



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

1951 CHAPTER 65 14 and 15 Geo 6

## PART III **E+W+S**

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. **E+W****

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

**27 Renewal of tenancy expiring during period of service or within two months thereafter. **E+W****

- (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

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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>F1</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>F2</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 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—

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- (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>F3</sup>has the meaning given by section 1(1) of the Companies Act 2006];
- [<sup>F4</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>F5</sup>spouse or civil partner], or held by him jointly with his [<sup>F5</sup>spouse or civil partner], shall be treated as shares held by that person.

[<sup>F6</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>F7</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>M1</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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** S. 27(5)(bb) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 9(3)** (with s. 37)
- F5** 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
- F6** S. 27(5A) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 9(4)**(with s. 37)
- F7** 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

- M1** 1910 c. 8.

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## 28 Premises to be comprised in new tenancy. **E+W**

- (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. **E+W**

- (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—
  - (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

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- (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;
- (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>M2</sup>Law of Property Act 1925 (which relates to service of notices) shall apply to notices for the purposes of this section.

**Marginal Citations**

M2 1925 c. 20.

**30 Power of court to grant new tenancy. E+W**

- (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

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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
  - (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>F8</sup>the <sup>M3</sup>Town and Country Planning Act 1971]), by statutory undertakers (as so defined) or by a development corporation (as defined in [<sup>F9</sup>the <sup>M4</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>M5</sup>Law of Property Act 1925.

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#### Textual Amendments

- F8** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 Pt. I para. 2](#)  
**F9** Words substituted by virtue of [New Towns Act 1965 \(c. 59\)](#), [Sch. 11 para. 5\(1\)](#)

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

- C1** 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

- M3** [1971 c. 78](#).  
**M4** [1965 c. 59](#).  
**M5** [1925 c. 20](#).

### 31 Provision for further renewal of tenancy. **E+W**

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. **E+W**

- (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 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>M6</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.

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### Marginal Citations

M6 1925 c. 20.

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

- (1) In relation to the granting of tenancies under this Part of this Act, the following provisions shall have effect as respects the <sup>M7</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 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



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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

M7 1927 c. 36.

### 34 Appeals. **E+W**

- (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. **E+W**

- (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.

### 36 Interpretation of preceding sections of Part III. **E+W**

- (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>M8</sup>Lands Clauses Consolidation Act 1845, applies;

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“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**

**M8** 1845 c. 18.

*Provisions as to Scotland*

**37 Application of sections thirty-eight to forty. S**

The three next following sections shall apply to Scotland only.

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

(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 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

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- (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>F10</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>F11</sup>spouse or civil partner], or held by him jointly with his [<sup>F11</sup>spouse or civil partner], shall be treated as shares held by that person.
- (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>F12</sup>Agricultural Holdings (Scotland) Act 1991], or
    - (ii) consist of or comprise premises (other than premises excepted from this provision) [<sup>F13</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>F14</sup> . . .
  - <sup>F14</sup>(b) . . . . .

*Changes to legislation: There are currently no known outstanding effects for the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, Part III. (See end of Document for details)*

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>M9</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

- F10** 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)
- F11** 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
- F12** 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)
- F13** 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)
- F14** 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

- M9** 1910 c. 8.

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

- (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.
- (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

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*Changes to legislation:* There are currently no known outstanding effects for the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, Part III. (See end of Document for details)

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- (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. S**

- (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.
- (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.

**Changes to legislation:**

There are currently no known outstanding effects for the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, Part III.