present or future, of his.

(6) Where—

(a) a bankruptcy petition has been presented against a debtor, and it is shown to the satisfaction of the court having jurisdiction in the bankruptcy that his inability to pay his debts is due to circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service; <sup>F2</sup> . . .

<sup>F2</sup>(b) . . . . .

the court may at any time stay the proceedings under the petition for such time and subject to such conditions as the court thinks fit.

<sup>F2</sup> . . .

#### Textual Amendments

**F1** S. 2(1)(d) substituted by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 12** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

**F2** Words in s. 2(6), s. 2(6)(b) and the preceding word “or” repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. V** Group 1.

### 3 Scope of protection.

(1) Subject to the following provisions of this section, the provisions of subsection (1), (2) or (3) of the last foregoing section shall apply to the exercise of a right or remedy in the following cases, and in the following cases only, that is to say:—

(a) they shall apply (by virtue of this paragraph and without more) where the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is for the time being performing a period of relevant service;

(b) they shall apply (by virtue of this paragraph and without more, but subject to any order of the appropriate court directing that they shall not so apply or shall cease so to apply) where the person liable as aforesaid has been performing a period of relevant service and, while he was so doing, an application was made to the appropriate court for leave under the last foregoing section to exercise the right or remedy;

(c) they shall apply in a case where—

(i) the appropriate court by order so directs, on the application of the person liable as aforesaid and on being satisfied that he is unable immediately to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question by reason of circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service; or

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- (ii) the person liable as aforesaid has made to the appropriate court an application for an order under this paragraph and the application has not been disposed of, or not having made such an application has given to the proper person written notice of his intention to do so.
- (2) A notice given for the purpose of paragraph (c) of the foregoing subsection shall expire at the expiration of fourteen days (or, if given in a class of case as to which a longer period is prescribed for the purposes of this subsection, at the expiration of that period) from the date on which it was given, and where the person giving a notice for that purpose has given a previous notice to the like effect the later notice shall have no operation unless the previous notice was withdrawn with the consent of the proper person before it expired.
- (3) For the purpose of the foregoing subsections, the expression “the proper person” means the person seeking to exercise the right or remedy in question, but a notice shall be deemed to be given to the proper person if given to any person (whether the proper person or his agent or not) proceeding to the enforcement of that right or remedy.
- (4) Where the appropriate court makes an order under paragraph (c) of subsection (1) of this section with respect to the exercise of a right or remedy, the powers of the court under the last foregoing section shall thereupon be exercisable as if an application for leave to exercise the right or remedy in question had been made under that section.
- (5) The appropriate court, in determining for the purpose of the said paragraph (c) whether the applicant is unable immediately to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question by reason of any such circumstances as are mentioned in that paragraph, may take account of other liabilities, whether present or future, of his.
- (6) In their application to the enforcement of a judgment or order for the recovery of possession of land in default of payment of rent, the references in subsection (4) of the last foregoing section and subsection (1) of this section to the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question shall be construed as referring only to the person or persons against whom the judgment or order was made and who is or are, or would, but for any forfeiture incurred in consequence of the default be, entitled to the benefit of the lease under which the rent was reserved.
- (7) Any reference in subsection (4) of the last foregoing section or subsection (1) of this section to the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question shall in a case where it is sought to exercise a right or remedy against one such person separately from any others who are also so liable, be construed as referring to him only and not including any such other person, but, in a case where it is sought to exercise it against two or more such persons jointly, shall be construed as referring to all or any of the persons against whom it is sought to exercise the right or remedy; and in this subsection references to exercising a right or remedy against a person shall include exercising it against property in which he has an interest or of which he is in possession.
- (8) This section, and subsection (4) of the last foregoing section, shall apply to a person affected, or claiming to be affected, by an exercise or proposed exercise by the mortgagee of any property of any of the rights or remedies mentioned in subsection (2) of the last foregoing section, being a right or remedy arising by virtue of a default in the payment of any mortgage money or a breach of any mortgage obligation, as if that

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person were a person liable to pay the mortgage money or to perform the mortgage obligation:

Provided that the said subsection (2) shall not apply to require leave for the exercise of the right or remedy otherwise than against the person liable as aforesaid except by virtue of paragraph (c) of subsection (1) of this section.

- (9) For the purposes of the last foregoing section and of subsection (3) of this section a person shall be deemed to be proceeding to execution on, or otherwise to the enforcement of, a judgment or order if, being entitled to the benefit of the judgment or order—
- (a) he issues a bankruptcy notice or presents a bankruptcy petition or a winding-up petition founded on the non-payment of money due under the judgment or order; or
  - (b) he takes out some judicial process with a view to, or in the course of, the enforcement of the judgment or order;

and, where a person has (in a case for which leave was not required under the last foregoing section) taken out any judicial process with a view to, or in the course of, the enforcement of a judgment or order, or proceeded to the exercise of any such remedy as is mentioned in subsection (2) of that section, he shall be deemed to be proceeding to the enforcement of the judgment or order or to the exercise of the remedy when any step is taken by him or on his behalf towards its completion:

Provided that—

- (i) the last foregoing section shall not apply to require leave for the taking of any such step as aforesaid except by virtue of paragraph (c) of subsection (1) of this section; and
  - (ii) for the purposes of this subsection, an application for discovery in aid of execution shall not be treated as the taking out of a judicial process or as the taking of a step towards the completion of the enforcement of a judgment or order.
- (10) For the purposes of the last foregoing section, the expression “the relevant date” means the date on which the service man in question began to perform the period of relevant service:

Provided that—

- (a) for the purposes of any reference in the last foregoing section to a contract made after the relevant date, where a service man performs two or more periods of relevant service the said expression means the date on which he began the later or latest of those periods of service; and
- (b) for the purposes of paragraph (b) of subsection (2) of the last foregoing section, and of paragraphs (i) and (ii) of the proviso to the said subsection (2) —
  - (i) where the said date was before the commencement of this Act, then subject to sub-paragraph (ii) of this paragraph the said expression means the date of that commencement; and
  - (ii) in a case to which the last foregoing section applies by virtue of paragraph (c) of subsection (1) of this section, the said expression means the date on which that section began so to apply.

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#### 4 Special provisions as to leases and hire-purchase agreements.

- (1) Where under section two of this Act the appropriate court refuses, or grants subject to restrictions and conditions, leave to enforce a judgment or order for the recovery of possession in default of payment of rent of any premises, the lease shall be deemed not to have been forfeited by reason of the default so long as the judgment or order remains unenforceable; and a judgment or order shall be deemed to have remained unenforceable, notwithstanding that it has at some time been enforceable, if before it is enforced it again becomes unenforceable.
- (2) A judgment or order for the recovery of possession of a dwelling house [<sup>F3</sup>let on or subject to a protected tenancy of statutory tenancy within the meaning of the <sup>M1</sup>Rent Act 1977] shall be deemed for the purposes of the foregoing provisions of this Act to be a judgment or order for the recovery of possession of the dwelling house in default of payment of rent if the court in giving or making the judgment or order was exercising the power conferred by [<sup>F3</sup>Case 1 in Schedule 15 to the Rent Act 1977] on the sole ground that rent lawfully due from the tenant had not been paid and was not exercising any other power conferred by that Schedule.
- [<sup>F4</sup>(2A) For the purposes of the foregoing provisions of this Act, a judgment or order for the recovery of possession of a dwelling-house let on an assured tenancy within the meaning of Part I of the Housing Act 1988 shall be regarded as a judgment or order for the recovery of possession in default of payment of rent if the judgment or order was made on any of Grounds 8, 10 and 11 in Schedule 2 to that Act and not on any other ground.]
- (3) On an application under section two of this Act for leave to enforce a judgment or order for the recovery in default of payment of rent of possession of land held in distinct parcels under one lease by two or more lessees, the court may (notwithstanding that a single rent was reserved by the lease and the proviso for re-entry in default of payment of the rent was not severable) order that the application shall be dealt with as if those parcels had been held under distinct leases and applications were being made for leave to enforce separate judgments or orders in relation thereto, and may make such consequential provision as seems just for the apportionment of the arrears of rent, for the relief of any lessee from forfeiture of the parcel held by him and for the adjustment of the rights and obligations under the lease of the parties to the application.
- [<sup>F5</sup>(4) Where the appropriate court refuses leave under section 4(2) of this Act to take possession of goods subject to a hire-purchase agreement or a conditional sale agreement or to execute a judgment or order for delivery of such goods, or gives leave subject to restrictions and conditions, and the person to whom the goods are bailed, or, as the case may be, the buyer, before possession is taken or execution on the judgment or order completed, pays the total price, the creditor's title to the goods shall, notwithstanding any failure to pay the total price at the time required by the agreement, vest in that person.
- (5) Where the creditor under a hire-purchase agreement or a conditional sale agreement has taken possession of the goods bailed or agreed to be sold under it, the appropriate court on an application under section 3(1)(c) of this Act, may, if it thinks fit, deal with the case as if the creditor were proceeding to take possession of the goods and, if it makes an order under that paragraph, may direct accordingly that the goods be restored to the person to whom they were bailed or, as the case may be, the buyer; and if, after the creditor has taken possession of the goods, notice is given under that paragraph with respect to them, he shall not, so long as the notice is in force or any application

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in pursuance of the notice is undisposed of, deal with the goods in such a way as to prejudice the powers of the appropriate court under this subsection.]

#### Textual Amendments

- F3** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 2](#)  
**F4** [S. 4\(2A\)](#) inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), Sch. 17 para. 1  
**F5** [S. 4\(4\)\(5\)](#) substituted for s. 4(4)—(6) by [Consumer Credit Act 1974 \(c. 39\)](#), s. 192, [Sch. 4 Pt. I para. 12](#)

#### Marginal Citations

- M1** [1977 c. 42](#).

## 5 Appropriate courts and procedure.

- (1) The appropriate court for the purposes of any of the provisions of this Part of this Act applying to England and Wales shall be such court as may be designated by rules made by the Lord Chancellor under this section, and such rules may designate different courts in relation to different classes of proceedings.
- (2) [<sup>F6</sup>Rules may be made in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005] prescribing the manner in which applications under the said provisions are to be made, and prescribing any matter which under any of those provisions is to be prescribed, and generally for regulating the conduct of proceedings under the said provisions.
- (3) [<sup>F7</sup>Rules under subsection (2)] may in particular make provision for enabling a court, for the purpose of hearing and determining an application under the said provisions of this Part of this Act or in exercising any discretion for the purposes of the said provisions of this Part of this Act, to admit any document as evidence of any facts stated therein.
- (4) [<sup>F7</sup>Rules under subsection (2)] may in particular make provision for requiring, or dispensing with, service of notice of any application under the said provisions of this Part of this Act upon persons who may be affected, whether by virtue of subsection (5) of section two or subsection (5) or (8) of section three or otherwise, and for enabling any persons to be heard at the hearing of any application under those provisions, and may also make provision for the making of applications *ex parte* in such cases as may be prescribed by the rules.
- (5) [<sup>F7</sup>Rules under subsection (2)] may, for the purpose of enabling a person performing relevant service to obtain the protection afforded by subsections (8) and (9) of section three of this Act, provide for enabling the appropriate court to treat as an application made by him for an order under paragraph (c) of subsection (1) of the said section three, an application for that purpose made by some other person on his behalf; and the rules may further provide that an application which the appropriate court has, under the rules, power to treat as an application by the person performing relevant service shall also be treated for the purposes of sub-paragraph (ii) of the said paragraph (c) as an application made by that person.

[<sup>F8</sup>(5A) The Lord Chancellor must consult the Lord Chief Justice of England and Wales before making rules under subsection (1) that relate to England and Wales.

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- (5B) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (5A).]
- (6) The power to make rules conferred by [F9 subsection (1)] shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F6** Words in s. 5(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 1 para. 8(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 7
- F7** Words in s. 5(3)-(5) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 1 para. 8(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 7
- F8** S. 5(5A)(5B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 41(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(d)
- F9** Words in s. 5(6) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 1 para. 8(4)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 7

## 6 Interpretation of sections two to five.

- (1) In the foregoing provisions of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—
- “costs” includes all charges and possession money payable to a sheriff in respect of interpleader proceedings taken by him;
  - “lease” includes an underlease and any contract of tenancy, and the expression “lessee” shall be construed accordingly;
  - “mortgage” includes any charge, and the expressions “mortgagor” and “mortgagee” shall be construed accordingly;
  - “mortgage money” includes any part thereof and interest thereon;
  - “mortgage obligation” means any obligation arising under or by virtue of the mortgage, other than an obligation to pay the mortgage money;
  - “prescribed” means prescribed by rules made under the last foregoing section;
  - “rent” includes any sum payable by way of mesne profits;
  - “the relevant date” has the meaning assigned to it by subsection (10) of section three of this Act.
- (2) It is hereby declared that in this Part of this Act the expression “distress” includes distress for rates.
- (3) For the purposes of the foregoing provisions of this Act an execution against goods shall be deemed to be completed by seizure and sale or, where a writ or warrant of delivery is issued, by delivery of the goods, an attachment of a debt shall be deemed to be completed by the receipt of the debt, an execution against land shall be deemed to be completed by seizure or, in the case of an equitable interest, by the appointment of a receiver, and the enforcement of a judgment or order for recovery of possession of land shall be deemed to be completed by delivery of possession.
- (4) References in the foregoing provisions of this Act to judgments or orders for the recovery of possession of land include references to any judgment or order the effect



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of which is to enable a person to obtain possession of land, and in particular includes, in relation to a mortgagee, a judgment or order for the delivery of possession of the mortgaged land.

- (5) For the purposes of the foregoing provisions of this Act a mortgagee of land or any interest in land shall be treated as not being entitled to obtain possession of the mortgaged property, whether by virtue of his estate or interest as mortgagee or of any attornment or other provision contained in the mortgage or in any agreement collateral thereto, unless default has been made in payment of some mortgage money, or there has been a breach on the part of the mortgagor, or of some person concurring in the making of the mortgage of some mortgage obligation; and for this purpose default shall not be deemed to have been made in payment of any mortgage money (except in a case where the mortgage money is repayable by instalments) unless a written demand for payment has been served on the person liable, and a period of three months has elapsed since the service of the demand.

#### *Provisions as to Scotland*

### **7 Application of sections eight to twelve.**

The five next following sections shall apply to Scotland only.

### **8 General restrictions on execution and other remedies.**

- (1) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, to enforce, except with the leave of the appropriate court, a decree of any court (whether pronounced before or after the commencement of this Act) for the payment of a sum of money or for the recovery of possession of land:

Provided that nothing in this subsection shall apply to—

- (a) any decree for damages in respect of loss or damage arising from any wrongful act or omission;
  - (b) any decree based upon a contract made after the relevant date;
  - (c) any decree for expenses;
  - (d) any decree for aliment or any decree or order enforceable by virtue of any enactment in like manner as a decree for aliment,<sup>F10</sup> . . . or
  - (e) any order made in criminal proceedings, or an order for the recovery of a penalty due in respect of a contravention of, or failure to comply with, any Act.
- (2) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, except with the leave of the appropriate court—
- (a) to do any diligence (not being diligence used only on the dependence of an action *orad fundandam jurisdictionem*);
  - (b) to enforce any irritancy, legal or conventional;
  - (c) to realise any security or forfeit any deposit;
  - (d) to exercise any power of sale conferred by a heritable security;
  - (e) to institute an action of maills and duties; or
  - (f) to take or resume possession of any property by reason of any default by any person in the payment of money or the performance of any obligation:

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Provided that this subsection shall not apply to any remedy or proceedings available in consequence of any default in the payment of a debt arising by virtue of a contract made after the relevant date or the performance of an obligation so arising, and nothing in this subsection shall affect—

- (i) any right or power of pawnbrokers to deal with pledges; or
- (ii) any remedy competent to a heritable creditor in possession of the security subjects at the relevant date;
- (iii) any right or power of a person to sell goods in his custody arising by reason of default in the payment of a debt.

(3) If on any application for such leave as is required under this section for the enforcement of any decree or the exercise of any right or remedy mentioned in the foregoing provisions of this section, the appropriate court is of opinion that the person liable to implement such decree or perform the obligation in respect of which such right or remedy arises, is unable immediately to do so by reason of circumstances directly or indirectly attributable to his or someone else’s performing or having performed a period of relevant service, the court may, subject to the provisions of this Part of this Act, refuse leave to enforce the decree or to exercise the right or remedy or give leave therefor subject to such restrictions and conditions as the court thinks proper.

Any order pronounced under this subsection may be suspended, rescinded or varied by a subsequent order.

(4) The appropriate court, in determining for the purpose of the last foregoing subsection whether a person is unable immediately to implement the decree or perform the obligation in question by reason of any such circumstances as are mentioned in that subsection, or in determining the restrictions and conditions (if any) subject to which leave is to be given under that subsection, may take account of other liabilities, whether present or future, of that person.

(5) Where—

- (a) a petition for sequestration has been presented against any debtor, and it is shown to the satisfaction of the court before which such petition depends that his inability to pay his debts is due to circumstances directly or indirectly attributable to his or someone else’s performing or having performed a period of relevant service; <sup>F11</sup> . . .

<sup>F11</sup>(b) . . . . .

the court may sist the proceedings in the petition for such time and subject to such conditions as the court thinks fit.

<sup>F11</sup> . . .

<b>Textual Amendments</b>	
<b>F10</b>	Words in s. 8(1)(d) repealed (1.11.1996) by 1995 c. 36, s. 105(5), <b>Sch. 5</b> ; S.I. 1996/2203, art. 3(3), <b>Sch. Table</b>
<b>F11</b>	Words in s. 8(5), s. 8(5)(b) and the preceding word “or” repealed (5.11.1993) by 1993 c. 50, s. 1(1), <b>Sch. 1 Pt. V Group 1</b>

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## 9 Scope of protection.

- (1) Subject to the following provisions of this section, the provisions of subsection (1) or (2) of the last foregoing section shall apply to the exercise of any right or remedy in the following cases and in the following cases only, that is to say:—
  - (a) they shall apply (by virtue of this paragraph) where the person liable to implement the decree or to perform the obligation in question is for the time being performing a period of relevant service;
  - (b) they shall apply (by virtue of this paragraph but subject to any order of the appropriate court directing that they shall not so apply or shall cease so to apply) where the person liable as aforesaid has been performing a period of relevant service and while he was so doing an application was made to the appropriate court for leave under the last foregoing section to exercise the right or remedy;
  - (c) they shall apply in any case where—
    - (i) the appropriate court by order so directs, on the application of the person liable as aforesaid and on being satisfied that he is unable immediately to implement the decree or to perform the obligation in question by reason of circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service; or
    - (ii) the person liable as aforesaid has made to the appropriate court an application for an order under this paragraph, and the application has not been disposed of, or not having made such an application has given to the proper person written notice of his intention to do so.
- (2) A notice given for the purpose of paragraph (c) of the foregoing subsection shall expire at the expiration of fourteen days (or, if given in a class of case as to which a longer period is prescribed for the purposes of this subsection, at the expiration of that period) from the date on which it was given, and where the person giving a notice for that purpose has given a previous notice to the like effect the later notice shall have no operation unless the previous notice was withdrawn with the consent of the proper person before it expired.
- (3) For the purpose of the foregoing subsections, the expression “the proper person” means the person seeking to exercise the right or remedy in question, but a notice shall be deemed to be given to the proper person if given to any person (whether the proper person or his agent or not) proceeding to enforce that right or remedy.
- (4) Where the appropriate court makes an order under paragraph (c) of subsection (1) of this section with respect to the exercise of any right or remedy the powers of the court under the last foregoing section shall thereupon be exercisable as if an application for leave to exercise the right or remedy in question had been made under that section.
- (5) The appropriate court, in determining for the purpose of the said paragraph (c) whether the applicant is unable immediately to implement the decree or to perform the obligation in question by reason of any such circumstances as are mentioned in that paragraph, may take account of other liabilities, whether present or future, of his.
- (6) Any reference in subsection (3) of the last foregoing section or subsection (1) of this section to the person liable to implement the decree or to perform the obligation in question shall in a case where it is sought to exercise a right or remedy against one such person separately from any others who are also so liable, be construed as referring to him only and not including any such other person but, in a case where it is sought to

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exercise it against two or more such persons jointly, shall be construed as referring to all or any of the persons against whom it is sought to exercise the right or remedy; and in this subsection references to exercising a right or a remedy against a person shall include references to exercising it against property in which he has an interest or of which he is in possession.

- (7) For the purposes of the last foregoing section, a person in right of a decree who presents a petition for sequestration or a winding up petition founded on the non-payment of money due under the decree shall be deemed to be enforcing the decree.
- (8) For the purposes of the last foregoing section, the expression “the relevant date” means the date on which the service man in question began to perform the period of relevant service:

Provided that—

- (a) for the purposes of any reference in that section to a contract made after the relevant date where a service man performs two or more periods of relevant service the said expression means the date on which he began the later or latest of those periods of service; and
- (b) for the purposes of the proviso to subsection (2) of that section—
- (i) where the said date was before the commencement of this Act, then subject to sub-paragraph (ii) of this paragraph the said expression means the date of that commencement; and
- (ii) in a case to which the last foregoing section applies by virtue of paragraph (c) of subsection (1) of this section, the said expression means the date on which that section began so to apply.

**[<sup>F12</sup>10 Property in goods subject to hire-purchase agreement.**

- (1) Where the appropriate court refuses leave under section 8(3) of this Act to take or resume possession of goods subject to a hire-purchase agreement or a conditional sale agreement or to do diligence on any decree for the delivery of such goods, or gives leave subject to restrictions and conditions, and the person to whom they are hired, or, as the case may be, the buyer before possession is taken or resumed or diligence is done, pays the total price, the creditor’s title to the goods shall, notwithstanding any failure to pay the total price at the time required by the agreement, vest in that person.
- (2) Where the creditor under a hire-purchase agreement or a conditional sale agreement has taken possession of the goods hired or agreed to be sold under it, the appropriate court on an application under section 9(1)(c) of this Act may, if it thinks fit, deal with the case as if the creditor were proceeding to take possession of the goods and, if it makes an order under that paragraph, may direct accordingly that the goods be restored to the person to whom they were hired or, as the case may be, the buyer; and if, after the creditor has taken possession of the goods, notice is given under that paragraph with respect to them, he shall not, so long as the notice is in force or any application in pursuance of the notice is undisposed of, deal with the goods in such a way as to prejudice the powers of the appropriate court under this subsection.

**Textual Amendments**

**F12** S. 10 substituted by [Consumer Credit Act 1974 \(c. 39\)](#), s. 192, [Sch. 4 Pt. I para. 13](#)

*Status: Point in time view as at 01/10/2009.*

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## 11 Appropriate courts and procedure.

- (1) The appropriate court for the purposes of any of the provisions of this Part of this Act applying to Scotland shall be such court as the Court of Session may by Act of Sederunt designate, and different courts may be designated in relation to different classes of proceedings.
- (2) The Court of Session may by Act of Sederunt make provision for requiring, or dispensing with, service of notice of any application under this Part of this Act upon persons who may be affected, whether by virtue of subsection (4) of section eight or subsection (5) of section nine of this Act or otherwise, and for enabling any such persons to be heard at the hearing, and may also make provision for the making of applications *ex parte* in such cases as may be prescribed by the Act of Sederunt.

<sup>F13</sup>(3) .....

### Textual Amendments

**F12** S. 10 substituted by [Consumer Credit Act 1974 \(c. 39\), s. 192, Sch. 4 Pt. I para. 13](#)

**F13** S. 11(3) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1966 \(c. 19\), s. 10, Sch. Pt. I](#)

## 12 Interpretation of sections eight to eleven.

For the purposes of sections eight to eleven of this Act the expression “heritable security” includes a security constituted by *ex facie* absolute disposition.]

### Textual Amendments

**F12** S. 10 substituted by [Consumer Credit Act 1974 \(c. 39\), s. 192, Sch. 4 Pt. I para. 13](#)

### *Effect of failure to observe restrictions under Part I*

## 13 Effect of failure to observe restrictions under Part I.

- (1) Omission to obtain leave required under section two of this Act, failure to observe a restriction or condition subject to which leave so required was given, or contravention of the prohibition in subsection (5) of section four of this Act against dealing with goods, shall not render invalid, or alter the effect of—
  - (a) anything which would have operated as a transfer of the title to any property or of the possession of any property if leave had not been required or the restriction, condition or prohibition had not been imposed;
  - (b) any payment, receipt, appointment or other transaction; or
  - (c) any legal proceedings.
- (2) In any action for damages for conversion or other proceedings which lie by virtue of any such omission, failure or contravention, the court may take account of the conduct of the defendant with a view, if the court thinks fit, to awarding exemplary damages in respect of the wrong sustained by the plaintiff.

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- (3) If in any action or proceedings which lie by virtue of any such omission, failure or contravention the court is satisfied that the defendant acted honestly and reasonably, and ought fairly to be excused for it, the court may relieve the defendant from liability in respect thereof.
- (4) In so far as it appears to the appropriate court to be practicable to remedy the results of any such omission, failure or contravention as aforesaid specifically without prejudice to the interests of third parties, the court may give any such directions for restoration of property, repayment of money or other measures as may appear to the court to be requisite for that purpose.

In this subsection the expression “third parties” means persons other than—

- (a) in the case of such an omission or failure in connection with the enforcement of a judgment or order or the exercise of a remedy, the person proceeding thereto and any person acting in relation thereto on his behalf;
  - (b) in the case of an omission to obtain leave for instituting such proceedings as are mentioned in paragraph (b) of subsection (2) of section two of this Act or for taking a step in such proceedings, the person instituting the proceedings or taking the step in question;
  - (c) in the case of a contravention of the prohibition in subsection (5) of section four of this Act, the owner of the goods; and
  - (d) in any of the cases aforesaid, any person taking a transfer of the title to or possession of any property under a transaction in connection with which the omission, failure or contravention took place, if he took with knowledge of the circumstances which rendered what was done such an omission, failure or contravention.
- (5) In relation to an action or other proceedings tried by a judge and jury—
    - (a) the references to the court in subsections (2) and (3) of this section shall be construed as references to the jury, but without prejudice to the power of the judge to give to the jury directions whether there is any evidence of facts justifying an award of exemplary damages on the one hand or the granting of relief on the other hand, or to give them advice as to the making of such an award or grant;
    - (b) the references to the court in subsection (4) of this section shall be construed as references to the judge alone.
  - (6) This section shall apply to Scotland subject to the following modifications:—
    - (a) for references to section two or to subsection (5) of section four of this Act there shall be respectively substituted references to section eight or to subsection (2) of section ten of this Act;
    - (b) paragraph (b) of subsection (4) of this section shall be omitted;
    - (c) the expression “plaintiff” means pursuer and the expression “defendant” means defender and any reference to a judgment shall include a reference to a decree.

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## PART II

### PROTECTION AGAINST INSECURITY OF TENURE OF PLACE OF RESIDENCE

#### Modifications etc. (not altering text)

C1 Pt. II (ss. 14-25) modified (E.W.) by S.I. 1990/776, art. 5(2)(g)

#### *Protection during service other than short period of training*

#### **14 Period of residence protection, and scope of three succeeding sections (protection of tenure under lettings at a rent). E+W**

- (1) The three next succeeding sections shall have effect, subject to subsection (2) of this section, in the case of a service man who performs a period of relevant service, other than a short period of training, either wholly after the commencement of this Act or partly theretofore and partly thereafter, for giving, during that period of service, or the residue of it if it began before the commencement of this Act, and four months from the date of the ending of it (in this Part of this Act referred to, in relation to such a service man, as his “period of residence protection”), security of tenure of premises which at any time during the period of protection are a rented family residence of his.

For the purposes of the operation of this Part of this Act at any time during a service man’s period of residence protection—

- (a) the expression “rented family residence” means premises in which (or in part of which) the service man was living immediately before the beginning of his period of service with a dependant or dependants of his in right of a tenancy at a rent of those premises being a tenancy vested in him or in that dependant or any of those dependants, and in which (or in part of which) at the time in question during the period of protection a dependant or dependants of his is or are living, whether with or without him, in right of such a tenancy of those premises being a tenancy vested in him or in that dependant or any of those dependants; and
- (b) the expression “tenancy qualifying for protection” means the tenancy of a rented family residence of the service man in right of which a dependant or dependants of his is or are living therein or in part thereof at the time in question.
- (2) The three next succeeding sections shall not have effect if and so long as the rented family residence—
- [<sup>F14</sup>(a) is a dwelling house which consists of or comprises premises [<sup>F15</sup>in England and Wales which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) on the premises or in Scotland which are] licensed for the sale of intoxicating liquor on the premises; or]
- (b) is bona fide let at a rent which includes payments in respect of board, [<sup>F16</sup>or
- (c) is a dwelling-house which is subject to a protected occupancy or statutory tenancy as defined in the <sup>M2</sup>Rent (Agriculture) Act 1976.]

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#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F14** S. 14(2)(a) substituted by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)
- F15** Words in s. 14(2)(a) inserted (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), s. 201(2), [Sch. 6 para. 22](#) (with [ss. 2\(3\)](#), [15\(2\)](#), [195](#)); [S.I. 2005/3056](#), art. 2(2)
- F16** Words added by [Rent \(Agriculture\) Act 1976 \(c. 80\)](#), [Sch. 8 para. 1](#)

#### Marginal Citations

- M2** [1976 c. 80](#).

## 14 Period of residence protection, and scope of three succeeding sections (protection of tenure under lettings at a rent). **S**

- (1) The three next succeeding sections shall have effect, subject to subsection (2) of this section, in the case of a service man who performs a period of relevant service, other than a short period of training, either wholly after the commencement of this Act or partly theretofore and partly thereafter, for giving, during that period of service, or the residue of it if it began before the commencement of this Act, and four months from the date of the ending of it (in this Part of this Act referred to, in relation to such a service man, as his “period of residence protection”), security of tenure of premises which at any time during the period of protection are a rented family residence of his.

For the purposes of the operation of this Part of this Act at any time during the service man’s period of residence protection—

- (a) the expression “rented family residence” means premises in which (or in part of which) the service man was living immediately before the beginning of his period of service with a dependant or dependants of his in right of a tenancy at a rent of those dependants, and in which (or in part of which) at the time in question during the period of protection a dependant or dependants of his or are living, whether with or without him, in right of such tenancy of those premises being a tenancy vested in him or in that dependant or any of those dependants; and
- (b) the expression “tenancy qualifying for protection” means the tenancy of a rented family residence of the service man in right of which a dependant or dependants of his is or are living therein or in part thereof at the time in question.
- (2) The three next succeeding sections shall not have effect if and so long as the rented family residence—
- <sup>[F179]</sup>(a) is a dwelling house which consists of or comprises premises <sup>[F180]</sup>which, by virtue of a premises licence issued under the [Licensing \(Scotland\) Act 2005](#), are licensed for the sale of alcohol (within the meaning of section 2 of that Act) for consumption on the premises]; or]
- (b) is bona fide let at a rent which includes payments in respect of board.



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#### Extent Information

**E10** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F179** S. 14(2)(a) substituted by Rent (Scotland) Act 1971 (c. 28), s. 135(2), **Sch. 18 Pt. II**

**F180** Words in s. 14(2)(a) substituted (S.) (1.9.2009 at 5.00 a.m.) by The Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 (S.S.I. 2009/248), art. 1(1), **sch. 1 para. 1(2)** (with art. 3)

### 15 <sup>X1</sup>Protection of tenure of furnished, and certain other, rented premises, by extension of the Furnished Houses (Rent Control) Act. **E+W**

(1) Subject to subsection (2) of the last preceding section, where at any time during a service man's period of residence protection.

(a) the rented family residence is let under the tenancy qualifying for protection either on such terms as are mentioned in [<sup>F17</sup>section 19(2) of the <sup>M3</sup>Rent Act 1977 (which relates to premises let in consideration of a rent which includes payment for the use of furniture or for services) or on terms of sharing with the lessor, and

(b) a notice to quit has been served by the lessor on the lessee (whether after or before the beginning of the period of protection) and the notice has not expired, but

[<sup>F18</sup>(c) the condition specified in subsection 1(b) of [<sup>F19</sup>section 104 of the Rent Act 1977] is not fulfilled, <sup>F20</sup>the said section 104] shall apply in relation to the notice to quit as if that condition had been fulfilled as to the contract under which that tenancy subsists.]

[<sup>F21</sup>(1A) This section does not apply in relation to any tenancy entered into after the commencement of section 69(2) of the <sup>M4</sup>Housing Act 1980.]

(2) The reference in paragraph (a) of the preceding subsection to a letting on terms of sharing with the lessor is a reference to a letting under which—

(a) the lessee has the exclusive occupation of some accommodation (in this subsection referred to as “the separate accommodation”);

(b) he has the use of other accommodation in common with the lessor or with the lessor and other persons; and

(c) the accommodation mentioned in the last preceding paragraph is or includes accommodation of such a nature that the circumstance specified in that paragraph is sufficient to prevent the separate accommodation from being a dwelling-house [<sup>F22</sup>let on or subject to a protected tenancy or statutory tenancy within the meaning of the Rent Act 1977], whether apart from that circumstance it would be such a dwelling-house or not.

(3) [<sup>F23</sup>The subsistence of a Crown interest in premises shall not affect the operation of this section], if the reversion immediately expectant on the tenancy in question is not a Crown interest, [<sup>F24</sup>but nothing in this subsection shall be construed as excluding the operation of this Part of this Act in cases where there subsists a Crown interest not being the reversion immediately expectant on the tenancy in question.]

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- (4) References in the said [<sup>F25</sup>section 104] to that section shall be construed as including references to the preceding provisions of this section and to the said [<sup>F26</sup>section 104] as extended by those provisions.
- (5) Nothing in the preceding provisions of this section shall be construed as rendering the said [<sup>F27</sup>section 104] applicable in a case in which the contract under which the tenancy in question subsists is excluded from [<sup>F28</sup>being a restricted contract (within the meaning of the <sup>M5</sup>Rent Act 1977) by paragraph 17 of Schedule 24 to that Act.]

#### Editorial Information

**X1** Unreliable marginal note

#### Extent Information

**E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F17** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)
- F18** [S. 15\(1\)\(c\)](#) and words thereafter substituted by [Rent Act 1968 \(c. 23\), s. 117\(2\), Sch. 15](#)
- F19** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)
- F20** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)
- F21** [S. 15\(1A\)](#) inserted by [Housing Act 1980 \(c. 51\), Sch. 25 Pt. I para. 1](#)
- F22** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)
- F23** Words substituted by [Rent Act 1968 \(c. 23\), s. 117\(2\), Sch. 15](#)
- F24** Words added by [Rent Act 1968 \(c. 23\), s. 117\(2\), Sch. 15](#)
- F25** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)
- F26** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)
- F27** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)
- F28** Words substituted by [Rent Act 1977 \(c. 42\), Sch. 23 para. 3](#)

#### Marginal Citations

- M3** [1977 c. 42.](#)
- M4** [1980 c. 51.](#)
- M5** [1977 c. 42.](#)

## 15 <sup>X4</sup>Protection of tenure or furnished and certain other, rented premises, by extension of the Furnished Houses (Rent Control) Act. **S**

- (1) Subject to subsection (2) of the last preceding section, where at any time during a service man's period of residence protection,
- (a) the rented family residence is let under the tenancy qualifying for protection either on such terms as are mentioned in [<sup>F181</sup>section [<sup>F182</sup>63(1)]] of the Rent (Scotland) Act [<sup>F182</sup>1984]] (which relates to premises let in consideration of a rent which includes payment for the use of furniture or for services) or on terms of sharing with the lessor, and
  - (b) a notice to quit has been served by the lessor on the lessee (whether after or before the beginning of the period of protection) and the notice has not expired, but
- [<sup>F183</sup>(c) the condition specified in subsection (1)(b) of section [<sup>F182</sup>72] of the Rent (Scotland) Act [<sup>F182</sup>1984] is not fulfilled,

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the said section [F18272] shall apply in relation to the notice to quit as if that condition had been fulfilled as to the contract under which that tenancy subsists.]

[F184(1A) This section does not apply in relation to any tenancy entered into [F185on or after 1st December 1980].]

(2) The reference in paragraph (a) of the preceding subsection to a letting on terms of sharing with the lessor is a reference to a letting under which—

- (a) the lessee has the exclusive occupation of some accommodation (in this subsection referred to as “the separate accommodation”);
- (b) he has the use of other accommodation in common with the lessor or with the lessor and other persons; and
- (c) the accommodation mentioned in the last preceding paragraph is or includes accommodation of such a nature that the circumstance specified in that paragraph is sufficient to prevent the separate accommodation from being [F186a dwelling-house subject to a statutory tenancy within the meaning of the Rent (Scotland) Act [F1821984]], whether apart from that circumstance it would be such a dwelling-house or not.

[F187(3) The subsistence of a Crown interest in premises shall not affect the operation of this section if the interest of the immediate landlord of the tenant under the tenancy in question is not a Crown interest; but nothing in this subsection shall be construed as excluding the operation of this Part of this Act in cases where there subsists a Crown interest not being the interest of the immediate landlord of the tenant under the tenancy in question.]

(4) References in the said [F188section [F18272]] to that section shall be construed as including references to the preceding provisions of this section and to the said [F188section [F18272]] as extended by those provisions.

[F189(5) . . . . .]

#### Editorial Information

X4 Unreliable marginal note

#### Extent Information

E11 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F181 Words substituted by [Rent \(Scotland\) Act 1971 \(c. 28\), s. 135\(2\)](#), [Sch. 18 Pt. II](#)
- F182 Figure substituted by [Rent \(Scotland\) Act 1984 \(c. 58, SIF 75:4\)](#), s. 117(1), [Sch. 8 Pt. II](#)
- F183 [S. 15\(1\)\(c\)](#) and words thereafter substituted by [Rent \(Scotland\) Act 1971 \(c. 28\)](#), s. 135(2), [Sch. 18 Pt. II](#)
- F184 [S. 15\(1A\)](#) inserted by [Tenants' Rights, Etc. \(Scotland\) Act 1980 \(c. 52\)](#), [s. 39\(2\)](#)
- F185 Words substituted by [Rent \(Scotland\) Act 1984 \(c. 58, SIF 75:4\)](#), s. 117(1), [Sch. 8 Pt. II](#)
- F186 Words substituted by virtue of [s. 24\(j\)](#) of this Act
- F187 [S. 15\(3\)](#) substituted by [Rent \(Scotland\) Act 1971 \(c. 28\)](#), s. 135(2), [Sch. 18 Pt. II](#)
- F188 Words substituted by [Rent \(Scotland\) Act 1971 \(c. 28\)](#), s. 135(2), [Sch. 18 Pt. II](#)
- F189 [S. 15\(5\)](#) repealed by [Rent \(Scotland\) Act 1971 \(c. 28\)](#), s. 135(5), [Sch. 20](#)

*Status: Point in time view as at 01/10/2009.*

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[<sup>F29</sup>16] **Protection of tenure of certain rented premises by extension of Housing Act 1988.** **E+W**

(1) Subject to subsection (2) of section 14 of this Act and subsection (3) below, if at any time during a service man's period of residence protection—

- (a) a tenancy qualifying for protection which is a fixed term tenancy ends without being continued or renewed by agreement (whether on the same or different terms and conditions), and
- (b) by reason only of such circumstances as are mentioned in subsection (4) below, on the ending of that tenancy no statutory periodic tenancy of the rented family residence would arise, apart from the provisions of this section,

Chapter I of Part I of the Housing Act 1988 shall, during the remainder of the period of protection, apply in relation to the rented family residence as if those circumstances did not exist and had not existed immediately before the ending of that tenancy and, accordingly, as if on the ending of that tenancy there arose a statutory periodic tenancy which is an assured tenancy during the remainder of that period.

(2) Subject to subsection (2) of section 14 of this Act and subsection (3) below, if at any time during a service man's period of residence protection—

- (a) a tenancy qualifying for protection which is a periodic tenancy would come to an end, apart from the provisions of this section, and
- (b) by reason only of such circumstances as are mentioned in subsection (4) below that tenancy is not an assured tenancy, and
- (c) if that tenancy had been an assured tenancy, it would not have come to an end at that time,

Chapter I of Part I of the Housing Act 1988 shall, during the remainder of the period of protection, apply in relation to the rented family residence as if those circumstances did not exist and, accordingly, as if the tenancy had become an assured tenancy immediately before it would otherwise have come to an end.

(3) Neither subsection (1) nor subsection (2) above applies if, on the ending of the tenancy qualifying for protection, a statutory tenancy arises.

(4) The circumstances referred to in subsections (1) and (2) above are any one or more of the following, that is to say,—

- (a) that the tenancy was entered into before, or pursuant to a contract made before, Part I of the Housing Act 1988 came into force;
- (b) that the rateable value (as defined for the purposes of that Act) of the premises which are the rented family residence, or of a property of which those premises form part, exceeded the relevant limit specified in [<sup>F30</sup>paragraph 2A] of Schedule 1 to that Act;
- (c) that the circumstances mentioned in [<sup>F31</sup>paragraph 2, 3, 3A, 3B] or paragraph 6 of that Schedule applied with respect to the tenancy qualifying for protection; and
- (d) that the reversion immediately expectant on the tenancy qualifying for protection belongs to any of the bodies specified in paragraph 12 of that Schedule.]

**Extent Information**

**E3** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 is up to date with all changes known to be in force on or before 12 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F29** S. 16 substituted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), Sch. 17 para. 3  
**F30** Words substituted by S.I. 1990/434, reg. 2, Sch. para. 1(a)  
**F31** Words substituted by S.I. 1990/434, reg. 2, Sch. para. 1(b)

## 16 Protection of tenure of certain rented premises by extension of Housing (Scotland) Act 1988. **S**

(1) Subject to subsection (2) of section 14 of this Act and subsection (3) below, if at any time during a service man's period of residence protection—

- (a) a tenancy qualifying for protection ends without being continued or renewed by agreement (whether on the same or different terms and conditions), and
- (b) by reason only of such circumstances as are mentioned in subsection (4) below, on the ending of that tenancy no statutory tenancy of the rented family residence would arise, apart from the provisions of this section,

sections 12 to 31 of the Housing (Scotland) Act 1988 shall, during the remainder of the period of protection, apply in relation to the rented family residence as if those circumstances did not exist and had not existed immediately before the ending of that tenancy and, accordingly, as if on the ending of that tenancy there arose a statutory assured tenancy during the remainder of that period.

(2) Subject to subsection (2) of section 14 of this Act and subsection (3) below, if at any time during a service man's period of residence protection—

- (a) a tenancy qualifying for protection would come to an end, apart from the provisions of this section,
- (b) by reason only of such circumstances as are mentioned in subsection (4) below that tenancy is not an assured tenancy, and
- (c) if that tenancy had been an assured tenancy, it would not have come to an end at that time,

sections 12 to 31 of the Housing (Scotland) Act 1988 shall, during the remainder of the period of protection, apply in relation to the rented family residence as if those circumstances did not exist and, accordingly, as if the tenancy had become an assured tenancy immediately before it would otherwise have come to an end.

(3) Neither subsection (1) nor subsection (2) above applies if, on the ending of the tenancy qualifying for protection, a statutory tenancy arises.

(4) The circumstances referred to in subsections (1) and (2) above are one or more of the following, that is to say—

- (a) that the circumstances mentioned in paragraph 2 of Schedule 4 to the Housing (Scotland) Act 1988 applied with respect to the tenancy qualifying for protection;
- (b) that the circumstances mentioned in paragraph 5 of that Schedule applied with respect to the tenancy qualifying for protection; and
- (c) that the reversion immediately expectant on the tenancy qualifying for protection belongs to any of the bodies specified in paragraph 11 of that Schedule.

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#### Extent Information

- E12** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

### 17 Provisions supplementary to section sixteen in case of rented premises which include accommodation shared otherwise than with the landlord. **E+W**

- (1) Where at any time during a service man's period of residence protection a tenancy qualifying for protection [<sup>F32</sup>which is a fixed term tenancy] ends as mentioned in paragraph (a) of subsection (1) of the last preceding section, and immediately before the ending of the tenancy—

- (a) the tenant under the terms of the tenancy had the exclusive occupation of some accommodation (in this section referred to as “the separate accommodation”) and had the use of other accommodation in common with another person or other persons, not being or including the landlord, but

- [<sup>F33</sup>(b) by reason only of such circumstances as are mentioned in [<sup>F34</sup>section 16(4) above, subsection (1) of section 3 of the Housing Act 1988] (provisions where tenant B shares accommodation with persons other than landlord) did not have effect with respect to the separate accommodation,

the [<sup>F35</sup>said section 3]] shall during the remainder of the period of protection apply in relation to the separate accommodation as if the circumstances referred to in paragraph (b) of this subsection did not exist, and had not existed immediately before the ending of the tenancy [<sup>F36</sup>and, accordingly, as if on the ending of the tenancy there arose a statutory periodic tenancy which is an assured tenancy during the remainder of that period].

- [<sup>F37</sup>(2) Where, at any time during a service man's period of residence protection—

- (a) a tenancy qualifying for protection which is a periodic tenancy would come to an end, apart from the provisions of this section and section 16 above, and  
(b) paragraphs (a) and (b) of subsection (1) above apply,

section 3 of the Housing Act 1988 shall, during the remainder of the period of protection, apply in relation to the separate accommodation as if the circumstances referred to in subsection (1)(b) above did not exist and, accordingly, as if the tenancy had become an assured tenancy immediately before it would otherwise have come to an end.

- (3) Neither subsection (1) nor subsection (2) above applies if, on the ending of the tenancy qualifying for protection, a statutory tenancy arises.]

#### Extent Information

- E4** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F32** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 4\(2\)\(a\)](#)  
**F33** [S. 17\(1\)\(b\)](#) and words substituted by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)  
**F34** Words substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 4\(2\)\(b\)](#)  
**F35** Words substituted by virtue of the [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 4\(2\)\(c\)](#)  
**F36** Words added by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 4\(2\)\(d\)](#)



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**F37** S. 17(2)(3) substituted for s. 17(2) by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 4\(3\)](#)

## 17 Provisions supplementary to section sixteen in case of rented premises, which include accomodation shared otherwise than with the landlord. **S**

(1) Where at any time during a service man's period of residence protection a tenancy qualifying for protection ends as mentioned in paragraph (a) of subsection (1) of the last preceding section, and immediately before the ending of the tenancy—

- (a) the tenant under the terms of the tenancy had the exclusive occupation of some accomodation (in this section referred to as “the seperate accomodation”) and had the use of other accomodation in common with another person or other persons, not being or including the landlord, but
- (b) by reason only of such circumstances as are mentioned in <sup>[F190]</sup>section 16(4) above, subsection (1) of section 14 of the [Housing \(Scotland\) Act 1988](#) <sup>[F191]</sup>did not have effect as respects the seperate accomodation,

then subject to the next succeeding subsection the <sup>[F191]</sup>said section 14] shall during the remainder of the period of protection apply in relation to the separate accomodation as if the circumstances referred to in paragraph (b) of this subsection did not exist, and had not existed immediately before the ending of the tenancy <sup>[F192]</sup>and, accordingly, as if on the ending of the tenancy there arose a statutory assured tenancy during the remainder of that period].

<sup>[F193]</sup>(2) Where, at any time during a service man's period of residence protection—

- (a) a tenancy qualifying for protection would come to an end, apart from the provisions of this section and section 16 above, and
- (b) paragraphs (a) and (b) of subsection (1) above apply,

section 14 of the [Housing \(Scotland\) Act 1988](#) shall, during the remainder of the period of protection, apply in relation to the separate accommodation as if the circumstances in subsection (1)(b) above did not exist and, accordingly, as if the tenancy had become an assured tenancy immediately before it would otherwise come to an end.

(3) Neither subsection (1) nor subsection (2) above applies if, on the ending of the tenancy qualifying for protection, a statutory tenancy arises.]

### Extent Information

**E13** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

### Textual Amendments

**F190** Words substituted by virtue of [Rent \(Scotland\) Act 1984 \(c. 58, SIF 75:4\)](#), s. 117(1), [Sch. 8 Pt. II](#) (which inter alia substituted “1984” for “1971” in section 17) and [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 5\(2\)\(a\)](#) (by which the new words referred to above were expressed to be substituted in paragraph (b) for the words from “subsection (2)” to “1977”)

**F191** Words substituted by virtue of [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 5\(2\)\(c\)](#)

**F192** Words added by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 5\(2\)\(c\)](#)

**F193** S. 17(2)(3) substituted for s. 17(2) by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 5\(3\)](#)

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## 18 Protection of tenure, in connection with employment, under a licence or a rent-free letting, by extension of the Rent Acts. **E+W**

(1) Where—

- (a) a service man begins a period of relevant service, other than a short period of training, after the commencement of this Act, and immediately before beginning it he was living, together with a dependant or dependants of his, in any premises by virtue of a licence in that behalf granted to him by his employer in consequence of his employment, or by virtue of a tenancy so granted otherwise than at a rent (in this section referred to as a “rent-free tenancy”), or
- (b) a service man is performing a period of relevant service, other than a short period of training, at the commencement of this Act, and immediately before beginning it he was living as aforesaid, and a dependant or dependants of his is or are living in the premises or in part thereof, otherwise than in right of a tenancy at a rent, at the commencement of this Act,

then during the service man’s period of residence protection as defined in section fourteen of this Act [<sup>F38</sup>Chapter I of Part I of the Housing Act 1988] shall, subject to the provisions of this section, apply in relation to those premises as if instead of the licence, or of the rent-free tenancy, as the case may be, there had been granted to the service man a tenancy at a rent—

- (i) for a term of years certain expiring at the beginning of the period of service, or at the commencement of this Act if the period of service began theretofore, and
- (ii) in other respects on the same terms and conditions (excluding any terms or conditions relating to the employment) as those on which the licence, or the rent-free tenancy, as the case may be, was granted;

and those premises shall be deemed to be during the period of protection [<sup>F39</sup>a dwelling-house [<sup>F40</sup>let on a statutory periodic tenancy which is an assured tenancy]] if apart from this section they would not have been so.

<sup>F41</sup>(2) .....

(3) Subsection (1) of this section shall not have effect—

- (a) where the licence, or the rent-free tenancy, as the case may be, was granted in connection with the management of premises [<sup>F42</sup>in England and Wales which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) on the premises for consumption on the premises or in Scotland which are] licensed for the sale of intoxicating liquor for consumption thereon, or
- (b) where the licence, or the rent-free tenancy, as the case may be, was granted pursuant to a contract which imposed on the grantor thereof an obligation to provide board for the service man and the dependant or dependants, [or
- (c) <sup>F43</sup>where the premises are a dwelling-house subject to a protected occupancy or statutory tenancy as defined in the <sup>M6</sup>Rent (Agriculture) Act 1976.][or
- (d) <sup>F44</sup>is a dwelling-house which is let on or subject to an assured agricultural occupancy within the meaning of Part I of the Housing Act 1988 which is not an assured tenancy.]

(4) As regards the assumption of the granting of a tenancy which is to be made for the purposes of subsection (1) of this section in a case where the grant in question was of a licence, if the granting of such a tenancy would have been a subletting of the premises



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it shall not be treated for any purpose as constituting a breach of any covenant or agreement prohibiting or restricting subletting.

- (5) The subsistence of a Crown interest in the premises shall not affect the application of this section if the interest of the grantor of the licence, or the rent-free tenancy, as the case may be, is not a Crown interest.
- (6) In relation to a policeman service man this section shall have effect with the substitution of a reference to a grant to him, either by the relevant police authority or by another person under arrangements made by that authority with that person, in consequence of the service man's membership of the relevant police force, for the reference in subsection (1) to a grant to a service man by his employer in consequence of his employment.

#### Extent Information

- E5** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F38** Words substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 6\(1\)](#)
- F39** Words substituted by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)
- F40** Words substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 6\(1\)](#)
- F41** [S. 18\(2\)](#) repealed by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1)(2), [Sch. 17 para. 6\(3\)](#), [Sch. 18](#)
- F42** Words in [s. 18\(3\)\(a\)](#) inserted (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), s. 201(2), [Sch. 6 para. 23](#) (with [ss. 2\(3\)](#), [15\(2\)](#), [195](#)); [S.I. 2005/3056](#), art. 2(2)
- F43** [S. 18\(3\)\(c\)](#) and word “or” preceding it added by [Rent \(Agriculture\) Act 1976 \(c. 80\)](#), [Sch. 8 para. 2](#)
- F44** [S. 18\(3\)\(d\)](#) and word “or” preceding it added by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. para. 6\(4\)](#)

#### Marginal Citations

- M6** [1976 c. 80](#).

## 18 Protection of tenure, in connection with employment, under a licence or a rent-free letting, by extension of the Rent Acts. **S**

(1) Where—

- (a) a service man begins a period of relevant service, other than a short period of training, after the commencement of this Act, and immediately before beginning it he was living, together with a dependant or dependants of his, in any premises by virtue of a licence in that behalf granted to him by his employer in consequence of his employment, or by virtue of a tenancy so granted otherwise than at a rent (in this section referred to as a “rent-free tenancy”), or
- (b) a service man is performing a period of relevant service, other than a short period of training, at the commencement of this Act, and immediately before beginning it he was living as aforesaid, and a dependant or dependants of his or are living in the premises or in part thereof, otherwise than in right of a tenancy at a rent, at the commencement of this Act,

then during the service man's period of residence protection as defined in section fourteen of this Act [<sup>F194</sup>sections 12 to 31 of the Housing (Scotland) Act 1988] shall, subject to the provisions of this section, apply in relation to those premises as if instead

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of the licence or, of the rent-free tenancy, as the case may be, there had been granted to the service man a tenancy at a rent—

- (i) for a term of years certain expiring at the beginning of the period of service, or at the commencement of this Act if the period of service began theretofore, and
- (ii) in other respects on the same terms and conditions (excluding any terms or conditions relating to the employment) as those on which the licence, or the rent-free tenancy, as the case may be, was granted;

and those premises shall be deemed to be during the period of protection [<sup>F195</sup>a dwelling-house [<sup>F194</sup>let on a statutory assured tenancy]] if apart from this section they would not have been so.

<sup>F196</sup>(2) . . . . .

(3) Subsection (1) of this section shall not have effect—

- (a) where the licence, or the rent-free tenancy, as the case may be, was granted in connection with the management of premises [<sup>F197</sup>which, by virtue of a premises licence issued under the Licensing (Scotland) Act 2005, are licensed for the sale of alcohol (within the meaning of section 2 of that Act) for consumption on the premises], or
- (b) where the licence, or the rent-free tenancy, as the case may be, was granted pursuant to a contract which imposed on the grantor thereof an obligation to provide board for the service man and the dependant or dependants.

(4) As regards the assumption of the granting of a tenancy which is to be made for the purposes of subsection (1) of this section in a case where the grant in question was of a licence, if the granting of such a tenancy would have been a subletting of the premises it shall not be treated for any purpose as constituting a breach of any covenant or agreement prohibiting of restricting subletting.

(5) The subsistence of a Crown interest in the premises shall not affect the application of this section if the interest of the grantor of the licence, or the rent-free tenancy, as the case may be, is not a Crown interest.

(6) In relation to a policeman service man this section shall have effect with the substitution of a reference to a grant to him, either by the relevant police authority or by another person under arrangements made by that authority with that person under arrangements made by that authority with that person, in consequence of the service man's membership of the relevant police force, for the reference in subsection (1) to a grant to a service man by his employer in consequence of his employment.

#### Extent Information

**E14** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F194** Words substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 6\(2\)](#)

**F195** Words substituted by virtue of s. 24(j) of this Act

**F196** [S. 18\(2\)](#) repealed by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1)(2), [Sch. 17 para. 6\(3\)](#), [Sch. 18](#)

**F197** Words in [s. 18\(3\)\(a\)](#) substituted (S.) (1.9.2009 at 5.00 a.m.) by [The Licensing \(Scotland\) Act 2005 \(Consequential Provisions\) Order 2009 \(S.S.I. 2009/248\)](#), art. 1(1), [sch. 1 para. 1\(3\)](#) (with art. 3)

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[<sup>F45</sup>19 **Limitation on application of Housing Act 1988 by virtue of sections 16 to 18.** **E**  
**+W**

Where by virtue of sections 16 to 18 above, the operation of Chapter I of Part I of the Housing Act 1988 in relation to any premises is extended or modified, the extension or modification shall not affect—

- (a) any tenancy of those premises other than the statutory periodic tenancy which is deemed to arise or, as the case may be, the tenancy which is for any period deemed to be an assured tenancy by virtue of any of those provisions; or
- (b) any rent payable in respect of a period beginning before the time when that statutory periodic tenancy was deemed to arise or, as the case may be, before that tenancy became deemed to be an assured tenancy; or
- (c) anything done or omitted to be done before the time referred to in paragraph (b) above.]

**Extent Information**

**E6** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

**Textual Amendments**

**F45** S. 19 substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1)(2), [Sch. 17 para. 8](#)

19 **Limitation on application of Housing (Scotland) Act 1988 by virtue of sections 16 to 18.** **S**

Where by virtue of sections 16 to 18 above, the operation of sections 12 to 31 of the Housing (Scotland) Act 1988 in relation to any premises is extended or modified, the extension or modification shall not affect—

- (a) any tenancy of those premises other than the statutory assured tenancy which is deemed to arise or, as the case may be, the tenancy which is for any period deemed to be an assured tenancy by virtue of any of those provisions; or
- (b) any rent payable in respect of a period beginning before the time when that statutory assured tenancy was deemed to arise or, as the case may be, before that tenancy became deemed to be an assured tenancy; or
- (c) anything done or omitted to be done before the time referred to in paragraph (b) above.

**Extent Information**

**E15** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

20 **Modifications of Rent Acts as respects occupation by employees.** **E+W**

- (1) Where the carrying out of duties connected with an employment which a service man had before beginning a period of relevant service (or, in the case of a policeman service man, the carrying out of his police duties) constitutes an obligation of a tenancy, and his performing that service prevents his carrying out those duties, the fact that he does not carry them out shall not be treated for the purposes of [<sup>F46</sup>Case 1 in [<sup>F47</sup>Schedule 15

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- to the <sup>M7</sup>Rent Act 1977]]<sup>F48</sup>or Ground 12 in Schedule 2 to the Housing Act 1988] (which relates to recovery of possession where an obligation of a tenancy has been broken or not performed) as a breach or non-performance of the obligation.
- (2) [<sup>F49</sup>Case 8 in the said Schedule 15]]<sup>F50</sup>or, as the case may be, Ground 16 in the said Schedule 2] (which relates to recovery of possession, without proof of suitable alternative accommodation, in circumstances connected with occupation by employees) shall not apply for the purposes of the proceedings on an application for possession of premises made at any time during a service man's period of residence protection (as defined in section fourteen of this Act) if either—
- (a) the premises are a rented family residence of his as defined in that section; or
- <sup>F51</sup>(b) Chapter I of Part I of the Housing Act 1988 applies in relation to the premises as mentioned in section 18(1) of this Act and a dependant or dependants of the service man is or are living in the premises or in part thereof in right of the statutory periodic tenancy or assured tenancy referred to in section 19(a) of this Act]
- (3) Where the last preceding subsection has effect as to an application for possession, the circumstances specified in [<sup>F52</sup>the Cases in Part I of the said [<sup>F53</sup>Schedule 15]]]<sup>F54</sup>or, as the case may be, Grounds 10 to 16 in Part II of the said Schedule 2] in which the court has power to make or give an order or judgment for the recovery of possession without proof of suitable alternative accommodation shall include the circumstances specified in either of the following paragraphs, that is to say—
- (a) that the landlord is a body who are statutory undertakers or a local authority or development corporation having public utility functions, and that the premises are required by that body in the public interest for occupation as a residence for some person who is engaged in their whole-time employment in connection with their public utility functions or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into;
- (b) where the last preceding subsection has effect by virtue of paragraph (b) thereof and the service man in question is a policeman service man, that the premises are required by the relevant police authority for occupation as a residence by a member of the police force in question:

Provided that, where the court is satisfied that circumstances exist such as are specified in paragraph (a) of this subsection, the matters relevant for the court in determining under [<sup>F55</sup>section 98(1) of the <sup>M8</sup>Rent Act 1977]]<sup>F56</sup>or, as the case may be, section 7(4) of the Housing Act 1988] whether it is reasonable to make or give such an order or judgment shall (without prejudice to the generality of that subsection) include the question whether the body seeking the order or judgment have at their disposal any vacant accommodation which would be suitable alternative accommodation for the tenant, or will have such accommodation at their disposal at or before the time when it is proposed that the order or judgment should take effect.

- (4) In the last preceding subsection the expressions “statutory undertakers” and “local authority” have the same meanings as in [<sup>F57</sup>the <sup>M9</sup>Town and Country Planning Act, 1971], the expression “development corporation” has the same meaning as in [<sup>F58</sup>the <sup>M10</sup>New Towns Act 1965], and the expression “public utility functions” means powers or duties conferred or imposed by or under any enactment being powers or duties to carry on a statutory undertaking (as defined in [<sup>F59</sup>the said Act of 1971]) [<sup>F60</sup>or being powers or duties of an internal drainage board].

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### Extent Information

- E7** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

- F46** Words substituted by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)
- F47** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 8](#)
- F48** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 9\(2\)](#)
- F49** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 8](#)
- F50** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 9\(3\)](#)
- F51** [S. 20\(2\)\(b\)](#) substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 9\(3\)](#)
- F52** Words substituted by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)
- F53** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 8](#)
- F54** Words inserted by [Housing Act 1988 \(c.50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 9\(4\)](#)
- F55** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 8](#)
- F56** Words inserted by [Housing Act 1988 \(c.50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 9\(4\)](#)
- F57** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 Pt. I para. 2](#)
- F58** Words substituted by virtue of [New Towns Act 1965 \(c. 59\)](#), [Sch. 11 para. 5\(1\)](#)
- F59** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 Pt. I para. 2](#)
- F60** Words substituted by [Water Act 1989 \(c.15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 161, 163, 189(4)–(10), 190(1), 193(1), [Sch. 25 para. 1\(2\)\(v\)](#), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 57\(6\), 58](#)

### Modifications etc. (not altering text)

- C2** [S. 20](#) amended by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 161, 163, 189(4)–(10), 190(1), 193(1), [Sch. 25 para. 1\(2\)\(v\)](#), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 57\(6\), 58](#)

### Marginal Citations

- M7** [1977 c. 42.](#)
- M8** [1977 c. 42.](#)
- M9** [1971 c. 78.](#)
- M10** [1965 c. 59.](#)

## 20 Modifications of Rent Acts as respects occupation by employees. **S**

- (1) Where the carrying out of duties connected with an employment which a service man had before beginning a period of relevant service (or, in the case of a policeman service man, the carrying out of his police duties) constitutes an obligation of a tenancy, and his performing that service prevents his carrying out those duties, the fact that he does not carry them out shall not be treated for the purposes of [<sup>F198</sup>Case 1 in [<sup>F199</sup>Schedule 2] to the Rent (Scotland) Act [<sup>F199</sup>1984]]<sup>F200</sup> or Ground 13 in Schedule 5 to the Housing (Scotland) Act 1988] (which relates to recovery of possession where an obligation of a tenancy has been broken or not performed) as a breach or non-performance of the obligation.
- (2) [<sup>F198</sup>Case 7 in the said [<sup>F199</sup>Schedule 2]]<sup>F201</sup> or, as the case may be, Ground 17 in the said Schedule 5] (which relates to recovery of possession, without proof of suitable alternative accommodation, in circumstances connected with occupation by employees) shall not apply for the purposes of the proceedings on an application for possession of premises made at any time during a service man's period of residence protection (as defined in section fourteen of this Act) if either—

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- (a) the premises are a rented family residence of his as defined in that section; or
- [<sup>F202</sup>(b) sections 12 to 31 of the Housing (Scotland) Act 1988 apply in relation to the premises as mentioned in section 18(1) of this Act and a dependant or dependants of the service man is or are living in the premises or in part thereof in right of the statutory assured tenancy or assured tenancy referred to in paragraph (a) of section 19 of this Act]
- (3) Where the last preceding subsection has effect as to an application for possession, the circumstances specified in [<sup>F198</sup>the Cases in Part I of the said [<sup>F199</sup>Schedule 2][<sup>F203</sup>or, as the case may be, Grounds 10 to 17 in Part II of the said Schedule 5] in which the court has power to make or give an order or judgment for the recovery of possession without proof of suitable alternative accommodation shall include the circumstances specified in either of the following paragraphs, that is to say—
- (a) that the landlord is a body who are statutory undertakers of a local authority or development corporation having public utility functions, and that the premises are required by that body in the public interest for occupation as a residence for some person who is engaged in their whole-time employment in connection with their public utility functions or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into;
- (b) where the last preceding subsection has effect by virtue of paragraph (b) thereof and the service man in question is a policeman service man, that the premises are required by the relevant police authority for occupation as a residence by a member of the police force in question:

Provided that, where the court is satisfied that circumstances exist such as are specified in paragraph (a) of this subsection, the matters relevant for the court in determining under [<sup>F198</sup>[<sup>F199</sup>section 11(1)] of the Rent (Scotland) Act <sup>M34</sup>[<sup>F199</sup>1984][<sup>F204</sup>or, as the case may be, section 18(4) of the Housing (Scotland) Act 1988] whether it is reasonable to make or give such an order or judgment shall (without prejudice to the generality of that subsection) include the question whether the body seeking the order or judgment have at their disposal any vacant accommodation which would be suitable alternative accommodation for the tenant, or will have such accommodation at their disposal at or before the time when it is proposed that the order or judgment should take effect.

- (4) In the last preceding subsection the expressions “statutory undertakers” and “local authority” have the same meaning as in [<sup>F205</sup>the Town and Country Planning (Scotland) Act <sup>M35</sup>1972], the expression “development corporation” has the same meaning as in [<sup>F206</sup>the New Towns (Scotland) Act <sup>M36</sup>1968], and the expression “public utility functions” means powers or duties conferred or imposed by or under any enactment being powers or duties to carry on a statutory undertaking (as defined in [<sup>F205</sup>the said Act of 1972]) or to provide public sewers or provide for the disposal of sewage, <sup>F207</sup> . . .

#### Extent Information

- E16** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F198** Words substituted by [Rent \(Scotland\) Act 1971 \(c. 28\), s. 135\(2\), Sch. 18 Pt. II](#)
- F199** Words substituted by [Rent \(Scotland\) Act 1984 \(c. 58, SIF 75:4\), s. 117\(1\), Sch. 8 Pt. II](#)
- F200** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\), s. 140\(1\), Sch. 17 para. 10\(2\)](#)



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- F201** Words inserted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 10(3)**  
**F202** S. 20(2)(b) substituted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 10(3)**  
**F203** Words inserted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 10(4)(a)**  
**F204** Words inserted after “section 11 of the Rent (Scotland) Act 1984” by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 10(4)(b)**  
**F205** Words substituted by virtue of s. 24(d) of this Act  
**F206** Words substituted by virtue of New Towns (Scotland) Act 1968 (c. 16), **Sch. 9 para. 5**  
**F207** Words do not extend to Scotland

#### Marginal Citations

- M34** 1984 c.58 (75:4).  
**M35** 1972 c. 52  
**M36** 1968 c. 16

## 21 <sup>X2</sup>† **Modifications of Agricultural Holdings Act 1948, where tenant is a service man.**

[<sup>F61</sup>(1) The three next succeeding subsections shall have effect where the tenant of an agricultural holding to which this section applies performs a period of relevant service, other than a short period of training, either wholly after the commencement of this Act or partly theretofore and partly thereafter, and after the commencement of this Act or partly theretofore and partly thereafter, and after the commencement of this Act, at a time during his period of residence protection, there is given to him notice to quit the holding, or notice to quit a part of the holding, being a part to which this section applies.

This section applies to [<sup>F62</sup>a dwelling-house comprised in an agricultural holding and occupied by the person responsible for the control (whether as tenant or as servant of agent of the tenant) of the farming of the holding], and applies to any part of an agricultural holding being a part which consists of or comprises such a dwelling-house.

- (2) [<sup>F63</sup>section 22 of the Agricultural Holdings (Scotland) Act 1991] (which restricts the operation of notices to quit) shall apply notwithstanding the existence of any such circumstances as are mentioned in subsection (2) <sup>F64</sup>... of that section; but where [<sup>F65</sup>the Scottish Land Court] is satisfied that such circumstances exist then (subject to the next succeeding subsection) [<sup>F65</sup>the Scottish Land Court] shall not be required to withhold [<sup>F65</sup>its] consent to the operation of the notice to quit by reason only that [<sup>F65</sup>it] is not satisfied that circumstances exist such as are mentioned in paragraphs (a) to (e) of subsection (1) of [<sup>F63</sup>section 24 of that Act].
- (3) In determining whether to give or withhold his consent under the said [<sup>F66</sup>section 22][<sup>F65</sup>the Scottish Land Court]—
- (a) if satisfied that circumstances exist such as are mentioned in subsection (2) <sup>F64</sup>... of the said [<sup>F66</sup>section 22] or in subsection (1) of the said [<sup>F66</sup>section 24], shall consider to what extent (if at all) the existence of those circumstances is directly or indirectly attributable to the service man’s performing or having performed the period of service in question, and
  - (b) in any case, shall consider to what extent (if at all) the giving of such consent at a time during the period of protection would cause special hardship in view of circumstances directly or indirectly attributable to the service man’s performing or having performed that period of service;

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and [<sup>F65</sup>the Scottish Land Court] shall withhold [<sup>F65</sup>its] consent to the operation of the notice to quit unless in all the circumstances [<sup>F65</sup>it] considers it reasonable to give [<sup>F65</sup>its] consent thereto.

<sup>F67</sup>(4) .....

(5) Where the tenant of an agricultural holding to which this section applies performs such a period of service as is mentioned in subsection (1) of this section and—

- (a) a notice to quit the holding or a part thereof to which this section applies was given to him before the commencement of this Act or is given to him thereafter but before the beginning of his period of residence protection, and
- (b) the tenant duly serves or has served a counter-notice under subsection (1) of the said section twenty-four, and

<sup>F68</sup>(c) the Scottish Land Court has not before the beginning of his period of residence protection decided whether to give or withhold consent to the operation of the notice to quit,]

the two last preceding subsections shall (with the necessary modifications) apply in relation to the giving or withholding of consent to the operation of the notice to quit as they apply in relation to the giving or withholding of consent to the operation of a notice to quit given in the circumstances mentioned in subsection (1) of this section.

(6) [<sup>F65</sup>Section twenty-seven (as originally enacted) of the said Act of 1949] (which authorises [<sup>F69</sup>the Secretary of State] to make regulations as to matters arising out of sections twenty-four and twenty-five of that Act) shall apply in relation to the provisions of those sections as modified by the preceding provisions of this section as it applies in relation to the provisions of those sections apart from this section.

<sup>F67</sup>(7) .....

(8) In this section the expression “agricultural holding” has the same meaning as in [<sup>F70</sup>the Agricultural Holdings (Scotland) Act 1991]... ]

#### Editorial Information

X2 Unreliable marginal note

#### Textual Amendments

- F61 S. 21 repealed (E.W.) (except in relation to a notice to quit an agricultural holding or part of an agricultural holding given before 7.4.1978) by [Agricultural Holdings \(Notices to Quit\) Act 1977](#) (c. 12), s. 14, **Sch. 2**
- F62 Words substituted by virtue of s. 24(b) of this Act
- F63 Words in s. 21(2) substituted (S.) (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991](#) (c. 55, SIF 2:3), ss. 88(1), 89(3), **Sch. 11**, para. 2(a) (with s. 45(3), Sch. 12 para. 3)
- F64 Words repealed by [Agriculture Act 1958](#) (c. 71), **Sch. 3**
- F65 Words substituted by virtue of [Agriculture Act 1958](#) (c. 71), **Sch. 1 Pt. II para. 45(a)** as read with s. 24(a) of this Act
- F66 Words in s. 21(3) substituted (S.) (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991](#) (c. 55, SIF 2:3), ss. 88(1), 89(3), **Sch. 11**, para. 2(b) (with s. 45(3), Sch. 12, para. 3)
- F67 S. 21(4)(7) repealed by [Agriculture Act 1958](#) (c. 71), **Sch. 2 Pt. II**
- F68 S. 21(5)(c) substituted by [Agriculture Act 1958](#) (c. 71), **Sch. 1 Pt. II para. 45(c)**
- F69 Words substituted by virtue of s. 24(a) of this Act
- F70 Words in s. 21(8) substituted (S.) (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991](#) (c. 55, SIF 2:3), ss. 88(1), 89(3), **Sch. 11**, para. 2(c) (with s. 45(3), Sch. 12, para. 3)



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**Modifications etc. (not altering text)**

- C3 S. 21(2)(3) amended (S.) (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 87, 89(3), **Sch. 12**, para. 4(a) (with s. 45(3), Sch. 12 para. 3)
- C4 S. 21(6) amended (S.) (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 87, 89(3), **Sch. 12**, para. 4(b) (with s. 45(3), Sch. 12 para. 3)

**22 Facilities for action on behalf of men serving abroad in proceedings as to tenancies. E+W**

(1) Where in the course of any proceedings [<sup>F71</sup>brought under [<sup>F72</sup>Part I of the <sup>M11</sup>Protection from Eviction Act 1977] or under [<sup>F73</sup>Part III, IV, or VII of the <sup>M12</sup>Rent Act 1977][<sup>F74</sup>or under Part I of the Housing Act 1988], or of any proceedings consequential upon the making of a reference or application to a rent tribunal under [<sup>F75</sup>Part V of the Rent Act 1977 or Part I of the Housing Act 1988]], or under this Part of this Act, it appears to the court or tribunal—

- (a) that the proceedings relate to a tenancy [<sup>F76</sup>or licence] vested in a service man;
- (b) that a person other than the service man desires to take a step in the proceedings on behalf of the service man at a time when he is serving abroad, or has purported to take a step in the proceedings on his behalf at a time when he was so serving; and
- (c) that the said person, in seeking or purporting to take that step, is or was acting in good faith in the interests of the service man, and is or was a fit person to take that step on his behalf, but is or was not duly authorised to do so,

the court or tribunal may direct that the said person shall be deemed to be, or to have been, duly authorised to take that step on behalf of the service man.

(2) The provisions of the preceding subsection apply in relation to the institution of proceedings before a court as they apply in relation to the taking of a step in such proceedings, and apply in relation to the making of a reference or application to a rent tribunal as they apply in relation to the taking of a step in proceedings consequential upon the making of such a reference or application; and references in that subsection to proceedings brought or a reference or application made as therein mentioned include references to proceedings which purport to be so brought or to a reference or application which purports to be so made, as the case may be.

(3) Where in the course of any proceedings a court or tribunal gives a direction under subsection (1) of this section, the person to whom the direction relates shall have the like right of audience in those proceedings as the service man himself would have.

[<sup>F77</sup>(3A) In relation to any proceedings before a rent officer or rent assessment committee, within the meaning of [<sup>F78</sup>the <sup>M13</sup>Rent Act 1977], subsections (1) to (3) of this section shall have effect as if the references to the court or tribunal included references to a rent officer or rent assessment committee.]

<sup>F79</sup>(4) .....

(7) References in this section to a time when a service man is serving abroad are references to a time when he is performing a period of relevant service and is outside the United Kingdom.

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### Extent Information

- E8** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

- F71** Words substituted by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)
- F72** Words substituted by Protection from Eviction Act 1977 (c. 43), [Sch. 1 para. 1](#)
- F73** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 9](#)
- F74** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 11\(a\)\(b\)](#)
- F75** Words substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 11\(a\)\(b\)](#)
- F76** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 11\(c\)](#)
- F77** [S. 22\(3A\)](#) added by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)
- F78** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 9](#)
- F79** [S. 22\(4\)-\(6\)](#) repealed (except in relation to a notice to quit an agricultural holding or part of an agricultural holding given before 7.4.1978) by [Agricultural Holdings \(Notices to Quit\) Act 1977 \(c. 12\)](#), s. 14, [Sch. 2](#)

### Marginal Citations

- M11** [1977 c. 43](#).
- M12** [1977 c. 42](#).
- M13** [1977 c. 42](#).

## 22 Facilities for action on behalf of men serving abroad in proceedings as to tenancies. **S**

- (1) Where in the course of any proceedings [<sup>F208</sup>brought under [<sup>F209</sup>the Rent (Scotland) Act 1984 or under Part II of the Housing (Scotland) Act 1988], or of any proceedings consequential upon making of a reference or application to a [<sup>F209</sup>rent assessment committee] under [<sup>F209</sup>Part VII of the said Act of 1984 or under Part II of the Housing (Scotland) Act 1988]], or under this Part of this Act, it appears to the court [<sup>F209</sup>or committee]—
- that the proceedings relate to a tenancy [<sup>F210</sup>or licence] vested in a service man;
  - that a person other than the service man desires to take a step in the proceedings on behalf of the service man at a time when he is serving abroad, or has purported to take a step in the proceedings on his behalf at a time when he was so serving; and
  - that the said person, in seeking or purporting to take that step, is or was acting in good faith in the interests of the service man, and is or was a fit person to take that step on his behalf, but is or was not duly authorised to do so,
- the court or tribunal may direct that the said person shall be deemed to be, or to have been, duly authorised to take that step on behalf of the service man.
- (2) The provisions of the preceding subsection apply in relation to the institution of proceedings in a court as they apply in relation to the taking of a step in such proceedings, and apply in relation to the making of a reference or application to a rent tribunal as they apply in relation to the taking a step in relation to the taking of a step in proceedings consequential upon the making of such a reference or application; and references in that subsection to proceedings brought or a reference or application made as therein mentioned include references to proceedings which purport to be so brought or to a reference or application which purports to be so made, as the case may be.

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- (3) Where in the course of any proceedings a court or tribunal gives a direction under subsection (1) of this section, the person to whom the direction relates shall have the like right of audience in those proceedings as the service man himself would have.
- [<sup>F211</sup>(3A) In relation to any proceedings before a rent officer or rent assessment committee, within the meaning of the Rent (Scotland) Act [<sup>F212</sup>1984], subsections (1) to (3) of this section shall have effect as if the references to the court or tribunal included references to a rent officer or rent assessment committee.]
- (4) [<sup>F213</sup>The Secretary of State] may make regulations—
- for enabling a counter-notice under [<sup>F214</sup>section 22(1) of the Agricultural Holdings (Scotland) Act 1991], to be served on behalf of the service man at a time when he is serving abroad, in a case where a notice to quit is given to him as mentioned in subsection (1) of section twenty-one of this Act; and
  - for enabling any act or proceedings consequential upon the service of a counter-notice under subsection (1) of the said section twenty-four to be performed or conducted on behalf of a service man at a time when he is serving abroad, either in such case as is mentioned in the preceding paragraph or in a case where subsection (5) of section twenty-five of this Act applies in relation to the service man.
- (5) Regulations made under the last preceding subsection may contain such incidental and consequential provisions as may appear to [<sup>F213</sup>the Secretary of State] to be necessary or expedient for the purposes of the regulations.
- (6) The power to make regulations under subsection (4) of this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) References in this section to a time when a service man is serving abroad are references to a time when he is performing a period of relevant service and is outside the United Kingdom.

#### Extent Information

**E17** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F208** Words substituted by Rent (Scotland) Act 1971 (c. 28), s. 135(2), **Sch. 18 Pt. II**
- F209** Words substituted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 12(a)(b)(c)**
- F210** Words inserted by Housing Act 1988 (c.50, SIF 75:1), s. 140(1), **Sch. 17 para. 12(d)**
- F211** S. 22(3A) added by Rent Act 1968 (c. 23), s. 117(2), **Sch. 15**
- F212** Figure substituted by Rent (Scotland) Act 1984 (c. 58, SIF 75:4), s. 117(1), **Sch. 8 Pt. II**
- F213** Words substituted by virtue of s. 24(a) of this Act
- F214** Words in s. 22(4)(a) substituted (S.) (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(1), 89(3), **Sch. 11**, para. 3 (with s. 45(3), Sch. 12 para. 3)

## 23 Interpretation of Part II. **E+W**

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

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“agricultural land” has the same meaning as [F80]it has for the purposes of [F81]section 26 of the M14[Rent Act 1977];

[F82]“assured tenancy” has the same meaning as in Part I of the Housing Act 1988]

“Crown interest” means an interest belonging to His Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or to a Government department, or held on behalf of His Majesty for the purposes of a Government department;

“dependant”, in relation to a service man, means—

- (a) his [F83]spouse or civil partner], and
- (b) any other member of his family who was wholly or mainly maintained by him immediately before the beginning of the period of service in question;

[F84]“fixed term tenancy” means any tenancy other than a periodic tenancy]

[F85]in relation to a statutory tenancy or to a provision of the Rent Act 1977 “landlord” and “tenant” have the same meaning as in that Act but, subject to that, those expressions have the same meaning as in Part I of the Housing Act 1988];

“policeman service man” means a service man who, immediately before beginning the period of relevant service in question, was a member of a police force;

F86

“relevant police authority” means, in relation to a police force F87 . . . , the police authority F88 . . . responsible for the maintenance of that force;

[F89]“statutory periodic tenancy” has the same meaning as in Part I of the Housing Act 1988]

“statutory tenancy” means a right to retain possession of premises after the ending of a tenancy thereof, being a right arising on the ending of that tenancy from the operation of [F90]the M15[Rent Act 1977] (or of [F91]the Rent Act 1977] as extended by this Part of this Act) in relation to a person as being, or being the [F92]surviving spouse or surviving civil partner] of or otherwise related to, the former owner of the tenancy, or a right to retain possession of premises arising by virtue of subsection (1) of section eighteen of this Act;

“tenancy” includes a statutory tenancy, and, apart from a statutory tenancy, means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement, but does not include any relationship between a mortgagor and a mortgagee as such.

[F93](1A) Any reference in this Part of this Act to Chapter I of Part I of the Housing Act 1988 includes a reference to the General Provisions of Chapter VI of that Part, so far as applicable to Chapter I.]

(2) In this Part of this Act—

- (a) references to the ending of a tenancy are references to the coming to an end thereof however brought about, whether by effluxion of time, notice to quit or otherwise, and in particular, as respects a statutory tenancy, include references to the coming to an end thereof as between the tenant and a landlord who is himself a tenant by reason of the ending of the tenancy of the landlord;
- (b) references to a tenancy vested in any person include references to a tenancy vested in trustees, or held as part of the estate of a deceased person, where the first-mentioned person has a right or permission to occupy the premises

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arising by reason of a beneficial interest (whether direct or derivative) under the trusts or, as the case may be, in the estate of the deceased person or under trusts of which the deceased person was trustee.

- (3) In this Part of this Act, and in [F94the Rent Act 1977][F95or Chapter I of Part I of the Housing Act 1988] as applied by any provision thereof, references to rent shall be construed as including references to any sum in the nature of rent payable in respect of such a licence as is mentioned in section eighteen of this Act.

#### Extent Information

- E9** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F80** Words substituted by [Rent Act 1968 \(c. 23\)](#), s. 117(2), [Sch. 15](#)
- F81** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 10](#)
- F82** Definition inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 13\(2\)\(a\)](#)
- F83** Words in s. 23(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(a), [Sch. 26 para. 21\(a\)](#); S.I. 2005/3175, art. 2(1), [Sch. 1](#)
- F84** Definition inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 13\(2\)\(b\)](#)
- F85** Definition substituted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 13\(2\)\(c\)](#)
- F86** Definition repealed by [Police Act 1964 \(c. 48\)](#), [Sch. 10 Pt. I](#)
- F87** Words repealed by [Police Act 1964 \(c. 48\)](#), [Sch. 10 Pt. I](#)
- F88** Words repealed by [Police Act 1964 \(c. 48\)](#), [Sch. 10 Pt. I](#)
- F89** Definition inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 13\(2\)\(d\)](#)
- F90** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 10](#)
- F91** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 10](#)
- F92** Words in s. 23(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(a), [Sch. 26 para. 21\(b\)](#); S.I. 2005/3175, art. 2(1), [Sch. 1](#)
- F93** S. 23(1A) inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 13\(3\)](#)
- F94** Words substituted by [Rent Act 1977 \(c. 42\)](#), [Sch. 23 para. 10](#)
- F95** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), s. 140(1), [Sch. 17 para. 13\(4\)](#)

#### Marginal Citations

- M14** 1977 c. 42.  
**M15** 1977 c. 42.

## 23 Interpretation of Part II. **S**

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

“agricultural land” has the same meaning as in [F215section [F216115(1)] of the Rent (Scotland) Act [F2161984]];

[F217“assured tenancy”; and “statutory assured tenancy” have the same meaning as in Part II of the Housing (Scotland) Act 1988]

“Crown interest” means an interest belonging to His Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or to a Government department, or held on behalf of His Majesty for the purposes of a Government department;

“dependant” in relation to a service man, means—

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- (a) his [<sup>F83</sup>spouse or civil partner], and
- (b) any other member of his family who was wholly or mainly maintained by him immediately before the beginning of the period of service in question;
  - [<sup>F218</sup>in relation to a statutory tenancy or to a provision of the Rent (Scotland) Act 1984 “landlord” and “tenant” have the same meaning as in that Act but, subject to that, those expressions have the same meaning as in Part II of the Housing (Scotland) Act 1988]
  - “policeman service man” means a service man who, immediately before beginning the period of relevant service in question, was a member of a police force;
    - <sup>F219</sup> . . . . .
    - “relevant police authority” means, in relation to a police force <sup>F220</sup> . . . , the police authority <sup>F221</sup> . . . responsible for the maintenance of that force;
    - “statutory tenancy” means a right to retain possession of premises after the ending of that tenancy from the operation of [<sup>F222</sup>the Rent (Scotland) Act [<sup>F216</sup>1984]] (or of [<sup>F222</sup>the Rent (Scotland) Act [<sup>F216</sup>1984]] as extended by this Part of this Act) in relation to a person as being, or being the [<sup>F92</sup>surviving spouse or surviving civil partner] of or otherwise related to, the former owner of the tenancy, or right to retain possession of premises arising by virtue of subsection (1) of section eighteen of this Act;
    - “tenancy” includes a statutory tenancy, and, apart from a statutory tenancy, means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement, but does not include any relationship between a mortgagor and mortgagee as such.

[<sup>F223</sup>(1A) Any reference in this Part of this Act to sections 12 to 31 of the Housing (Scotland) Act 1988 includes a reference to sections 47 to 55 of that Act so far as applicable to those sections.]

- (2) In this Part of this Act—
  - (a) references to the ending of a tenancy are references to the coming to an end thereof however brought about, whether by effluxion of time, notice to quit or otherwise, and in particular, as respects a statutory tenancy, include references to the coming to an end thereof as between the tenant and a landlord who is himself a tenant by reason of the ending of the tenancy of the landlord;
  - (b) references to a tenancy vested in any person include references to a tenancy vested in trustees, or held as part of the estate of a deceased person, where the first-mentioned person has a right or permission to occupy the premises arising by reason of a beneficial interest (whether direct or derivative) under the trusts or, as the case may be, in the estate of the deceased person or under trusts of which the deceased person was trustee.
- (3) In this Part of this Act, and in [<sup>F215</sup>the Rent (Scotland) Act [<sup>F224</sup>1984]] [<sup>F225</sup>or sections 12 to 31 of the Housing (Scotland) Act 1988] as applied by any provision thereof, references to rent shall be construed as including references to any sum in the nature of rent payable in respect of such a licence as is mentioned in section eighteen of this Act.

#### **Extent Information**

**E18** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

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### Textual Amendments

- F83** Words in s. 23(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(a), **Sch. 26 para. 21(a)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F92** Words in s. 23(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(a), **Sch. 26 para. 21(b)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F215** Words substituted by Rent (Scotland) Act 1971 (c. 28), s. 135(2), **Sch. 18 Pt. II**
- F216** Figure substituted by Rent (Scotland) Act 1984 (c. 58, SIF 75:4), s. 117(1), **Sch. 8 Pt. II**
- F217** Definition inserted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 14(2)(a)**
- F218** Definition substituted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 14(2)(b)**
- F219** Definition repealed by Police (Scotland) Act 1967 (c. 77), **Sch. 5 Pt. I**
- F220** Words repealed by Police (Scotland) Act 1967 (c. 77), **Sch. 5 Pt. II**
- F221** S. 24(c) repealed by Agriculture Act 1958 (c. 71), **Sch. 2 Pt. II**
- F222** Words substituted by Rent (Scotland) Act 1971 (c. 28), s. 135(2), **Sch. 18 Pt. II**
- F223** S. 23(1A) inserted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 14(3)**
- F224** Words substituted by Rent (Scotland) Act 1984 (c. 58, SIF 75:4), s. 117(1), **Sch. 8 Pt. II**
- F225** Words inserted by Housing Act 1988 (c. 50, SIF 75:1), s. 140(1), **Sch. 17 para. 14(4)**

## 24 Application of Part II in Scotland.

In the application of the preceding sections of this Part of this Act to Scotland—

- (a) for any reference to the Minister of Local Government and Planning or to the Minister of Agriculture and Fisheries there shall be substituted a reference to the Secretary of State; and for any reference to the county court there shall be substituted a reference to the sheriff;
- (b) <sup>F96</sup> . . . ; <sup>F97</sup> . . . ; and for any reference to such a dwelling-house as is mentioned in paragraph 1 of the Seventh Schedule to the Agricultural Holdings Act, 1948, there shall be substituted a reference to a dwelling-house comprised in an agricultural holding and occupied by the person responsible for the control (whether as tenant or as servant or agent of the tenant) of the farming of the holding;
- <sup>F98</sup>(c) . . . . .
- (d) for any reference to the Town and Country Planning Act, 1947, there shall be substituted a reference to the Town and Country (Scotland) Act, 1947, and for references to the Furnished Houses (Rent Control) Act, 1946, and to section eight thereof, there shall be respectively substituted references to the Rent of Furnished Houses Control (Scotland) Act, 1943, and to section six thereof;
- (e) for any reference to a valuation list there shall be substituted a reference to a valuation roll; for any reference to a hereditament there shall be substituted a reference to lands and heritages; and for any reference to intoxicating liquor there shall be substituted a reference to excisable liquor;
- (f) the expression “licence” means a right or permission derived otherwise than under a lease; and any reference to the reversion immediately expectant on a tenancy shall be construed as a reference to the interest of the immediate landlord of the tenant under the tenancy;
- <sup>F99</sup>(g) . . . . .
- <sup>X3</sup>(h) section sixteen of this Act shall have effect as if for subsection (8) there were substituted the following subsection—



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“(8) A notice for the purposes of this section may be served in like manner as a notice under section three hundred and forty-nine of the Local Government (Scotland) Act, 1947.”

[<sup>F100</sup>(j) for any reference to the Rent Restrictions Acts there shall be substituted a reference to the Rent (Scotland) Act 1971; and for any reference, however expressed, to a dwelling-house to which the Rent Restrictions Acts apply there shall be substituted a reference to a dwelling-house subject to a statutory tenancy within the meaning of the Rent (Scotland) Act 1971.]

#### Editorial Information

**X3** The text of s. 24(h), which is spent, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

#### Textual Amendments

**F96** Words in s. 24(b) repealed (S.)(25.9.1991) by *Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3)*, ss. 88(2), 89(3), **Sch. 13, Pt.I** (with s. 45(3), **Sch. 12, paras. 1, 3**)

**F97** Words repealed by *Agriculture Act 1958 (c.71)*, **Sch. 2 pt. II**

**F98** S. 24(c) repealed by *Agriculture Act 1958 (c. 71)*, **Sch. 2 Pt. II**

**F99** S. 24(g) repealed by *Police (Scotland) Act 1967 (c. 77)*, **Sch. 5**

**F100** S. 24(j) added by *Rent (Scotland) Act 1971 (c. 28)*, s. 135(2), **Sch. 18 Pt. II**

### *Protection during short period of training*

## 25 Protection during short period of training.

- (1) Where a service man who has been living with a dependant or dependants of his in any premises in right of a tenancy, of of a licence in that behalf granted by his employer in consequence of his employment, performs a short period of training, then, for so long during that period and within fourteen days from the ending of it as the dependant or dependants and the service man or any of them is or are still living in the premises or any part thereof, no person shall be entitled, except with the leave of the appropriate court, to proceed—
  - (a) to execution on, or otherwise to the enforcement of, any judgement or order given or made against any of them for the recovery of possession of any part of the premises in which any of them is or are living, or
  - (b) to exercise against any of them any right to take possession of, or to re-enter upon, any such part thereof.
- (2) If, on any application for such leave as is required by the preceding subsection, the court is of opinion that, by reason of circumstances directly or indirectly attributable to the service man’s performing or having performed the period of service in question, the judgement, order or right ought not to be immediately executed, enforced or excersised, the court may refuse leave or give leave subject to such restrictions and conditions as the court thinks proper.
- (3) References in this section to a judgement or order for the recovery of possession of premises include references to any judgement or order the effect of which is to enable



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a person to obtain possession of the premises, and in particular includes, in relation to a mortgagee, a judgement or order for the delivery of possession of the premises.

- (4) For the purposes of this section a person shall be deemed to be proceeding to execution on, or otherwise to the enforcement of, a judgement or order in the circumstances in which, by virtue subsection (9) of section three of this Act, he would be deemed to be so proceeding for the purposes of section two of this Act, and where a person has, in a case for which leave was not required under this section, taken out any judicial process with a view to, or in the course of, the enforcement of a judgement or order or proceeded to the exercise of a right to take possession of or to re-enter upon premises, he shall be deemed to be proceeding to the enforcement of the judgement or order of to the exercise of the right when any step is taken by him or on his behalf towards its completion.
- (5) The references in section five and subsection (1) of section eleven of this Act to the provisions of Part I of this Act shall include references to the provisions of this section, and the provisions of section thirteen of this Act which relate to omission to obtain leave required under section two of this Act shall have effect in relation to omission to obtain leave required under this section.
- (6) In this section the expression “dependant”, in relation to a service man, means—
- his [<sup>F101</sup>spouse or civil partner], and
  - any other member of his family wholly or mainly maintained by him.
- (7) In the application of this section to Scotland—
- the expression “licence” has the meaning assigned to it by paragraph (f) of section twenty-four of this Act;
  - a reference to proceeding to execution on or otherwise to the enforcement of a judgement of order shall be construed as a reference to the enforcement of a decree, and any reference to a mortgagee shall be omitted;
  - for the references to section two and to subsection (9) of section three of this Act there shall be respectively substituted references to section eight and to subsection (7) of section nine of this Act.

#### Textual Amendments

**F101** Words in s. 25(6)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(a), [Sch. 26 para. 22](#); S.I. 2005/3175, art. 2(1), [Sch. 1](#)

### PART III

#### PROTECTION AGAINST INSECURITY OF TENURE OF BUSINESS AND PROFESSIONAL PREMISES

##### *Provisions as to England and Wales*

#### **26 Application of sections twenty-seven to thirty-six.**

The ten next following sections shall apply to England and Wales only.

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## **27 Renewal of tenancy expiring during period of service or within two months thereafter.**

- (1) The provisions of this Part of this Act shall have effect for empowering the court to order the grant of new tenancies in cases where—
- (a) immediately before beginning (whether after or before the commencement of this Act) a period of relevant service, other than a short period of training, a service man was the working proprietor of a business or professional practice carried on in the premises, or part of the premises, comprised in a tenancy vested in him, and
  - (b) the tenancy (in this Part of this Act referred to as “the expiring tenancy”) would apart from the provisions of this Part of this Act come to an end after the commencement of this Act and before the date of the ending of that period of service or before the expiration of two months from that date, and would so come to an end by effluxion of time or by the expiration of a notice to quit given by the landlord, whether after or before the commencement of this Act, and
  - (c) at the time when an application for the grant of a new tenancy is made under this Part of this Act the service man is still the proprietor of the business or practice and it is still being carried on in the premises, or part of the premises, comprised in the expiring tenancy:

Provided that the said provisions shall not have effect if at the time when the application might otherwise be made the premises comprised in the expiring tenancy

- <sup>F102</sup>(a) are an agricultural holding (within the meaning of the Agricultural Holdings Act 1986) held under a tenancy in relation to which that Act applies,
  - (b) are a holding (other than a holding excepted from this provision) held under a farm business tenancy, or
  - (c) consist of or comprise premises (other than premises excepted from this provision) [<sup>F103</sup>which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises].]
- (2) For the purposes of paragraph (a) of the last preceding subsection a service man shall be deemed to have been at any time the working proprietor of a business or professional practice carried on as mentioned in that paragraph if, and only if, he was the proprietor of the business or practice during the whole of the period of one year immediately preceding that time and, during more than one-half of that period, either—
- (a) he worked whole-time in the actual management or conduct of that business or practice, or
  - (b) he worked whole-time in the actual management or conduct of a business or professional practice of which that business or practice was a branch and was mainly engaged in the management or conduct of that branch.
- (3) In the preceding provisions of this section the expression “proprietor” means, in the case of a business or practice carried on by a partnership firm, a partner in the firm on terms and conditions entitling him to not less than one half of the profits of the firm, and, in the case of a business or practice carried on by a company, a person holding shares in the company amounting in nominal value to not less than one half of the issued share capital of the company; and, in relation to a business or practice carried on by a partnership firm or by a company, references in those provisions to the proprietor of the business or practice include references to a person being one of

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two such partners in the firm or, as the case may be, being one of two persons each holding such shares in the company, and references to the working proprietor of the business or practice shall be construed accordingly.

- (4) In relation to a business or practice carried on by a partnership firm or by a company, references in the preceding provisions of this section to a tenancy vested in the service man include references to a tenancy vested in one or more partners of the firm, or vested in the company, as the case may be; and for the purposes of those provisions and of this subsection a tenancy shall be treated as having been vested at any time in a person if it was then vested in trustees, or held as part of the estate of a deceased person, and the first-mentioned person then had a right or permission to occupy the premises comprised in the tenancy, or the part of those premises in which the business or practice was being carried on, being a right or permission arising by reason of a beneficial interest (whether direct or derivative) under the trusts or, as the case may be, in the estate of the deceased person or under trusts of which the deceased person was trustee.

- (5) In this section—

- (a) the expression “profits” in relation to a firm means such profits of the firm as are from time to time distributable among the partners therein;
- (b) the expression “company” [<sup>F104</sup>has the meaning given by section 1(1) of the Companies Act 2006];

[<sup>F105</sup>(bb) the expressions “farm business tenancy” and “holding”, in relation to such a tenancy, have the same meaning as in the Agricultural Tenancies Act 1995;]

- (c) the expression “share” includes stock and the expression “share capital” shall be construed accordingly;

and for the purposes of this section shares held by a person’s [<sup>F106</sup>spouse or civil partner], or held by him jointly with his [<sup>F106</sup>spouse or civil partner], shall be treated as shares held by that person.

[<sup>F107</sup>(5A) In paragraph (b) of the proviso to subsection (1) of this section the reference to a holding excepted from the provision is a reference to a holding held under a farm business tenancy in which there is comprised a dwelling-house occupied by the person responsible for the control (whether as tenant or servant or agent of the tenant) of the management of the holding.]

- (6) [<sup>F108</sup>In paragraph (c) of the proviso to subsection (1) of this section, the reference to premises excepted from the provision] is a reference to premises in respect of which—

- (a) the excise licence for the time being in force is a licence the duty in respect of which is the reduced duty payable under section forty-five of the <sup>M16</sup>Finance (1909—10) Act 1910, or a licence granted in pursuance of regulations under subsection (5) of the said section forty-five (which relates to the granting of licences on the provisional payment of reduced duty), or
- (b) the Commissioners of Customs and Excise certify that no application under the said section forty-five has been made in respect of the period for which the excise licence for the time being in force was granted, but that if such an application had been made such a licence could properly have been granted as is mentioned in the preceding paragraph.

#### Textual Amendments

**F102** S. 27(1)(a)-(c) substituted for words (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 9(2)** (with s. 37)

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- F103** Words in s. 27(1) substituted (24.11.2005) by Licensing Act 2003 (c. 17), s. 201(2), **Sch. 6 para. 24** (with ss. 2(3), 15(2), 195); S.I. 2005/3056, art. 2(2)
- F104** Words in s. 27(5)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 6(2)** (with art. 10)
- F105** S. 27(5)(bb) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 9(3)** (with s. 37)
- F106** Words in s. 27(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(a), **Sch. 26 para. 23**; S.I. 2005/3175, art. 2(1), Sch. 1
- F107** S. 27(5A) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 9(4)**(with s. 37)
- F108** Words in s. 27(6) substituted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 9(5)** (with s. 37)

#### Marginal Citations

**M16** 1910 c. 8.

## 28 Premises to be comprised in new tenancy.

- (1) Any new tenancy granted under this Part of this Act shall, subject to the next succeeding subsection, be a tenancy of the whole of the premises comprised in the expiring tenancy.
- (2) If at the time of the application for a new tenancy the business or practice is being carried on in a separate part of the premises comprised in the expiring tenancy (whether that part is used exclusively for the purposes of the business or practice or not) any new tenancy granted as aforesaid shall, if the landlord so requires, be a tenancy of the whole of the premises comprised in the expiring tenancy, but otherwise shall be a tenancy of that separate part:

Provided that where in such a case the landlord does not require the new tenancy to be a tenancy of the whole of the premises comprised in the expiring tenancy and—

- (a) those premises include such a separate part as aforesaid and also another separate part consisting of living accommodation occupied wholly or mainly by one or more dependants of the service man, or by a person who is employed for the purposes of the business or practice carried on as aforesaid, and
- (b) an application is made in that behalf,

the new tenancy shall, unless the court in its discretion otherwise determines, be a tenancy of the separate part in which the business or practice is carried on and also of the separate part consisting of the living accommodation.

- (3) Any question arising under the last preceding subsection whether a part of premises should be treated as a separate part for the purposes of the grant of a new tenancy shall be determined by the court on the hearing of the application.
- (4) In this section the expression “dependant” has the meaning assigned to it by subsection (1) of section twenty-three of this Act.

## 29 Application for grant of new tenancy.

- (1) An order for the grant of a new tenancy under this Part of this Act shall not be made except upon an application to the county court made by the tenant under the expiring tenancy; and, subject to subsection (3) of this section, any such application shall—

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- (a) if apart from this section the expiring tenancy would expire by effluxion of time, not be made later than one month before the date on which that tenancy would so expire;
- (b) if apart from this section the expiring tenancy would come to an end by notice to quit given by the landlord, be made after the giving of the notice to quit and not later than one month before the notice is due to expire:

Provided that—

- (i) in a case falling within paragraph (b) of this subsection an application may be made at any time not later than one month after the giving of the notice to quit, if the latest time limited by that paragraph would fall before the end of that month; and
  - (ii) where the latest time limited by the preceding provisions of this subsection would fall before the end of one month beginning with the commencement of this Act, an application may be made not later than the end of that month.
- (2) Where apart from this section the expiring tenancy would come to an end—
- (a) by effluxion of time, or
  - (b) by notice to quit given by the landlord so as to expire not less than four months after the giving of the notice,
- the landlord may at any time not earlier than the beginning of the service man's period of service in question nor earlier than four months before the date on which that tenancy would so come to an end serve on the tenant notice, in such form and containing such particulars as to the provisions of this Part of this Act as may be prescribed by regulations made by the Lord Chancellor by statutory instrument, requiring the tenant within the period of one month from the date of the service of the notice to elect whether or not to make an application under the preceding subsection; and, subject to the next succeeding subsection, where a notice under this subsection is served no such application shall be made in relation to the expiring tenancy after the end of the said period of one month.
- (3) The court to which an application under subsection (1) of this section could be made within the time limited by the preceding subsections shall have power, on an application made in that behalf either before or after the expiration of that time, to extend the time limited by those subsections for making the application under the said subsection (1) if the court is satisfied that there are or were adequate reasons for not making that application within the time so limited and that in all the circumstances of the case it is reasonable to extend the time.
- (4) Where an application is duly made under subsection (1) of this section and the expiring tenancy would apart from this section come to an end before the relevant date, then—
- (a) if the expiring tenancy would so come to an end after the application is made, it shall be treated as continuing until the relevant date;
  - (b) if the expiring tenancy would have so come to an end at a time before the application is made, it shall be treated as having continued since that time until the application is made and as continuing thereafter until the relevant date.
- (5) The relevant date for the purposes of the last preceding subsection, in relation to an application—
- (a) unless the application is withdrawn, is the date falling one month after the date on which the proceedings on the application (including any proceedings on or in consequence of an appeal) are finally determined;

*Status: Point in time view as at 01/10/2009.*

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- (b) if the application is withdrawn, is the date falling one month after the withdrawal of the application.
- (6) Section one hundred and ninety-six of the <sup>M17</sup>Law of Property Act 1925 (which relates to service of notices) shall apply to notices for the purposes of this section.

#### **Marginal Citations**

**M17** 1925 c. 20.

### **30 Power of court to grant new tenancy.**

- (1) Subject to the provisions of this Part of this Act, on an application under this Part of this Act duly made the court may, if in all the circumstances of the case it appears reasonable to do so, order that there shall be granted to the tenant a tenancy for such period, at such rent and on such terms and conditions as the court in all the circumstances thinks reasonable, and thereafter the parties shall be deemed to have entered into a lease of the premises or part of premises (as the case may be) creating such a tenancy:

Provided that in fixing the rent under this subsection the court shall disregard any consideration arising from the personal circumstances of any of the parties.

- (2) Any period for which under the last preceding subsection a tenancy is ordered to be granted shall begin with the end of the expiring tenancy, whether it ends in accordance with the terms thereof or after being continued by subsection (4) of the last preceding section.
- (3) In ordering the grant of a new tenancy under this section the court shall so limit the period of the tenancy, or shall order the grant subject to such terms and conditions, as in the opinion of the court may be most suitable for securing that the tenancy shall not extend beyond or may be terminated by the landlord at a time not later than, the expiration of four months from the end of the period of service in consequence of which the application was made:

Provided that nothing in this subsection shall be construed as restricting the discretion of the court in a case where the court thinks it reasonable that the tenancy should come to an end, or be capable of being terminated by the landlord, at any earlier time.

- (4) The court shall not order the grant of a new tenancy if it is satisfied—
- (a) that the tenant has broken any of the terms or conditions of the expiring tenancy, and that in view of the nature and circumstances of the breach a new tenancy ought not to be granted; or
  - (b) that the landlord has offered to afford to the tenant, on terms and conditions which in the opinion of the court are reasonable, alternative accommodation which, in the opinion of the court, is suitable for the purposes of the business or professional practice carried on under the expiring tenancy; or
  - (c) that the landlord reasonably requires possession in order that the premises the subject of the expiring tenancy, or a substantial part of those premises, may be demolished or reconstructed; or
  - (d) where there subsists in the premises an interest belonging to a public authority, that in the public interest a new tenancy ought not to be granted; or

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- (e) that having regard to all the circumstances of the case greater hardship would be caused by ordering the grant of a new tenancy than by refusing to do so.

The reference in paragraph (d) of this subsection to an interest belonging to a public authority is a reference to an interest belonging to a Government department or held on behalf of His Majesty for the purposes of a Government department, or held by a local authority (as defined in [<sup>F109</sup>the <sup>M18</sup>Town and Country Planning Act 1971]), by statutory undertakers (as so defined) or by a development corporation (as defined in [<sup>F110</sup>the <sup>M19</sup>New Towns Act 1965]).

- (5) Where at the commencement of this Act any authority is empowered by any enactment or order to purchase compulsorily land specifically described in that enactment or order, there shall, for the purposes of the last preceding subsection, be deemed, during a period of six months from the commencement of this Act or during such period as the authority remains so empowered as aforesaid (whichever period first expires), to be subsisting in that land an interest belonging to that authority.
- (6) A tenancy ordered to be granted under this section shall, where the reversion is subject to a mortgage, be deemed to be a tenancy created by a lease authorised by section ninety-nine of the <sup>M20</sup>Law of Property Act 1925.

#### Textual Amendments

**F109** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 Pt. I para. 2](#)

**F110** Words substituted by virtue of [New Towns Act 1965 \(c. 59\)](#), [Sch. 11 para. 5\(1\)](#)

#### Modifications etc. (not altering text)

**C5** [S. 30](#) amended by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 161, 163, 189(4)–(10), 190(1), 193(1), [Sch. 25 para. 1\(2\)\(v\)](#), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 57\(6\)](#), [58](#)

#### Marginal Citations

**M18** [1971 c. 78](#).

**M19** [1965 c. 59](#).

**M20** [1925 c. 20](#).

### 31 Provision for further renewal of tenancy.

Where the grant of a new tenancy has been ordered under this Part of this Act, the provisions of this Part of this Act shall thereafter apply in relation to the new tenancy as if the conditions specified in paragraph (a) of subsection (1) of section twenty-seven of this Act were fulfilled in relation to the new tenancy and the new tenancy were the tenancy referred to in those provisions as the expiring tenancy.

### 32 Provisions for cases where landlord is a tenant.

- (1) Where in the case of a tenancy the reversion is itself a tenancy, and the period for which in accordance with the preceding provisions of this Part of this Act the court proposes to order the grant of a new tenancy will extend beyond the date on which the reversion will come to an end, the power of the court under those provisions shall include power to order such a grant until the end of the reversion and also to order the grant of such a reversionary tenancy or reversionary tenancies as may be required to secure that the combined effect of those grants will be equivalent to the grant of a tenancy for the said period; and the provisions of this Part of this Act shall, subject



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to the necessary modifications, apply to the grant of a tenancy and of one or more reversionary tenancies.

- (2) Where by virtue of any of the provisions of this Part of this Act a tenancy (in this subsection referred to as “the inferior tenancy”) is continued or granted for a period such as to extend to or beyond the end of the term of a superior tenancy, the superior tenancy shall, for the purposes of this Part of this Act and of any other enactment and of any rule of law, be deemed so long as it subsists to be an interest in reversion expectant upon the termination of the inferior tenancy and, if there is no intermediate tenancy, to be the interest in reversion immediately expectant upon the termination thereof.
- (3) In the case of a tenancy continuing by virtue of subsection (4) of section twenty-nine of this Act after the coming to an end of the reversion, subsection (1) of section one hundred and thirty-nine of the <sup>M21</sup>Law of Property Act 1925 (which relates to the effect of the extinguishment of a reversion) shall apply as if references in the said subsection (1) to the surrender or merger of the reversion included references to the determination of the reversion for any reason other than surrender or merger.

#### **Marginal Citations**

**M21** 1925 c. 20.

### **33 Provisions as to Landlord and Tenant Act 1927.**

- (1) In relation to the granting of tenancies under this Part of this Act, the following provisions shall have effect as respects the <sup>M22</sup>Landlord and Tenant Act 1927.
- (2) The provisions of Part I of the said Act of 1927 shall not apply in relation to tenancies granted under this Part of this Act.
- (3) Nothing in this Part of this Act shall affect the time at which a tenancy is to be treated as terminating for the purposes of the said Part I; and a tenant who by virtue of this Part of this Act remains in occupation of any premises or part of premises after the expiring tenancy would apart from this Part of this Act have come to an end shall be treated for those purposes as having quitted his holding on the termination of that tenancy.
- (4) In considering, for the purposes of section four of the said Act of 1927, whether the tenant or his predecessors in title has or have carried on a trade or business at any premises for the period of five years specified in subsection (1) of that section, a period of occupation of the premises by virtue of this Part of this Act shall not count towards completion of the said five years, but shall notwithstanding anything in the last preceding subsection be treated as not breaking the continuity of immediately preceding and succeeding periods of occupation of the premises.
- (5) Notwithstanding anything in this Part of this Act, the following provisions shall have effect, as respects claims by the tenant for compensation under Part I of the said Act of 1927, and notices by the landlord under paragraph (d) of subsection (1) of section two of that Act or paragraph (b) of the proviso to subsection (1) of section four thereof (which paragraphs exclude compensation where within the specified period of two months the landlord serves on the tenant such a notice for the renewal of the tenancy as is therein mentioned)—
  - (a) no application shall be made under this Part of this Act for the grant of a new tenancy if the tenant has duly claimed such compensation as aforesaid and

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- the landlord has within the said period of two months served such a notice as aforesaid;
- (b) where an application is made under this Part of this Act at a time when the tenant has duly claimed such compensation and when the landlord has not served such a notice as aforesaid but the said period of two months has not expired, the application shall not be heard until that period has expired, and, if within that period the landlord serves such a notice, the application shall be dismissed;
- (c) where at the time such an application is made the tenant has not duly claimed such compensation but the time for claiming it has not expired the application shall not be heard before the expiration of that time, and if before the expiration thereof the tenant duly makes a claim the last foregoing paragraph shall apply as it applies where the application under this Part of this Act is made after the making of a claim for compensation.
- (6) Where the tribunal under the said Act of 1927 has made an interim order under subsection (13) of section five of that Act and subsequently determines not to order the grant of a new tenancy under subsection (2) of that section, the said tribunal may if it thinks fit direct that the possession of the tenant under the interim order shall be treated as if it were a tenancy granted under this Part of this Act, and where it so directs the time within which an application for the grant of a further new tenancy may be made under this Part of this Act shall be such as the tribunal may direct.

#### Marginal Citations

M22 1927 c. 36.

### 34 Appeals.

- (1) No appeal shall be brought from any determination or order of the court under this Part of this Act except with the leave of the court or of the Court of Appeal.
- (2) Notwithstanding anything in subsection (4) of section twenty-nine of this Act, the court granting leave to appeal may direct that during the period beginning with the granting of leave to appeal and ending with the date to which a tenancy is continued by the said subsection (4) the tenancy shall have effect subject to such modifications, terms or conditions as that court may specify.

### 35 Application to Crown property.

- (1) Except in so far as it is otherwise expressly provided, this Part of this Act shall apply where there is an interest belonging to His Majesty in right of the Crown or to a Government department, or held on behalf of His Majesty for the purposes of a Government department, in like manner as where no such interest subsists.
- (2) Where an interest in any land belongs to a Government department, or is held on behalf of His Majesty for the purposes of a Government department, and the Minister or Board in charge of any Government department is satisfied that for reasons of national security it is necessary that the use or occupation of the land should be discontinued or changed, the Minister or Board may certify that this subsection applies to the land; and where such a certificate is given no order shall be made under this Part of this Act for the grant of a new tenancy comprising that land or any part thereof.

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### 36 Interpretation of preceding sections of Part III.

(1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

“the landlord”, in relation to a tenancy, means the person for the time being entitled to the reversion and, where the reversion is subject to a mortgage and the mortgagee is in possession or he or a receiver appointed by him or by the court is in receipt of the rents and profits, includes that mortgagee and any such receiver as aforesaid;

“mortgage” includes any charge, and the expressions “mortgagor” and “mortgagee” shall be construed accordingly;

“notice to quit” includes a notice to determine a term of years certain, but does not include a notice requiring possession where section one hundred and twenty-one of the <sup>M23</sup>Lands Clauses Consolidation Act 1845, applies;

“the reversion”, in relation to a tenancy, means the interest which not being a mortgage term and apart from any such term, is for the time being in reversion immediately expectant upon the termination of the tenancy; and

“tenancy” means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement, but does not include any relationship between a mortgagor and a mortgagee as such, and “tenant” shall be construed accordingly.

(2) References in this Part of this Act to the premises comprised in a tenancy are references to the aggregate of the land comprised in the tenancy.

#### Marginal Citations

M23 1845 c. 18.

#### *Provisions as to Scotland*

### 37 Application of sections thirty-eight to forty.

The three next following sections shall apply to Scotland only.

### 38 Application by service man for renewal of tenancy of business premises.

(1) Where—

- (a) immediately before beginning (whether before or after the commencement of this Act) a period of relevant service other than a short period of training, a service man was the working proprietor of a business or a professional practice carried on in the premises or part of the premises comprised in a tenancy vested in him, and
- (b) the landlord gives or has given to the service man notice of termination of tenancy taking effect after the commencement of this Act, and before the date of the ending of that period of service or before the expiration of two months from that date, and
- (c) at the time when an application for renewal of the tenancy is made in pursuance of the provisions hereinafter contained the service man is still the

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proprietor of the business or practice and the business or practice is still being carried on in the premises comprised in the tenancy,

the service man may, at any time before the notice of termination of tenancy takes effect and not later than the expiry of twenty-one days after the service of the notice or after the commencement of this Act, whichever is the later, apply to the sheriff for a renewal of his tenancy.

- (2) For the purposes of paragraph (a) of the last preceding subsection a service man shall be deemed to have been at any time the working proprietor of a business or professional practice carried on as mentioned in that paragraph if, and only if, he was the proprietor of the business or practice during the whole of the period of one year immediately preceding that time and, during more than one-half of that period, either—
  - (a) he worked whole-time in the actual management or conduct of that business or practice, or
  - (b) he worked whole-time in the actual management or conduct of a business or professional practice of which that business or practice was a branch and was mainly engaged in the management or conduct of that branch.
- (3) In the preceding provisions of this section the expression “proprietor” means, in the case of a business or practice carried on by a firm, a partner in the firm on terms and conditions entitling him to not less than one half of the profits of the firm and, in the case of a business or practice carried on by a company, a person holding shares in the company amounting in nominal value to not less than one half of the issued share capital of the company; and, in relation to a business or practice carried on by a partnership firm or by a company, references in those provisions to the proprietor of the business or practice include references to a person being one of two such partners in the firm or, as the case may be, being one of two persons each holding such shares in the company, and references to the working proprietor of the business or practice shall be construed accordingly.
- (4) In relation to a business or practice carried on by a firm or by a company, references in the preceding provisions of this section to a tenancy vested in the service man include references to a tenancy vested in one or more partners in the firm, or vested in the company, as the case may be; and for the purposes of those provisions and of this subsection a tenancy shall be treated as having been vested at any time in a person if it was then vested in trustees, or held as part of the estate of a deceased person, and the first-mentioned person then had a right or permission to occupy the premises comprised in the tenancy, or the part of those premises in which the business or practice was being carried on, being a right or permission arising by reason of a beneficial interest (whether direct or derivative) under the trusts or, as the case may be, in the estate of the deceased person or under trusts of which the deceased person was trustee.
- (5) In this section—
  - (a) the expression “profits” in relation to a firm means such profits of the firm as are from time to time distributable among the partners therein;
  - (b) the expression “company” <sup>[F111]</sup>has the meaning given by section 1(1) of the Companies Act 2006;
  - (c) the expression “share” includes stock and the expression “share capital” shall be construed accordingly;

and for the purposes of this section shares held by a person’s <sup>[F112]</sup>spouse or civil partner], or held by him jointly with his <sup>[F112]</sup>spouse or civil partner], shall be treated as shares held by that person.

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- (6) The foregoing provisions of this section shall not have effect if at the time when an application for renewal of the tenancy might otherwise be made—
- (a) the premises comprised in the tenancy—
- (i) are an agricultural holding within the meaning of the <sup>F113</sup>Agricultural Holdings (Scotland) Act 1991], or
  - (ii) consist of or comprise premises (other than premises excepted from this provision) <sup>F114</sup>which, by virtue of a premises licence granted under the Licensing (Scotland) Act 2005, are licensed for the sale of alcohol (within the meaning of section 2 of that Act)] for consumption on the premises, <sup>F115</sup> . . .
- <sup>F115</sup>(b) . . . . .

In this subsection the reference to premises excepted from the provision as to premises licensed for the sale of exciseable liquor is a reference to premises in respect of which—

- (i) the excise licence for the time being in force is a licence the duty in respect of which is the reduced duty payable under section forty-five of the <sup>M24</sup>Finance (1909<sup>^</sup>—10) Act 1910, or a licence granted in pursuance of regulations under subsection (5) of the said section forty-five (which relates to the granting of licences on the provisional payment of reduced duty); or
- (ii) the Commissioners of Customs and Excise certify that no application under the said section forty-five has been made in respect of the period for which the excise licence for the time being in force was granted, but that if such an application had been made such a licence could properly have been granted as is mentioned in the preceding paragraph.

#### Textual Amendments

- F111** Words in s. 38(5)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 6(3)** (with art. 10)
- F112** Words in s. 38(5) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(a), **Sch. 26 para. 24**; S.I. 2005/3175, art. 2(1), Sch. 1
- F113** Words in s. 38(6)(a)(i) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(3), **Sch. 11 para. 4** (with s. 45(3), Sch. 12 para. 3)
- F114** Words in s. 38(6)(a)(ii) substituted (1.9.2009 at 5.00 a.m.) by [The Licensing \(Scotland\) Act 2005 \(Consequential Provisions\) Order 2009 \(S.S.I. 2009/248\)](#), art. 1(1), **sch. 1 para. 1(4)** (with art. 3)
- F115** S. 38(6)(b) and preceding word repealed (except as they extend to N.I.) by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), **Sch. 1 Pt. I** Group 5

#### Marginal Citations

- M24** 1910 c. 8.

### 39 Power of sheriff to grant new tenancy.

- (1) On any application under subsection (1) of the last foregoing section the sheriff may, subject as hereinafter provided, determine that the tenancy shall be renewed for such period, at such rent, and on such terms and conditions as he shall, in all the circumstances, think reasonable, and thereafter the parties shall be deemed to have entered into a new lease of the premises for that period, at that rent and on those terms and conditions.

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- (2) The period for which a tenancy may be renewed under the last foregoing subsection shall not extend beyond the expiry of four months from the end of the period of service in consequence of which the application was made.
- (3) Notwithstanding anything in subsection (1) of this section, the sheriff may, if in all the circumstances he thinks it reasonable to do so, dismiss any application under subsection (1) of the last foregoing section, and shall not determine that a tenancy shall be renewed, if he is satisfied—
  - (a) that the tenant is in breach of any condition of his tenancy which in the opinion of the sheriff is material; or
  - (b) that the tenant is notour bankrupt or is divested of his estate by virtue of a trust deed for behoof of creditors, or, being a company, is unable to pay its debts; or
  - (c) that the landlord has offered to sell the premises to the tenant at such price as may, failing agreement, be fixed by a single arbiter agreed on by the parties or appointed, failing such agreement, by the sheriff; or
  - (d) that the landlord has offered to afford to the tenant, on terms and conditions which in the opinion of the sheriff are reasonable, alternative accommodation which, in the opinion of the sheriff, is suitable for the purposes of the business carried on by the tenant in the premises; or
  - (e) that the tenant has given notice of termination of tenancy and in consequence of that notice the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would in the opinion of the sheriff be seriously prejudiced if he could not obtain possession of the premises; or
  - (f) that, having regard to all the circumstances of the case, greater hardship would be caused by determining that the tenancy shall be renewed than by refusing so to do.
- (4) Where a tenancy has been renewed under subsection (1) of this section, the tenant shall have the like right to apply for further renewals as if the tenancy had been renewed by agreement between the landlord and the tenant, and accordingly the foregoing provisions of this section and the immediately preceding section shall, with any necessary modifications, apply to a tenancy which has been renewed under the said subsection (1) or under this subsection.
- (5) If on any application under this section the sheriff is satisfied that it will not be possible to dispose finally of the application before the notice of termination of tenancy takes effect, he may make an interim order authorising the tenant to continue in occupation of the premises at such rent, for such period (which shall not exceed three months) and on such terms and conditions as the sheriff may think fit.
- (6) Applications under subsection (1) of the last foregoing section shall be conducted and disposed of in the summary manner in which proceedings are conducted and disposed of under the Small Debt (Scotland) Acts 1837 to 1889, and the decision of the sheriff in any such application shall be final and not subject to review.

#### **40 Application to Crown property.**

- (1) The last two foregoing sections shall apply to any such premises as are mentioned therein in which the interest of the immediate landlord of the tenant belongs to His Majesty in right of the Crown or to a government department or is held on behalf of His Majesty for the purposes of a government department, in like manner as the said section applies to any other such premises.

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- (2) Where the Minister or Board in charge of any Government Department is satisfied that for reasons of national security it is necessary that the use or occupation of any such premises in which the interest aforesaid belongs to a Government Department or is held on behalf of His Majesty for the purposes of a Government Department should be discontinued or changed, the Minister or Board may certify that this subsection applies to the premises; and where such a certificate is given the sheriff shall not determine that the tenancy shall be renewed.

**PART IV**

PROTECTION OF SUPERANNUATION RIGHTS

41 ..... F116

**Textual Amendments**  
**F116** S. 41 repealed by [Superannuation Act 1972 \(c. 11\), s. 29\(4\), Sch. 8](#)

**42 Provisions as to firemen’s pensions.**

- (1) Subsection (2) of section twenty-six of the Fire Services Act, 1947 (which relates to the provisions which may be included in the Firemen’s Pension Scheme brought into operation under that section) shall have effect as if after paragraph (a) thereof there were inserted the following paragraph:—

“(aa) where a person immediately before he undertakes service of a description specified in the First Schedule to the Reserve and Auxillary Forces (Protection of Civil Interests) Act, 1951, or attends for hourly instruction as defined in section forty-two of that Act either—

- (i) is a member of a fire brigade maintained in pursuance of this Act, or
- (ii) is employed in employment on duties connected with the provision of fire services which is treated for the purposes of the Scheme as if it were employment as a member of such a fire brigade,

for treating employment during the period of his service or instructiion, and during such further period, if any, as may be specified in the Scheme, as employment as a member of such a fire brigade.”

- (2) In this section the expression “hourly instruction” means—
  - (a) part-time service under the <sup>M25</sup>National Service Act 1948, otherwise than pursuant to a training notice under that Act; and
  - (b) service for the purposes of training only performed by a person mentioned in paragraph 7 of the First Schedule to this Act for a period shorter than that mentioned in that paragraph.



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**Modifications etc. (not altering text)**

**C6** The text of s. 42(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M25** 1948 c. 64.

**43** ..... <sup>F117</sup>

**Textual Amendments**

**F117** S. 43 repealed by [Police Pensions Act 1976 \(c. 35\)](#), [Sch. 3](#)

**44 Retrospective effect of Part IV.**

(1) <sup>F118</sup> . . . , any order made for the purposes of section forty-two of this Act <sup>F119</sup> . . . may be framed so as to have effect as from the fifteenth day of July, nineteen hundred and fifty.

<sup>F120</sup>(2) .....

**Textual Amendments**

**F118** Words repealed by [Superannuation Act 1972 \(c. 11\)](#), s. 29(4), [Sch. 8](#)

**F119** Words repealed by [Police Pensions Act 1976 \(c. 35\)](#), [Sch. 3](#)

**F120** S. 44(2) repealed by [Superannuation Act 1972 \(c. 11\)](#), s. 29(4), [Sch. 8](#)

**45 Financial provisions.**

(1) There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of this Part of this Act in any sums payable under any other enactment out of moneys so provided.

(2) There shall be paid into the Exchequer any increase attributable to the provisions of this Part of this Act in any sums required under any other enactment to be so paid.

**PART V**

PAYMENTS TO MAKE UP CIVIL REMUNERATION

**Modifications etc. (not altering text)**

**C7** Part V (ss. 46–53) extended by [New Towns Act 1981 \(c.64\)](#), [s. 35\(3\)](#)

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 is up to date with all changes known to be in force on or before 12 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### 46 General provisions as to payments to make up civil remuneration.

(1) Where a person occupied in any capacity specified in the first column of Part I or Part II of the Second Schedule to this Act ceases to be so occupied in order to perform relevant service to which this Part of this Act applies, there may, subject to the provisions of this Part of this Act, be made to or in respect of him such payments as are hereafter in this section provided.

(2) While any such person is performing relevant service to which this Part of this Act applies, there may be paid to him, or to or for the benefit of his [<sup>F121</sup>spouse or civil partner] or other dependants nominated by him, a sum which shall not exceed the remuneration which he would have received if he had continued to be occupied in the said capacity, after deducting therefrom the amount of his service pay:

Provided that, in applying this subsection in the case of a person occupied in several capacities specified as aforesaid, account shall be taken, in relation to any one of those capacities, of the appropriate proportion only of his service pay, and not of the whole.

(3) In the event of the death of any such person while performing relevant service to which this Part of this Act applies, then, unless that person leaves—

- [<sup>F122</sup>(a)] a [<sup>F123</sup>surviving spouse entitled to a surviving spouse's pension] by virtue of—
- [<sup>F124</sup>(i) regulations made under section 7 or 10 of the <sup>M26</sup>Superannuation Act 1972; or
  - (ii) any local Act scheme; or]
  - (iii) the [<sup>F125</sup>Fire and Rescue Services Act 2004]; or
  - (iv) [<sup>F126</sup>the <sup>M27</sup>Police Pensions Act 1976]; [<sup>F127</sup>or]
- [<sup>F128</sup>(b) a surviving civil partner entitled to a surviving civil partner's pension by virtue of any of those provisions,]

there may, during a period not exceeding twenty-six weeks from the date of the death, be paid to or for the benefit of his widow or other dependants such sum as might have been paid to him under the last foregoing subsection if he had been performing such service during that period.

<sup>F129</sup>(4) .....

#### Textual Amendments

**F121** Words in s. 46(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(8\)\(a\), Sch. 26 para. 25\(2\)](#); S.I. 2005/3175, art. 2(1), Sch. 1

**F122** Words in s. 46(3) renumbered as s. 46(3)(a) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(8\)\(a\), Sch. 26 para. 25\(3\)\(a\)](#); S.I. 2005/3175, art. 2(1), Sch. 1

**F123** Words in s. 46(3)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(8\)\(a\), Sch. 26 para. 25\(3\)\(b\)](#); S.I. 2005/3175, art. 2(1), Sch. 1

**F124** S. 46(3)(i)(ii) substituted by [Superannuation Act 1972 \(c. 11\), s. 29\(1\), Sch. 6 para. 30](#)

**F125** Words in s. 46(3)(iii) substituted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\), s. 61, Sch. 1 para. 12\(2\)](#) (with savings for E.S. in [S.I. 2004/2306, art. 3, Sch.](#) and for W. in [S.I. 2004/2918, art. 3, Sch.](#); and with further savings for W. (11.11.2004) in [S.I. 2004/2918, art. 1\(1\), Sch.](#); [S.I. 2004/2304, art. 2](#); [S.I. 2004/2917, art. 2](#)

**F126** Words substituted by virtue of [Police Pensions Act 1976 \(c. 35\), s. 12\(3\)](#)

**F127** Word in s. 46(3)(a)(iv) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(8\)\(a\), Sch. 26 para. 25\(3\)\(c\)](#); S.I. 2005/3175, art. 2(1), Sch. 1

**F128** S. 46(3)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(8\)\(a\), Sch. 26 para. 25\(3\)\(d\)](#); S.I. 2005/3175, art. 2(1), Sch. 1

*Status: Point in time view as at 01/10/2009.*

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**F129** S. 46(4) repealed (except as it extends to N.I.) by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. I Group 5

#### Marginal Citations

**M26** 1972 c. 11.

**M27** 1976 c. 35.

## 47 Paying and determining authorities.

- (1) Where the capacity in which the person in question was occupied is a capacity specified in Part I of the Second Schedule to this Act, the power of making payments under the last foregoing section shall be exercisable by the authority specified as respects that capacity in the second column of the said Part I.
- (2) Where the capacity is a capacity specified in Part II of the said Schedule, the determination as to the payments to be made under the last foregoing section shall be made by the authority specified as respects that capacity in the second column of the said Part II (hereafter in this Part of this Act referred to as the “determining authority”), and it shall be the duty of the authority specified as respects that capacity in the third column of the said Part II (hereafter in this Part of this Act referred to as the “paying authority”) to make any payment in accordance with the determination of the determining authority.
- (3) A paying authority aggrieved by a determination under the last foregoing subsection of a determining authority who is not the Secretary of State may, within one month from the receipt by them of written notice of the determination, appeal to the Secretary of State, and where such an appeal is brought the said subsection shall have effect as if the Secretary of State were the determining authority:

Provided that in the cases as to which it is so directed in the third column of the said Part II the right of appeal shall be exercisable by the authority therein specified instead of by the paying authority.

## 48 Recoupment of expenses incurred in connection with civil occupation while serving in the forces.

Where a person to whom subsection (1) of section forty-six of this Act applies by virtue of his having been occupied in the capacity of coroner, [<sup>F130</sup>or clerk of the peace], <sup>F131</sup> . . . incurs expenses in the payment of salaries or other sums to persons employed by him in connection with his duties in that capacity, or office expenses in connection with those duties, and those expenses are in respect of the period during which he is performing relevant service to which this Part of this Act applies and would otherwise have had to be borne by him, those expenses shall be recouped to him by the paying authority.

#### Textual Amendments

**F130** Words repealed (E.W.) by Courts Act 1971 (c. 23), Sch. 11 Pt. IV

**F131** Words in s. 48 repealed (1.4.1995) by 1994 c. 29, s. 93, Sch. 9 Pt. II; S.I. 1995/685, arts. 1(2), 4(n), 8(a)

*Status: Point in time view as at 01/10/2009.*

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**49 Special provision for probation committees.**

Where a power of making a payment under this Part of this Act is exercisable by several probation committees acting jointly and those committees cannot agree as to how that power is to be exercised, it shall be their duty to pay such amount, if any, as the Secretary of State may determine.

**50 Assimilation of treatment of payments under Part V and certain other payments to treatment of remuneration in civil capacity.**

(1) Where any enactment (whether contained in or having effect under any Act) relating to the manner in which any expenses are to be paid or borne, or to the making of grants towards any expenses, would have applied as respects the remuneration which any such person as is mentioned in subsection (1) of section forty-six of this Act would have received if he had continued to be occupied in the capacity in question, that enactment shall apply in like manner as respects any payment under the foregoing provisions of this Part of this Act.

(2) ..... <sup>F132</sup>

(3) Subsections (1) <sup>F133</sup> ... of this section shall apply in relation to any agreement between the town council of a small burgh within the meaning of the <sup>M28</sup>Local Government (Scotland) Act 1947, and the county council relating to contributions by the town council towards the remuneration of a <sup>F133</sup> ... sanitary inspector as they apply in relation to the enactments therein mentioned.

**Textual Amendments**

**F132** S. 50(2) repealed (as it applies to Great Britain) by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), **Sch. 1 Pt. IV**

**F133** Words repealed by National Health Service (Scotland) Act 1972 (c. 58), **Sch. 7 Pt. II**

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**Modifications etc. (not altering text)**

**C8** References to specified officers to be construed as references to proper officers of authority: **Local Government Act 1972 (c. 70), Sch. 29 Pt. I para. 4** and **Local Government (Scotland) Act 1973 (c. 65), Sch. 27 Pt. I para. 2**

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**Marginal Citations**

**M28** 1947 c. 43.

**51 Payments out of moneys provided by Parliament.**

There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of this Part of this Act in any sums payable under any other enactment out of moneys so provided.

**52 Service to which Part V applies and interpretation.**

(1) The relevant service to which this Part of this Act applies is any relevant service except—  
<sup>F134</sup>(a) .....

*Status: Point in time view as at 01/10/2009.*

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- (b) <sup>F135</sup> . . . service of a description specified in paragraph 7 of the said First Schedule performed under an obligation or voluntary arrangements under which its continuous duration is limited to fifteen days or less.
- (2) In this Part of this Act—
- (a) the expression “service pay” means pay for performing relevant service to which this Part of this Act applies, and includes marriage, [<sup>F136</sup> civil partnership,] family and other similar allowances, and
  - (b) the reference to the appropriate proportion of the service pay of a person previously occupied in several capacities specified in the Second Schedule to this Act shall, in relation to any one of those capacities, be construed as a reference to the proportion which the rate at which he was last remunerated in that capacity bears to that rate plus the rate at which he was last remunerated in each of the other capacities.
- (3) In this Part of this Act the expression “remuneration” means salaries, wages and emoluments, but any reference to the remuneration which a person received or would receive shall be construed as a reference to the net remuneration after deducting any expenses which he incurred or would have incurred in the payment of salaries or other sums to persons employed by him in connection with the duties in respect of which he received or would receive the remuneration and any office expenses in connection with those duties.

**Textual Amendments**

**F134** S. 52(1)(a) repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. I**

**F135** Words repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. I**

**F136** Words in s. 52(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(a), **Sch. 26 para. 26**; S.I. 2005/3175, art. 2(1), Sch. 1

**53 Retrospective effect of Part V.**

<sup>F137</sup>  
.....

**Textual Amendments**

**F137** S. 53 repealed (except as it extends to N.I.) by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), **Sch. 1 Pt. I** Gp. 5

**PART VI**

PROTECTION AGAINST LOSS OF BENEFITS UNDER CONTRACTS WITH  
INDUSTRIAL ASSURANCE COMPANIES AND FRIENDLY SOCIETIES

**54 Protection of life policies (industrial assurance, and collecting societies).**

- (1) This section applies to—
- (a) policies of industrial assurance; and
  - (b) policies of assurance upon human life effected [<sup>F138</sup>before 1st December 2001] with collecting societies other than policies of industrial assurance.

*Status: Point in time view as at 01/10/2009.*

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- [<sup>F139</sup>(1A) In subsection (1), “collecting society” means a friendly society which, at the time when the policy in question was effected, carried on industrial assurance business within the meaning of section 1 of the Industrial Assurance Act 1923.]
- (2) In this Part of this Act the expression “relevant premium”, used in relation to a given period of relevant service, means an unpaid premium as to which the following conditions are fulfilled, that is to say, that it fell due either—
- (a) during that period of service or within the following additional period from the ending thereof, that is to say, three months or twice the duration of the period of service, whichever is the shorter, or
  - (b) before the beginning of that period of service on a policy which was in force immediately before the beginning thereof,
- and that at the beginning of the period of service one year’s premiums or more had been paid on the policy on which it fell due.
- (3) A policy to which this section applies shall not be forfeited after the commencement of this Act by reason of non-payment of any premium if either—
- (a) on an application for relief duly made under subsection (4) of this section after the non-payment occurred, relief from forfeiture in respect of the non-payment of it is granted thereunder; or
  - (b) it falls due whilst a period of protection for the policy under this section is current.
- (4) Where under section twenty-three of the <sup>M29</sup>Industrial Assurance Act 1923 (which requires notice before forfeiture by reason of non-payment of premium) a notice relating to a relevant premium or premiums either—
- (a) is served after the commencement of this Act, or
  - (b) has been served before the commencement of this Act but the policy has not been forfeited at the commencement thereof,

if the owner of the policy or any other person on his behalf duly makes an application to the company or society for relief under this subsection and it appears on such an application that the owner of the policy, whether the service man or another, is unable to pay the amount stated in the notice as due by reason of circumstances directly or indirectly attributable to the service man’s performing the period of relevant service, or, if it has ended, to his having performed it, the company or society shall grant relief in respect of the non-payment of the premium or premiums to which the notice relates, and, if the relief is granted after the ending of the additional period referred to in subsection (2) of this section, in respect of any other relevant premium or premiums fallen due on the policy since the notice was served:

Provided that if the notice, being served after the ending of the said additional period, relates to any premium not being a relevant premium as well as to the relevant premium or premiums, relief shall be granted in respect only of the relevant premium or premiums, but in a case in which relief is granted and this proviso takes effect a further notice shall be required under and by virtue of the said section twenty-three before forfeiture of the policy by reason of default in payment of any premium excluded from the relief by this proviso.

An application for relief under this subsection must be made within twenty-eight days from the date of the serving of the notice if served after the commencement of this Act or within three months from such commencement if it was served theretofore, so however that, if the date of the serving of the notice was before the beginning of

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the period of relevant service, an application under this subsection shall be deemed to be made in due time if it is made within twenty-eight days from the beginning of that period.

- (5) Where such a notice has been served before the commencement of this Act and the policy has been forfeited at the commencement thereof, if the owner of the policy or any other person on his behalf within three months from the commencement of this Act duly makes an application to the company or society for reinstatement of the policy and it appears on such an application that there was at the expiration of the time for payment limited by the notice the like inability to pay as is mentioned in the last preceding subsection, the company or society shall grant the application:

Provided that if the notice, having been served after the ending of the additional period referred to in subsection (2) of this section, related to any premium not being a relevant premium as well as to the relevant premium or premiums, the company or society shall not be under obligation to reinstate the policy unless the premium or premiums other than relevant premiums are paid within twenty-eight days from the time when the granting of the application is notified.

- (6) Where under the preceding provisions relief from forfeiture is granted, or a policy is reinstated, during the period of relevant service in question or the additional period referred to in subsection (2) of this section, the company or society shall fix a period of protection for the policy.
- (7) Where a period of protection for a policy has been fixed the company or society shall extend it from time to time on application being duly made by or on behalf of the owner of the policy if it appears that the period of service in question or the additional period referred to in subsection (2) of this section has not ended, subject however to the next succeeding subsection.
- (8) The company or society may at any time terminate a period of protection which is then current, or may refuse an application made at any time for extension of such a period, if it appears that the owner of the policy for which the period was fixed is no longer unable to pay the premiums thereon by reason of such circumstances as are mentioned in subsection (4) of this section, and they may at any time shorten a period of protection which is then current if it then appears that it will extend beyond the ending of the additional period referred to in subsection (2) of this section, and may terminate a period of protection which remains current after the ending of the said additional period.
- (9) [<sup>F140</sup>A complaint may be made to the ombudsman scheme in relation to] any refusal by a company or society to grant under this section relief from forfeiture, or an application for reinstatement, and from any termination or shortening by them of a period of protection and from any decision of theirs as to the length of time for which a period of protection is to be fixed or extended; and, [<sup>F141</sup>where an ombudsman determines a complaint in favour of the complainant] in circumstances in which a period of protection is required to be fixed or extended, the length of it shall be determined by him instead of by the company or society.

[<sup>F142</sup>A complaint to the ombudsman scheme made under this subsection is to be treated as if it were a complaint to which the voluntary jurisdiction of the scheme applies, and the scheme operator may make such adaptations of the voluntary jurisdiction rules as appear to it to be necessary in the circumstances for the determination of a complaint made under this subsection.]



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[<sup>F143</sup>(9A) For the purposes of subsection (9)—

“voluntary jurisdiction of the scheme” has the meaning given in section 227(12) of the Financial Services and Markets Act 2000, and  
 “voluntary jurisdiction rules” has the meaning given in section 227(3) of that Act.”.]

#### Textual Amendments

**F138** Words in s. 54(1)(b) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 2(2) (with art. 6)

**F139** S. 54(1A) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 2(3)

**F140** Words in s. 54(9) substituted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 2(4)(a) (with art. 6)

**F141** Words in s. 54(9) substituted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 2(4)(b) (with art. 6)

**F142** Para. in s. 54(9) substituted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 2(4)(c) (with art. 6)

**F143** S. 54(9A) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 2(5) (with art. 6)

#### Marginal Citations

**M29** 1923 c. 8.

## 55 Protection of life policies (friendly societies other than collecting societies).

[<sup>F144</sup>(1) This section applies to -

- (a) policies of assurance upon human life, in respect of which there are separate premiums, effected before the 1st December 2001 with a friendly society which was not a collecting society, and
- (b) policies of assurance upon human life effected on or after the 1st December 2001 with a friendly society.]

[<sup>F145</sup>(1A) In subsection (1)(a), “collecting society” means a friendly society which at the time when the policy in question was effected, carried on industrial assurance business within the meaning of section 1 of the Industrial Assurance Act 1923.]

- (2) Where a policy to which this section applies has been forfeited, whether before or after the commencement of this Act, by reason of non-payment of a relevant premium or premiums (as defined in the last preceding section), if the owner of the policy or any other person on his behalf at any time before the expiration of six months from the wdate of the ending of the period of relevant service in question (or, if later, the expiration of three months from the commencement of this Act) duly makes an application to the society for reinstatement of the policy, and it appears on such an application that there was at the time when the forfeiture took place the like inability to pay as is mentioned in subsection (4) of the last preceding section, the society shall grant the application:

Provided that, if at the time when the forfeiture took place the society was entitled to forfeit the policy by reason of non-payment of any premium not being a relevant premium as well as by reason of non-payment of the relevant premium or premiums, the society shall not be under obligation to reinstate the policy unless the premium or premiums other than relevant premiums are paid within twenty-eight days from the time when the granting of the application is notified.

*Status: Point in time view as at 01/10/2009.*

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- (3) Subsection (9) of the last preceding section shall apply to a refusal of an application under this section as it applies to a refusal of an application under subsection (5) of that section.

#### Textual Amendments

**F144** S. 55(1) substituted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 3(1) (with art. 6)

**F145** S. 55(1A) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 3(2) (with art. 6)

## 56 Adjustment of rights under policies protected.

- (1) Where relief from forfeiture of a policy is granted, or a policy is reinstated, under either of the two last preceding sections on an application made in connection with any period of service, the amount or aggregate amount of any relevant premium or premiums thereon remaining unpaid at the time for writing-off hereinafter defined, or on the arising of a claim under the policy before that time, shall be dealt with in accordance with subsection (3) or (4) of this section:

Provided that, in the case of a policy for which a period of protection has been fixed under section fifty-four of this Act, the premiums to be dealt with as aforesaid (in this section referred to as the relevant arrears) shall include all premiums remaining unpaid as aforesaid which fell due thereon during that period and shall exclude any premium falling due thereon after the ending of that period.

- (2) In this section the expression “time for writing-off” means the expiration of twenty-eight days from—
- (a) in the case of a policy to which section fifty-four of this Act applies, if a period of protection has been fixed therefor under that section, the ending of that period, or, if no period of protection therefor has been so fixed, the date on which the decision for relief or reinstatement is notified;
  - (b) in the case of a policy to which section fifty-five of this Act applies, if it was reinstated before the ending of the additional period referred to in subsection (2) of section fifty-four of this Act, the date of the ending of that period, or, if it is reinstated after the ending of that period, the date on which the decision for reinstatement is notified.
- (3) Where at the time for writing-off there are relevant arrears on a policy as to which relief from forfeiture has been granted, or which has been reinstated, under either of the two last preceding sections, and the policy is then in force and a claim has not arisen thereunder, the terms of the policy shall be varied in accordance with the following provisions of this subsection.

If the policy is a policy for the whole term of life, the relevant arrears shall be extinguished by a reduction of the sum assured under the policy, the amount of the reduction being the amount of those arrears multiplied by the factor shown in the following table which is appropriate to the age next birthday of the person whose life is assured:—

<i>Age next Birthday</i>	<i>Factor</i>	<i>Age next Birthday</i>	<i>Factor</i>
1 to 5	6	36 to 40	2.5

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6 to 10	5 ·5	41 to 45	2· 25
11 to 15	5	46 to 50	2
16 to 20	4 ·5	51 to 55	1 ·75
21 to 25	4	56 to 65	1· 5
26 to 30	3 ·5	66 to 75	1·25
31 to 35	3	76 and over	1

If the policy is an endowment policy, the date of maturity of the policy shall be postponed by a period equal to that in respect of which the premium or premiums comprised in the relevant arrears were payable, and the period during which premiums under the policy remain payable after that time shall be correspondingly extended.

- (4) Where a claim arises under such a policy (or, in the case of a policy reinstated, is to be deemed by virtue of subsection (3) of the next succeeding section to have arisen thereunder) before the time for writing-off and there are or were relevant arrears thereon at the time when the claim arises or is to be deemed to have arisen, the amount payable in respect of the claim shall be reduced by the amount of those arrears together with compound interest thereon at the rate of three per cent. per annum with half-yearly rests.

For the purposes of this subsection any sums paid or tendered in respect of any premiums shall be treated as satisfying them in the order in which they fell due.

- (5) Where the amount of a free policy or of a surrender value is required to be ascertained in relation to such a policy and at the date when the ascertainment is made there is or are remaining unpaid any premium or premiums on the policy which either—
- (a) if the time for writing-off has come, have been dealt with, or are to be dealt with, as relevant arrears under subsection (3) of this section, or
  - (b) if that time has not come, will fall to be so dealt with if not paid before that time,

the provisions of the policy, of any guarantee given in relation thereto, and of the Industrial Assurance Acts 1923 to 1948, relating to free policies and surrender values shall have effect subject to such modifications as appear to <sup>[F146]</sup>the actuary] to be necessary having regard to the non-payment of the premium or premiums aforesaid and to the actual or prospective variation of the terms of the policy under subsection (3) of this section.

<sup>[F147]</sup>(5A) In subsection (5), “the actuary” means an independent actuary whose appointment has been agreed by the parties to the policy.]

- (6) In this section the expression “endowment policy” means a policy insuring money to be paid on the duration for a specified period of the life of the person assured, either with or without provision for the payment of money in the event of the death of that person before the expiration of that period <sup>[F148]</sup>and either with or without provision for the payment of money before the expiration of that period and during the life of that person in the event of the marriage of that person or otherwise.]

#### Textual Amendments

**F146** Words in s. 56(5) substituted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3, Pt. I para. 4(2) (with art. 6)

**F147** S. 56(5A) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 4(3) (with art. 6)

*Status: Point in time view as at 01/10/2009.*

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**F148** Words added by [Friendly Societies Act 1955 \(4 & 5 Eliz. 2 c. 19\), s. 3\(3\)](#)

**Modifications etc. (not altering text)**

**C9** [S. 56\(3\)](#) modified by [S.I. 1977/1143, Sch. 3 para. 5](#) and [1977/1144, Sch. 3 para. 7](#)

**57 Provisions supplementary to the three preceding sections.**

<sup>F149</sup>(1) . . . . .

(2) A notice under section twenty-three of the Industrial Assurance Act 1923, served after the expiration of six months from the commencement of this Act as to a policy on which one year's premiums or more have been paid shall be of no effect unless, in addition to the matters required by that section to be stated, it contains a statement in such form as may be prescribed by regulations under this section of the effect of subsection (4) of section fifty-four of this Act.

(3) Subject to the provisions of the last preceding section a policy reinstated under section fifty-four or fifty-five of this Act after a forfeiture shall have effect, and be deemed always to have had effect, as if the forfeiture had not taken place:

Provided that nothing in this subsection shall be construed as authorising a company or society again to forfeit such a policy by reason of any non-payment of a relevant premium that occurred before the forfeiture.

(4) Regulations may be made by the Commissioner with the consent of the Treasury, by statutory instrument—

- (a) as to procedure in connection with the making of applications under this Part of this Act, with the fixing, extending, terminating and shortening of periods of protection, and with appeals, including provision as to information to be furnished and the manner of verification thereof;
- (b) for fixing limits of time for appeals;
- (c) as to the form and manner in which decisions of companies or societies, and of the Commissioner on appeals, are to be expressed and notified;
- (d) for requiring notice to be given of the termination or shortening of periods of protection, and shortly before such periods are about to end, and for extending such periods in cases in which there is default in giving such notice;
- (e) for preventing forfeiture of a policy at a time when a right to make an application or appeal which would be prejudiced thereby is subsisting, or when such an application or appeal has been made and is pending;
- (f) for enabling relief (including relief by way of reinstatement of a policy after forfeiture) to be granted in cases in which there has been a failure to make an application or appeal within due time and there were good reasons for the failure;
- (g) for other purposes for which provision is required for giving full effect to the preceding provisions of this Part of this Act.

[<sup>F150</sup>(5) Subject to subsection (5A), any contravention by an industrial assurance company, a collecting society, or a friendly society of provisions [<sup>F151</sup>this Part or] of regulations under this section is to be treated as if it were a contravention of a requirement imposed under the Financial Services and Markets Act 2000 (with the effect that Part XIV of that Act applies).]

*Status: Point in time view as at 01/10/2009.*

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[<sup>F152</sup>(5A) A contravention of the kind mentioned in subsection (5) is not actionable under section 150 of the Financial Services and Markets Act 2000 (actions for damages).

(5B) Nothing in subsection (5) prejudices the operation of section 16 of the Interpretation Act 1978 in relation to any legal proceedings in respect of, or any penalty which may be imposed in relation to, a contravention of the kind mentioned in that subsection committed before 1st December 2001.]

(6) The Statutory Instruments Act <sup>M30</sup>1946, shall apply to a statutory instrument containing regulations under this section in like manner as if it had been made by a Minister of the Crown.

(7) No regulations under this section shall be made unless a draft thereof has been approved by resolution of each House of Parliament:

Provided that regulations may be made under this section within three months from the date of the passing of this Act without a draft thereof having been approved as aforesaid, but regulations so made shall be laid before Parliament after being made and shall cease to have effect on the expiration of a period of twenty-eight days from the date on which they were made unless at some time before the expiration of that period they have been approved by a resolution of each House of Parliament, without prejudice however to anything previously done thereunder of to the making of new regulations. In reckoning any such period of twenty-eight days no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days.

#### Textual Amendments

**F149** S. 57(1) repealed (1.12.2001) by S.I. 2001/3647, art. 5, **Sch. 3 Pt. I para. 5(2)** (with art. 6)

**F150** S. 57(5) substituted (1.12.2001) by S.I. 2001/3647, art. 5, **Sch. 3 Pt. I para. 5(3)** (with art. 6)

**F151** By **The Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (S.I. 2002/1555)**, **art. 3** it is provided (3.7.2002) that in s. 57(5) the words “this Part or” shall be inserted

**F152** S. 57(5A)(5B) inserted (1.12.2001) by S.I. 2001/3647, art. 5, **Sch. 3 Pt. I para. 5(4)** (with art. 6)

#### Modifications etc. (not altering text)

**C10** S. 57 modified in relation to the Channel Islands (3.7.2002) by **The Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (S.I. 2002/1555)**, **art. 4**

#### Marginal Citations

**M30** 1946 c. 36

## 58 Relief against non-payment of contributions to friendly societies (other than life policy premiums).

(1) Where any person performing a period of relevant service was at the beginning of that period a member of a friendly society, having paid contributions to the society for a period up to that time of one year or longer, and thereafter ceases to pay contributions to the society, he shall not for that reason cease to be a member but no further contributions shall be paid by him until the ending of that period, and his rights to any benefits provided by the society shall be suspended until he subsequently resumes payment of contributions, and he shall thereupon, as respects any benefits accruing

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in the future, be in the same position as he would have been if he had not ceased to pay contributions:

Provided that regulations may be made under this section within three months from the date of the passing of this Act without a draft thereof having been approved as aforesaid, but regulations so made shall be laid before Parliament after being made and shall cease to have effect on the expiration of a period of twenty-eight days from the date on which they were made unless at some time before the expiration of that period they have been approved by a resolution of each House of Parliament, without prejudice however to anything previously done thereunder or to the making of new regulations.

- (2) The preceding subsection shall not affect any policy to which section fifty-four or fifty-five of this Act applies.
- (3) Nothing in this section shall be taken to prevent a friendly society providing by its rules for the continuance of the membership of persons performing relevant service upon terms more favourable than those provided by this section.
- (4) This section shall be deemed to have had effect from the fifteenth day of July, nineteen hundred and fifty.

## 59 Interpretation and extent of Part VI.

<sup>F153</sup>(1) . . . . .

(2) In this Part of this Act, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

<sup>F154</sup>

[<sup>F155</sup>“collecting society” means a friendly society which—

- (a) immediately before 1st December 2001 carried on industrial assurance business, within the meaning of section 1 of the Industrial Assurance Act 1923, and
- (b) after that date is subject to an existing liability or a liability which may accrue under a policy effected in the course of that business to which the provision of this Part apply;

“friendly society” has the meaning given by section 116 of the Friendly Societies Act 1992 <sup>F156</sup>;

“industrial assurance company” and “company” means a person other than a friendly society who—

- (a) immediately before 1st December 2001 carried on industrial assurance business, within the meaning of section 1 of the Industrial Assurance Act 1923, and
- (b) after that date is subject to an existing liability or a liability which may accrue under a policy effected in the course of that business to which the provisions of this Part apply;

“ombudsman scheme” has the meaning given in section 225(3) of the Financial Services and Markets Act 2000;]

“owner” means, in relation to a policy effected with a friendly society other than a collecting society, the person who is for the time being the person entitled to receive the sums payable under the policy on maturity,



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and means, in relation to a policy which has been forfeited, the person who would be so entitled if the policy were still in force;

“policy” includes a contract of assurance in respect of which no specific document constituting the contract is issued;

[<sup>F157</sup>“society” means, as the case may be—

(a) a collecting society, or

(b) a friendly society which is subject to an existing liability or a liability which may accrue under a policy to which section 55 applies.]

references to a registered society include references to a branch of such a society;

references to forfeiture of a policy shall be construed, in a case where the policy provides that on a default in the payment of premiums the policy provides that on a default in the payment of premiums the policy shall be converted into a free policy for a reduced amount, as including references to such a conversion.

[<sup>F158</sup>(2A) References in this Act to section 23 of the Industrial Assurance Act 1923 are to be treated as references to that section as it has effect, notwithstanding the repeal of that Act, by virtue of the Financial Services and Markets Act 2000 (Consequential Amendments and Savings) (Industrial Assurance) Order 2001.]

(3) His Majesty may by Order in Council direct that this Part of this Act shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to the Isle of Man or any of the Channel Islands.

#### Textual Amendments

**F153** S. 59(1) repealed (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 6(2) (with art. 6)

**F154** Definition in s. 59(2) omitted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 6(3)(a) (with art. 6)

**F155** Definitions in s. 59(2) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 6(3)(b) (with art. 6)

**F156** 1992 c. 40.

**F157** Definition in s. 59(2) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 6(4) (with art. 6)

**F158** S. 59(2A) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 6(5) (with art. 6)

## PART VII

### MISCELLANEOUS AND GENERAL

#### 60 Evidence as to performance of relevant service.

(1) A certificate stating that a person has performed or is performing of is to perform a period of relevant service or of relevant service of any particular description, or the duration of the date of the beginning or ending of such a period, or whether such a period which has been or is being or is to be performed by any person is or is not a short period training, being a certificate which is signed by a person authorised in that behalf—

(a) by [<sup>F159</sup>the Defence Council]<sup>F160</sup> ...

<sup>F161</sup>(b) .....



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shall in all legal proceedings be sufficient evidence of the facts stated therein for the purposes of the Act except to any extent to which it is shown to be incorrect.

- (2) A certificate signed by a person authorised in that behalf by [<sup>F159</sup>the Defence Council] stating that a person is not performing, and has not within a specified previous time performed, a period of relevant service in a specified force or forces (being a force of forces in respect of which [<sup>F159</sup>the Defence Council], keep records), <sup>F160</sup>..., shall in all legal proceedings be sufficient evidence of the facts stated therein for the purposes of this Act except to any extent to which it is shown to be incorrect.
- (3) A certificate signed by a person authorised in that behalf by [<sup>F159</sup>the Defence Council]<sup>F160</sup>..., referring to an inquiry as to a person therein described and being to the effect that no person answering to that description is identifiable in the relevant records kept by the authority on whose behalf the certificate is signed, shall be sufficient evidence for the purposes of this Act that no such person is so identifiable.
- (4) A certificate signed as aforesaid stating any matter appearing from records shall be treated for the purposes of subsection (1), and of subsection (2), of this section as stating it as a fact.
- (5) A document purporting to be a certificate signed as aforesaid shall be deemed to be such unless the contrary is proved.
- (6) [<sup>F159</sup>The Defence Council]<sup>F160</sup>... shall <sup>F160</sup>... be under obligation to secure that, on inquiry made to them for the purposes of this Act as to a person therein described, if the information appearing from records kept by them is such as to enable a certificate falling within subsection (3) of this section, such a certificate shall be given:

Provided that no certificate the giving of which would in the opinion of the authority to whom the inquiry is made be against the interests of national security shall be given.

#### Textual Amendments

**F159** Words substituted with savings by S.I. 1964/488, **Sch. 1 Pt. I**

**F160** Words repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. I**

**F161** S. 60(1)(b) repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. I**

## 61 Presumption of death of persons serving in the forces.

- (1) The question whether any person has died while performing relevant service in His Majesty's forces shall, for the purposes of—
  - (a) Part V of this Act;
  - [<sup>F162</sup>(b) any regulations made under section 7 or 10 of the Superannuation Act <sup>M31</sup>1972 (which relate respectively to the superannuation of local government officers etc. and national health service officers);
  - (c) any local Act scheme;]
  - [<sup>F163</sup>(d) a scheme made under section 34 of the Fire and Rescue Services Act 2004;]
  - (e) any regulations made under [<sup>F164</sup>the Police Pensions Act <sup>M32</sup>1976];be determined in accordance with the rules set out in the next following subsection.
- (2) The said rules are—

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- (i) no person shall be treated as having died while performing relevant service in His Majesty's forces unless and until the appropriate authority are satisfied that he has been officially reported as dead, or as missing;
  - (ii) where the appropriate authority are satisfied that a person has been officially reported as dead, or as missing and presumed dead, he shall be treated as having died while performing relevant service in His Majesty's forces unless and until the authority are satisfied that he has subsequently been officially reported as alive;
  - (iii) subject to the last foregoing paragraph, where the appropriate authority are satisfied that a person has been officially reported as missing, the authority may, if they think fit, treat him as having died while performing relevant service in His Majesty's forces unless and until they are satisfied that he has subsequently been officially reported as alive.
- (3) Where the appropriate authority determine in accordance with the rules set out in subsection (2) of this section that a person is to be treated as the authority may fix on the evidence available to them.
- (4) The Third Schedule to this Act shall have effect as respects the financial provisions consequent on the adoption of the rules set out in subsection (2) of this section.
- (5) In this section and in the said Schedule the expression "the appropriate authority" means the authority specified in subsection (1) or, as the case may be, subsection (2) of section forty-seven of this Act as the authority having power to determine whether any, and if so what, payment is to be made under section forty-six of this Act, or, in a case where the service pay of the person in question is of such amount that no payment is permissible under the said section forty-six, the authority who would have that power if that person's service pay were of such smaller amount as would permit of a payment being made under that section; and where, in the case of any person, there are several such authorities, the expression "the appropriate authority" means all those authorities acting jointly:
- F165 . . .
- (6) In this section the expression "officially reported" means reported (whether before or after the passing of this Act) by or on behalf of [F166 the Defence Council].

#### Textual Amendments

- F162** S. 61(1)(b)(c) substituted by [Superannuation Act 1972 \(c. 11\)](#), **Sch. 6 para. 31**
- F163** S. 61(1)(d) substituted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, **Sch. 1 para. 12(3)** (with savings for E.S. in [S.I. 2004/2306](#), art. 3, **Sch.** and for W. in [S.I. 2004/2918](#), art. 3, **Sch.**; and with further savings for W. (11.11.2004) in [S.I. 2004/2918](#), art. 1(1), **Sch.**); [S.I. 2004/2304](#), art. 2; [S.I. 2004/2917](#), art. 2
- F164** Words substituted by virtue of [Police Pensions Act 1976 \(c. 35\)](#), s. 12(3)
- F165** Proviso in s. 61(5) repealed (1.4.1996) by [1995 c. 17](#), s. 5(1)(2), **Sch. 3** (with [Sch. 2 paras. 6, 16](#))
- F166** Words substituted by virtue of [Defence \(Transfer of Functions\) Act 1964 \(c. 15\)](#), **ss. 1(3), 3(2)**

#### Marginal Citations

- M31** [1972 c. 11](#).
- M32** [1976 c. 35](#)

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**62** ..... <sup>F167</sup>

**Textual Amendments**

**F167** S. 62 repealed by [Local Government \(Superannuation\) Act 1953 \(c. 25\)](#), [Sch. 3 Pt. I para. 8](#)

**63 Dispensation with declaration on ending of service of constables.**

Where a person, having ceased to serve as a constable in order to undertake service of a description specified in the First Schedule to this Act, resumes service as a constable during any period which, by virtue of any regulations made under section one of the [<sup>F168</sup>Police Pensions Act 1976], is to be treated in his case as a period of service as a member of a police force, it shall not be necessary for him, notwithstanding anything in any enactment, to make any declaration required to be made by him on accepting office as a constable.

**Textual Amendments**

**F168** Definition repealed by [Statute Law \(Repeals\) Act 1977 \(c. 18\)](#), [Sch. 1 Pt. I](#)

**64 Interpretation.**

(1) In this Act, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them respectively, that is to say,—

- ..... <sup>F169</sup>
- [<sup>F170</sup>“conditional sale agreement” means an agreement for the sale of goods under which the purchase price of part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;
- “creditor” means the person by whom goods are bailed or (in Scotland) hired under a hire-purchase agreement or, as the case may be, the seller under a conditional sale agreement, or the person to whom his rights and duties have passed by assignment or operation of the law;
- “hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—
- (a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired, and
  - (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
    - (i) the exercise of an option to purchase by that person,
    - (ii) the doing of any other specified act by any party to the agreement,
    - (iii) the happening of any other specified event;]
- [<sup>F171</sup>“local authority” has the same meaning as in paragraph 6(1) of Schedule 3 to the Pensions (Increase) Act <sup>M33</sup>1971 and any reference in this Act to a local authority shall apply also to the bodies mentioned in paragraph 6(2) of that Schedule;

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“local Act scheme” means the superannuation scheme administered by a local authority maintaining a superannuation fund under a local Act;]

“relevant service” means service after the fifteenth day of July, nineteen hundred and fifty, of a description specified in the First Schedule to this Act;  
.....<sup>F172</sup>

“service” means the discharge of naval, military or air force duties, and includes training for the discharge of such duties<sup>F173</sup> ... ;

“service man” means a man who performs a period of relevant service;

“short period of training” means a period of relevant service<sup>F173</sup> ... of a description specified in [<sup>F174</sup>paragraph 7 of the First Schedule to this Act] performed under an obligation or voluntary arrangements under which its continuous duration is limited to less than three months.

[<sup>F175</sup>“total price” means the total sum payable by the person to whom goods are bailed or hired under a hire-purchase agreement or, as the case may be, the buyer under a conditional sale agreement including any sum payable on the exercise of an option to purchase but excluding any sum payable as a penalty or as compensation or damages for a breach of the agreement.]

(2) .....<sup>F176</sup>

(3) .....<sup>F177</sup>

(4) In this Act, unless the context otherwise requires, references to any enactment shall be construed as references to that enactment as amended by or under any other enactment.

#### Textual Amendments

**F169** Definition repealed by [Statute Law \(Repeals\) Act 1977 \(c. 18\)](#), [Sch. 1 Pt. I](#)

**F170** Definitions inserted by [Consumer Credit Act 1974 \(c. 39\)](#), s. 192(4), [Sch. 4 Pt. I para. 14\(1\)](#)

**F171** Definitions substituted by [Superannuation Act 1972 \(c. 11\)](#), [Sch. 6 para. 32](#)

**F172** Definition repealed by [Rent Act 1968 \(c. 23\)](#), s. 117(5), [Sch. 17](#) and [Rent \(Scotland\) Act 1971 \(c. 28\)](#), s. 135(2), [Sch. 20](#)

**F173** Words repealed by [Statute Law \(Repeals\) Act 1977 \(c. 18\)](#), [Sch. 1 Pt. I](#)

**F174** Words substituted by [Statute Law \(Repeals\) Act 1977 \(c. 18\)](#), [Sch. 2](#)

**F175** Definition inserted by [Consumer Credit Act 1974 \(c. 39\)](#), s. 192(4), [Sch. 4 Pt. I para. 14\(2\)](#)

**F176** [S. 64\(2\)](#) repealed with saving by [Armed Forces Act 1981 \(c. 55\)](#), [Sch. 5 Pt. I](#)

**F177** [S. 64\(3\)](#) repealed by [Statute Law \(Repeals\) Act 1977 \(c. 18\)](#), [Sch. 1 Pt. I](#)

#### Marginal Citations

**M33** [1971 c. 56](#)

## 65 Provisions as to Northern Ireland.

- (1) The preceding provisions of this Act shall not extend to Northern Ireland.
- (2) His Majesty may by Order in Council provide for extending this Act to Northern Ireland with such additions, exceptions and modifications as appear to His Majesty to be expedient.
- (3) An Order in Council under this section—
  - (a) may be varied or revoked by a further Order in Council made thereunder;

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*Changes to legislation: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 is up to date with all changes known to be in force on or before 12 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) may include such incidental, consequential and supplemental provisions as appear to His Majesty to be expedient.
- (4) Provisions made by an Order in Council under this section may be made so as to have effect from the time (whether before, at or after the commencement of this Act) from which any corresponding provision made by this Act has effect.
- (5) ..... <sup>F178</sup>
- (6) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F178** S. 65(5) repealed by [Northern Ireland Constitution Act 1973 \(c. 36\)](#), s. 41(1), **Sch. 6 Pt. I**

**66 Short title.**

This Act may be cited as the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951.

**Status:**

Point in time view as at 01/10/2009.

**Changes to legislation:**

Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 is up to date with all changes known to be in force on or before 12 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.