



# Rentcharges Act 1977

## 1977 CHAPTER 30

### *Apportionment*

#### **4 Application for apportionment**

- (1) The owner of any land which is affected by a rentcharge which also affects land which is not in his ownership may, subject to this section, apply to the Secretary of State for an order apportioning the rentcharge between that land and the remaining land affected by the rentcharge.
- (2) The owner of any land which is affected by a rentcharge which does not affect land not in his ownership may apply to the Secretary of State for an order apportioning the rentcharge between such parts of his land as may be specified in the application.
- (3) No application for apportionment may be made under this section in respect of—
  - (a) a rentcharge of a kind mentioned in section 2(3)(d) or 3(3)(a) above, or
  - (b) land affected by a rentcharge which also affects other land, if the whole of that other land is exonerated or indemnified from the whole of the rentcharge by means of a charge on the first mentioned land.
- (4) Every application—
  - (a) under subsection (1) above, shall specify the amount (if any) equitably apportioned to the applicant's land, and
  - (b) under subsection (2) above, shall specify the applicant's proposal for apportioning the rentcharge between the parts of his land specified in the application.
- (5) Subject to subsection (4) above, every application under this section shall be in such form and shall contain such information and be accompanied by such documents as may be prescribed by regulations.
- (6) In any case where the Secretary of State considers that any additional document or information ought to be furnished by the applicant he may require the applicant—
  - (a) to deliver to him such documents (including documents of title and, in the case of registered land, an authority to inspect the register), and

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(b) to furnish him with such information,  
as the Secretary of State may specify.

(7) Where an applicant's documents of title are in the custody of a mortgagee the mortgagee shall, if requested to do so by the Secretary of State for the purpose of an application made under this section, deliver those documents to the Secretary of State on such terms as to their custody and return as the mortgagee may reasonably require.

## 5 Apportionment

(1) Where an application for apportionment is made under section 4 above and the Secretary of State is satisfied that he is in a position to do so, he shall prepare a draft order for apportionment of the rentcharge.

(2) If the application is made under section 4(1) above, the amount specified in the draft order as being that part of the rentcharge apportioned to the applicant's land shall be—  
(a) the amount specified in the application as the amount equitably apportioned to that land ; or  
(b) where no amount has been equitably apportioned to that land, such amount as the Secretary of State considers appropriate.

(3) If the application is made under section 4(2) above, the amounts specified in the draft order as apportioned between the parts of the applicant's land specified in the application shall be those proposed in the application.

(4) A copy of the draft order shall be served by the Secretary of State on the person appearing to him to be the rent owner or his agent, and, in a case falling within subsection (2)(b) above, on such persons as appear to him to be the owners of the land affected by the rentcharge.

(5) After service of a draft order on the rent owner or his agent under subsection (4) above, the rent owner may, before the expiry of the period of 21 days beginning with the date on which the draft order is served (or such longer period, not exceeding the period of 42 days beginning with that date, as the Secretary of State may in a particular case allow)—

- (a) object to it on the ground that such an apportionment would provide insufficient security for any part of the rentcharge;
- (b) make an application to the effect that in the event of the apportionment not exceeding the sum mentioned in section 7(2) below, a condition should be imposed under that section.

(6) Where a draft order is served under subsection (4) above on a person who is the owner of any land affected by the rentcharge, that person may, before the expiry of the period of 21 days beginning with the date on which the draft order is served (or such longer period, not exceeding the period of 42 days beginning with that date, as the Secretary of State may in a particular case allow), make representations to the Secretary of State concerning the apportionment specified in the draft order.

(7) Any objection, application or representations under subsection (5) or (6) above shall be made in writing.

(8) An objection under subsection (5) above shall state what apportionment (if any) would in the opinion of the rent owner provide sufficient security for the rentcharge or, as the case may be, part of the rentcharge.

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- (9) The Secretary of State shall consider any objection duly made under subsection (5) above and any representations duly made under subsection (6) above and, if he is satisfied that the draft order should be modified—
- (a) in the case of an objection, in order to preserve for the rent owner sufficient security for each apportioned part of the rentcharge, or
  - (b) to take account of any such representations,
- he shall make such modifications in the draft order as appear to him to be appropriate.
- (10) Where—
- (a) the relevant period has expired without any objection or representation having been duly made, or
  - (b) an objection has, or any representations have, been duly made and the objection has, or, as the case may be, all the representations have, been considered by the Secretary of State,
- the Secretary of State shall, if the applicant has not then withdrawn his application and the Secretary of State is satisfied that it is appropriate to do so, make an order (an "apportionment order") in the form of the draft but incorporating—
- (i) any modifications made by the Secretary of State in accordance with subsection (9) above, and
  - (ii) where appropriate, a condition imposed by virtue of section 7(2) below.
- (11) Immediately after making an apportionment order the Secretary of State shall serve copies of the order on the applicant and on the person appearing to him to be the rent owner or his agent, and, in a case falling within subsection (2)(b) above, on those other persons on whom copies of the draft order were served under subsection (4) above.
- (12) In a case where modifications have been made in a draft order under subsection (9) above, the Secretary of State shall not make an apportionment order without giving the applicant an opportunity to withdraw his application.

## **6 Appeal**

- (1) Where the applicant or the rent owner or, in a case falling within section 5(2)(b) above, any other person who is the owner of any land affected by the rentcharge, is aggrieved by the terms of an apportionment order, he may appeal to the Lands Tribunal.
- (2) Where an appeal has been duly made to the Lands Tribunal under this section, the Tribunal shall—
- (a) confirm the order, or
  - (b) set it aside, and, subject to section 7(2) below, make such other order apportioning the rentcharge as it thinks fit.

## **7 Effect of apportionment order**

- (1) An apportionment order shall, subject to subsection (2) below, have effect—
- (a) on the expiry of the period of 28 days beginning with the day on which it is made, or
  - (b) where an appeal against the order has been duly made under section 6 above, on such day as the Lands Tribunal shall specify.
- (2) If—

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- (a) in the case of an application made under section 4(1) above, the part of the rentcharge apportioned to the applicant's land, or
- (b) in the case of an application under section 4(2) above, any apportioned part of the rentcharge,

does not exceed the annual sum of £5, then, subject to subsection (3) below, it shall, where an application has been duly made under section 5(5)(b) above, be made a condition of the apportionment order that it shall have effect only for the purpose of the redemption of that part of the rentcharge in accordance with the following provisions of this Act.

- (3) The Secretary of State shall not impose a condition under subsection (2) above in any case where he considers that, having regard to all the circumstances, to do so would cause the applicant to suffer financial hardship.
- (4) In the case of an application under section 4(1) above, the effect of an apportionment order shall (subject to subsection (2) above) be to release the applicant's land from any part of the rentcharge not apportioned to it and to release the remaining land affected by the rentcharge from such part (if any) of the rentcharge as is apportioned to the applicant's land.
- (5) In the case of an application under section 4(2) above, the effect of an apportionment order shall (subject to subsection (2) above) be to release each part of the applicant's land from any part of the rentcharge not apportioned to it.
- (6) The Secretary of State may by regulations specify, in substitution for the sum mentioned in subsection (2) above, such other annual sum as he considers appropriate.