

SCHEDULE 1

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION OR THE SCOTTISH LAND COURT

PART II

APPORTIONMENTS CARRIED OUT BY ARBITRATION

3.—(1) Subject to sub-paragraph (4), in any case where an apportionment is to be carried out by arbitration, an arbiter shall be appointed by agreement between the transferor and transferee within the period of 28 days from the change of occupation of the holding or part of the holding and the transferee shall give notice of the appointment of the arbiter to the Scottish Ministers within fourteen days from the date of the appointment.

(2) Notwithstanding sub-paragraph (1), the transferor or the transferee may at any time within the period of 28 days referred to in sub-paragraph (1) make an application to the Scottish Ministers for the appointment of an arbiter.

(3) If at the expiry of the period of 28 days referred to in sub-paragraph (1) an arbiter has not been appointed by agreement between the transferor and the transferee nor an application made to the Scottish Ministers under sub-paragraph (2), the Scottish Ministers shall at their own instance proceed to appoint an arbiter.

(4) Where an apportionment under regulation 39(4)(b) is to be carried out by arbitration, the producer shall either appoint an arbiter with the agreement of all persons with an interest in the holding or make an application to the Scottish Ministers for the appointment of an arbiter.

Commencement Information

II Sch. 1 para. 3 in force at 31.3.2005, see reg. 1(2)

4.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbiter shall be appointed by agreement between the occupier and any other interested party or, in default of agreement, by the Scottish Ministers on an application by the occupier.

(2) Where an arbiter is appointed by agreement in terms of sub-paragraph (1), the occupier shall give notice of the appointment of the arbiter to the Scottish Ministers within fourteen days from the date of the appointment.

Commencement Information

I2 Sch. 1 para. 4 in force at 31.3.2005, see reg. 1(2)

5.—(1) Where, in terms of a notice given by the Scottish Ministers under regulation 12(2), an apportionment or prospective apportionment is to be carried out by arbitration, the Scottish Ministers shall apply to the Scottish Land Court for the appointment of an arbiter.

(2) Any fee payable by the Scottish Ministers on an application to the Scottish Land Court under sub-paragraph (1) shall be recoverable by them as a debt due from the other parties to the arbitration jointly and severally.

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(3) Where the Scottish Ministers are to be a party to an arbitration (otherwise than in terms of a notice given under regulation 12(2), the arbiter shall, in lieu of being appointed by the Scottish Ministers, be appointed by the Scottish Land Court.

Commencement Information

I3 Sch. 1 para. 5 in force at 31.3.2005, see reg. 1(2)

6.—(1) If the person appointed arbiter dies, or is incapable of acting, or is removed by the sheriff under paragraph 23, or for seven days after notice from any party requiring that person to act fails to act, a new arbiter may be appointed as if no arbiter had been appointed.

(2) If an award is set aside by the sheriff under paragraph 24, a new arbiter may be appointed as if no arbiter had been appointed.

Commencement Information

I4 Sch. 1 para. 6 in force at 31.3.2005, see reg. 1(2)

7. No party to the arbitration shall have power to revoke the appointment of the arbiter without the consent of all of the other parties.

Commencement Information

I5 Sch. 1 para. 7 in force at 31.3.2005, see reg. 1(2)

8. Every appointment, application, notice, revocation and consent under paragraphs 1 to 7 must be in writing.

Commencement Information

I6 Sch. 1 para. 8 in force at 31.3.2005, see reg. 1(2)

9. The remuneration of the arbiter shall be—

- (a) where the arbiter is appointed by agreement between the parties, such amounts as may be agreed upon by the arbiter and the parties or, in default of agreement, fixed by the auditor of the sheriff court (subject to an appeal to the sheriff) on an application made by the arbiter or one of the parties;
- (b) where the arbiter is appointed by the Scottish Ministers, such amount as may be fixed by the Scottish Ministers;
- (c) where the arbiter is appointed by the Scottish Land Court, such amount as may be fixed by that Court,

and shall be recoverable by the arbiter as a debt due from any one of the parties to the arbitration.

Commencement Information

I7 Sch. 1 para. 9 in force at 31.3.2005, see reg. 1(2)

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10.—(1) Subject to sub-paragraph (2), in any arbitration to which this Schedule applies, the arbiter may join as a party to the arbitration any person having an interest in the holding, whether or not such person has applied to become a party to the arbitration, provided that such person consents to be so joined.

(2) Where an apportionment pursuant to a request in a statement under regulation 39(4)(b) is to be carried out by arbitration, any person with an interest in the holding who has refused to sign such a statement as is referred to in regulation 39(4)(a) must be a party to the arbitration.

Commencement Information

I8 Sch. 1 para. 10 in force at 31.3.2005, see reg. 1(2)

11. The parties to the arbitration shall within twenty-eight days of the appointment of the arbiter deliver to the arbiter a statement of their respective cases with all necessary particulars; and

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said twenty-eight days except with the consent of the arbiter;
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by that party and any amendment or addition duly made.

Commencement Information

I9 Sch. 1 para. 11 in force at 31.3.2005, see reg. 1(2)

12. The parties to the arbitration, and all persons claiming through them, shall, subject to any legal objection, submit to be examined by the arbiter on oath or affirmation in relation to the matters in dispute and shall, subject to any such objection, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents, within their possession or power which may be required or called for, and do all other things as the arbiter reasonably may require for the purposes of the arbitration.

Commencement Information

I10 Sch. 1 para. 12 in force at 31.3.2005, see reg. 1(2)

13. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbiter and the Scottish Ministers may make such representations where the arbitration follows on a notice given by them under regulation 12(2).

Commencement Information

I11 Sch. 1 para. 13 in force at 31.3.2005, see reg. 1(2)

14. The arbiter shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbiter thinks fit, be examined on oath or affirmation.

Commencement Information

I12 Sch. 1 para. 14 in force at 31.3.2005, see reg. 1(2)

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15.—(1) The arbiter shall make and sign the award within three months of the appointment of the arbiter or within such longer period as may, either before or after the expiry of the aforesaid period, be agreed to in writing by the parties or fixed by the Scottish Ministers.

(2) The arbiter shall notify the terms of that award to the Scottish Ministers within eight days of the delivery of the award.

(3) The award shall fix a date not later than one month after the delivery of the award for the payment of any expenses awarded under paragraph 19.

Commencement Information

I13 Sch. 1 para. 15 in force at 31.3.2005, see reg. 1(2)

16. The award to be made by the arbiter shall be final and binding on the parties and any persons claiming under them.

Commencement Information

I14 Sch. 1 para. 16 in force at 31.3.2005, see reg. 1(2)

17. The arbiter may correct in an award any clerical mistake or error arising from any accidental slip or omission.

Commencement Information

I15 Sch. 1 para. 17 in force at 31.3.2005, see reg. 1(2)

18. Where the arbiter is requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award, the arbiter must furnish such a statement.

Commencement Information

I16 Sch. 1 para. 18 in force at 31.3.2005, see reg. 1(2)

19. The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the sheriff court on the application of any party, but that taxation shall be subject to review by the sheriff.

Commencement Information

I17 Sch. 1 para. 19 in force at 31.3.2005, see reg. 1(2)

20.—(1) The arbiter shall, in awarding expenses, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of amount or otherwise;
- (b) any unreasonable demand for particulars or refusal to supply particulars; and
- (c) generally all the circumstances of the case.

(2) The arbiter may disallow any expenses which the arbiter considers to have been incurred unnecessarily, including the expenses of any witness whom the arbiter considers to have been called unnecessarily.

Commencement Information

I18 Sch. 1 para. 20 in force at 31.3.2005, see reg. 1(2)

21. It shall not be lawful to include in the expenses of and incidental to the arbitration and award, or to charge against any of the parties, any sum payable in respect of remuneration or expenses to any person appointed by the arbiter to act as clerk or otherwise to assist the arbiter in the arbitration unless such appointment was made after submission of the claim and answers to the arbiter and with either the consent of the parties to the arbitration or the sanction of the sheriff.

Commencement Information

I19 Sch. 1 para. 21 in force at 31.3.2005, see reg. 1(2)

22. The arbiter may at any stage of the proceedings, and shall, if so directed by the sheriff (which direction may be given on the application of any party), state a case for the opinion of the sheriff on any questions of law arising in the course of the arbitration and the opinion of the sheriff on any case shall be final.

Commencement Information

I20 Sch. 1 para. 22 in force at 31.3.2005, see reg. 1(2)

23. Where an arbiter has committed any misconduct, the sheriff may remove that arbiter.

Commencement Information

I21 Sch. 1 para. 23 in force at 31.3.2005, see reg. 1(2)

24. Where an arbiter has committed any misconduct, or an arbitration or award has been improperly procured, the sheriff may set the award aside.

Commencement Information

I22 Sch. 1 para. 24 in force at 31.3.2005, see reg. 1(2)

25. Any amount paid in respect of the remuneration of an arbiter by any party to the arbitration in excess of amount, if any, directed by the award to be paid by that person in respect of the expenses of the award shall be recoverable from the other party or jointly from the other parties.

Commencement Information

I23 Sch. 1 para. 25 in force at 31.3.2005, see reg. 1(2)

26. The Arbitration (Scotland) Act 1894 shall not apply to any arbitration carried out under this Schedule.

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Commencement Information

I24 [Sch. 1 para. 26](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

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Changes and effects yet to be applied to :

- Regulations revoked by [S.S.I. 2018/391 sch. Pt. 2](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 2(1)(1A) substituted for reg. 2(1) by [S.S.I. 2011/83 Sch. para. 1](#)