

SCHEDULES

SCHEDULE 2

CONSEQUENCES OF CONSEQUENCES OF CONVERSION OF PERPETUALLY RENEWABLE LEASES

Adjustment of rent to compensate for loss of fines

7.—(1) Where, under the lease, any fine was payable by the lessee on renewal, then an amount to be ascertained as hereinafter provided, unless commuted, is payable to the person entitled to the fee farm rent as additional rent; but no sums payable for the costs of examination of the lessee's title or of granting a new lease or any other work which is rendered unnecessary by this Order are to be taken into account in ascertaining the additional rent.

(2) In default of agreement and subject to the exercise by the Registrar or, as the case may be, the Lands Tribunal of the powers conferred by Article 42, the following provisions have effect for the purpose of ascertaining the instalments of additional rent—

- (a) the additional rent is to be ascertained on the basis of the fine which would have been payable on the occasion of the first renewal after the appointed day, if this Order had not been made;
- (b) where the lessee had a right to renew at different times, the occasion of the first renewal is such date as he may, by notice served on the lessor within one year after the appointed day, select from among the dates at which he would have been entitled to renew his lease, had it remained renewable, or, in default of such notice, the last day on which he would have been entitled to renew;
- (c) where the time at or within which the fine must be paid is not definitely fixed by or ascertainable from the lease, the fine is to be taken to be payable on such date as may be determined in accordance with Article 42 on a reference made by either the owner of the fee simple or the person entitled to the fee farm rent;
- (d) the yearly amount of the additional rent is to be ascertained by dividing the amount of the fine payable by the lessee on renewal by the number of years which represents the interval or average interval occurring between the dates of renewal;
- (e) the additional rent is payable by, as nearly as may be, equal instalments at the time at which the fee farm rent is payable, the first instalment falling due on the day for payment of fee farm rent which occurs on or nearest to the first anniversary of the appointed day;
- (f) the additional rent is deemed to be part of the fee farm rent for all purposes, including any covenant for payment of rent or for entry or re-entry contained in the lease;
- (g) if the lessee was liable to forfeit his right of renewal if he made default in payment of a fine or in doing any other act or thing within a time ascertained by the dropping of a life, but not otherwise, then five per cent. of the existing rent of the land (that is to say, the rent payable under the terms of the lease immediately before the appointed day), or such other percentage of that rent as may be agreed under paragraph 8(1)(a)(iv), is to be treated as added to the fine payable by the lessee on renewal for the purpose of ascertaining the amount of the instalments of additional rent and as compensation to the lessor for loss of

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his right of re-entry (present or future) which would have accrued, if this Order had not been made, by reason of any such liability to forfeit the right of renewal;

(h) notwithstanding that, under the lease, any unpaid fine on a renewal carries interest, no instalment of additional rent payable in lieu thereof carries interest.

(3) Where by virtue of paragraph 1(3) more than one fee farm rent is payable, this paragraph applies to each of those rents in accordance with the terms of their respective leases.

8.—(1) Where—

(a) the owner of the fee simple and the person entitled to the fee farm rent agree upon—

(i) the commutation or discharge of any claims in respect of additional rent, or any part of it;

(ii) the interval or average interval between dates of renewal;

(iii) the amount of instalments of additional rent;

(iv) the percentage of the existing rent which is to be treated as added to a fine under paragraph 7(2)(g);

(v) the amount of the fee farm rent (including the instalments of additional rent) which is to be apportioned in respect of any part of the land comprised in the lease; and

(b) a statement in writing of the agreement is endorsed on or attached to the lease (or a counterpart of it or an assignment of the benefit of it) and is signed by the owner and that person,

the statement is conclusive evidence of the matters stated in it, and where the agreement involves an apportionment such as is mentioned in head (a)(v), the former lessee's covenants are to be apportioned in regard to the land to which the apportionment relates.

(2) The costs in connection with the agreement and any negotiations therefor are to be borne by the owner of the fee simple and (without prejudice to any right of set-off or counterclaim) are recoverable in proceedings in any court of competent jurisdiction.