

*Status: Point in time view as at 11/01/2021.*

*Changes to legislation: There are currently no known outstanding effects for the  
Agricultural Holdings Act 1986, SCHEDULE 2. (See end of Document for details)*

## SCHEDULES

### <sup>F1</sup>SCHEDULE 2

Section 12.

#### ARBITRATION [<sup>F1</sup>OR THIRD PARTY DETERMINATION] OF RENT: PROVISIONS SUPPLEMENTARY TO SECTION 12

##### Textual Amendments

- F1** Words in Sch. 2 heading inserted (26.3.2015 for specified purposes, 26.5.2015 in so far as not already in force) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(2)(e)(3)(a), [Sch. 4 para. 25\(6\)](#)

##### *Amount of rent*

- 1 (1) For the purposes of section 12 of this Act, the rent properly payable in respect of a holding shall be the rent at which the holding might reasonably be expected to be let by a prudent and willing landlord to a prudent and willing tenant, taking into account (subject to sub-paragraph (3) and paragraphs 2 and 3 below) all relevant factors, including (in every case) the terms of the tenancy (including those relating to rent), the character and situation of the holding (including the locality in which it is situated), the productive capacity of the holding and its related earning capacity, and the current level of rents for comparable lettings, as determined in accordance with sub-paragraph (3) below.
- (2) In sub-paragraph (1) above, in relation to the holding—
- (a) “productive capacity” means the productive capacity of the holding (taking into account fixed equipment and any other available facilities on the holding) on the assumption that it is in the occupation of a competent tenant practising a system of farming suitable to the holding, and
- (b) “related earning capacity” means the extent to which, in the light of that productive capacity, a competent tenant practising such a system of farming could reasonably be expected to profit from farming the holding.
- (3) In determining for the purposes of that sub-paragraph the current level of rents for comparable lettings, the arbitrator [<sup>F2</sup>or (as the case may be) the third party ] shall take into account any available evidence with respect to the rents (whether fixed by agreement between the parties or by arbitration [<sup>F3</sup>or third party determination] under this Act) which are, or (in view of rents currently being tendered) are likely to become, payable in respect of tenancies of comparable agricultural holdings on terms (other than terms fixing the rent payable) similar to those of the tenancy under consideration, but shall disregard—
- (a) any element of the rents in question which is due to an appreciable scarcity of comparable holdings available for letting on such terms compared with the number of persons seeking to become tenants of such holdings on such terms,

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- (b) any element of those rents which is due to the fact that the tenant of, or a person tendering for, any comparable holding is in occupation of other land in the vicinity of that holding that may conveniently be occupied together with that holding, and
- (c) any effect on those rents which is due to any allowances or reductions made in consideration of the charging of premiums.

#### **Textual Amendments**

- F2** Words in Sch. 2 para. 1(3) inserted (26.3.2015 for specified purposes, 26.5.2015 in so far as not already in force) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(2)(e)(3)(a), [Sch. 4 para. 25\(2\)\(a\)](#)
- F3** Words in Sch. 2 para. 1(3) inserted (26.3.2015 for specified purposes, 26.5.2015 in so far as not already in force) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(2)(e)(3)(a), [Sch. 4 para. 25\(2\)\(b\)](#)

- 2 (1) On a reference under section 12 of this Act, the arbitrator [<sup>F4</sup>or (as the case may be) the third party] shall disregard any increase in the rental value of the holding which is due to—
- (a) tenant’s improvements or fixed equipment other than improvements executed or equipment provided under an obligation imposed on the tenant by the terms of his contract of tenancy, and
  - (b) landlord’s improvements, in so far as the landlord has received or will receive grants out of money provided by Parliament or local government funds in respect of the execution of those improvements.
- (2) In this paragraph—
- (a) “tenant’s improvements” means any improvements which have been executed on the holding, in so far as they were executed wholly or partly at the expense of the tenant (whether or not that expense has been or will be reimbursed by a grant out of money provided by Parliament or local government funds) without any equivalent allowance or benefit made or given by the landlord in consideration of their execution,
  - (b) “tenant’s fixed equipment” means fixed equipment provided by the tenant, and
  - (c) “landlord’s improvements” means improvements executed on the holding by the landlord.
- (3) Where the tenant has held a previous tenancy of the holding, then—
- (a) in the definition of “tenant’s improvements” in sub-paragraph (2)(a) above, the reference to any such improvements as are there mentioned shall extend to improvements executed during that tenancy, and
  - (b) in the definition of “tenant’s fixed equipment” in sub-paragraph (2)(b), the reference to such equipment as is there mentioned shall extend to equipment provided during that tenancy,
- excluding, however, any improvement or fixed equipment so executed or provided in respect of which the tenant received any compensation on the termination of that (or any other) tenancy.
- (4) For the purposes of sub-paragraph (2)(a) above, the continuous adoption by the tenant of a system of farming more beneficial to the holding—
- (a) than the system of farming required by the contract of tenancy, or

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(b) in so far as no system is so required, than the system of farming normally practised on comparable agricultural holdings, shall be treated as an improvement executed at his expense.

#### Textual Amendments

**F4** Words in Sch. 2 para. 2(1) inserted (26.3.2015 for specified purposes, 26.5.2015 in so far as not already in force) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(2)(e)(3)(a), [Sch. 4 para. 25\(3\)](#)

- 3 On a reference under section 12 of this Act the arbitrator [<sup>F5</sup>or (as the case may be) the third party]—
- (a) shall disregard any effect on the rent of the fact that the tenant who is a party to the arbitration [<sup>F6</sup>or third party determination] is in occupation of the holding, <sup>F7</sup>...
- [<sup>F8</sup>(aa) in a case where the tenant is, under an agreement in writing with the landlord, required to make payments in respect of improvements to the holding that are or are to be wholly or partly financed by the landlord, shall disregard any effect on the rent of—
- (i) the fact that the tenant is required to make such payments, and
- (ii) any benefit to the tenant arising from the improvements before the date on which the last of those payments falls to be made, and]
- (b) shall not fix the rent at a lower amount by reason of any dilapidation or deterioration of, or damage to, buildings or land caused or permitted by the tenant.

#### Textual Amendments

- F5** Words in Sch. 2 para. 3 inserted (26.3.2015 for specified purposes, 26.5.2015 in so far as not already in force) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(2)(e)(3)(a), [Sch. 4 para. 25\(4\)\(a\)](#)
- F6** Words in Sch. 2 para. 3(a) inserted (26.3.2015 for specified purposes, 26.5.2015 in so far as not already in force) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(2)(e)(3)(a), [Sch. 4 para. 25\(4\)\(b\)](#)
- F7** Word in Sch. 2 para. 3(a) omitted (11.11.2020 for specified purposes, 11.1.2021 in so far as not already in force) by virtue of [Agriculture Act 2020 \(c. 21\)](#), s. 57(1)(b)(c)(6), [Sch. 3 para. 8\(2\)](#)
- F8** Sch. 2 para. 3(aa) inserted (11.11.2020 for specified purposes, 11.1.2021 in so far as not already in force) by [Agriculture Act 2020 \(c. 21\)](#), s. 57(1)(b)(c)(6), [Sch. 3 para. 8\(3\)](#)

#### *Frequency of [<sup>F9</sup>determinations] under section 12*

#### Textual Amendments

**F9** Word in Sch. 2 para. 4 cross-heading substituted (11.11.2020 for specified purposes, 11.1.2021 in so far as not already in force) by [Agriculture Act 2020 \(c. 21\)](#), s. 57(1)(b)(c)(6), [Sch. 3 para. 3\(2\)](#)

- 4 (1) Subject to the following provisions of this Schedule, a [<sup>F10</sup>notice under section 12(1) of this Act] shall not be effective for the purposes of section 12 of this Act if the next termination date following the date of [<sup>F11</sup>the notice] falls earlier than the end of three years from any of the following dates, that is to say—
- (a) the commencement of the tenancy, or

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- (b) the date as from which there took effect a previous increase or reduction of rent (whether made under that section or otherwise), or
  - (c) the date as from which there took effect a previous direction of an arbitrator [<sup>F12</sup>or third party] under that section that the rent should continue unchanged.
- (2) The following shall be disregarded for the purposes of sub-paragraph (1)(b) above—
- (a) an increase of rent under section 6(3) or 8(4) of this Act;
  - (b) an increase of rent under subsection (1) of section 13 of this Act or such an increase as is referred to in subsection (3) of that section, or any reduction of rent agreed between the landlord and the tenant of the holding in consequence of any change in the fixed equipment provided on the holding by the landlord;
  - (c) a reduction of rent under section 33 of this Act;
  - [<sup>F13</sup>(d) an increase or reduction of rent arising from—
    - (i) the exercise of an option to tax under Schedule 10 to the Value Added Tax Act 1994,
    - (ii) the revocation of such an option, or
    - (iii) a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.]

#### Textual Amendments

- F10** Words in Sch. 2 para. 4(1) substituted (11.11.2020 for specified purposes, 11.1.2021 in so far as not already in force) by [Agriculture Act 2020 \(c. 21\)](#), s. 57(1)(b)(c)(6), [Sch. 3 para. 3\(3\)\(a\)](#)
- F11** Words in Sch. 2 para. 4(1) substituted (11.11.2020 for specified purposes, 11.1.2021 in so far as not already in force) by [Agriculture Act 2020 \(c. 21\)](#), s. 57(1)(b)(c)(6), [Sch. 3 para. 3\(3\)\(b\)](#)
- F12** Words in Sch. 2 para. 4(1)(c) inserted (26.3.2015 for specified purposes, 26.5.2015 in so far as not already in force) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(2)(e)(3)(a), [Sch. 4 para. 25\(5\)](#)
- F13** Sch. 2 para. 4(2)(d) inserted (21.7.2009) by [Finance Act 2009 \(c. 5\)](#), s. 79(1) (with s. 79(2)(3))

- 5 (1) This paragraph applies in any case where a tenancy of an agricultural holding (“the new holding”) commences under a contract of tenancy between—
- (a) a person who immediately before the date of the commencement of the tenancy was entitled to a severed part of the reversionary estate in an agricultural holding (“the original holding”) in which the new holding was then comprised, and
  - (b) the person who immediately before that date was the tenant of the original holding,
- and where the rent payable in respect of the new holding at the commencement of the tenancy of that holding represents merely the appropriate portion of the rent payable in respect of the original holding immediately before the commencement of that tenancy.
- (2) In any case to which this paragraph applies—
- (a) paragraph (a) of sub-paragraph (1) of paragraph 4 above shall be read as referring to the commencement of the tenancy of the original holding, and
  - (b) references to rent in paragraphs (b) and (c) of that sub-paragraph shall be read as references to the rent payable in respect of the original holding,

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until the first occasion following the commencement of the tenancy of the new holding on which any such increase or reduction of, or direction with respect to, the rent of the new holding as is mentioned in paragraph (b) or (c) takes effect.

- 6 Where under an agreement between the landlord and the tenant of the holding (not being an agreement expressed to take effect as a new contract of tenancy between the parties) provision is made for adjustment of the boundaries of the holding or for any other variation of the terms of the tenancy, exclusive of those relating to rent, then, unless the agreement otherwise provides—
- (a) that provision shall for the purposes of sub-paragraph (1) of paragraph 4 above be treated as not operating to terminate the tenancy, and accordingly as not resulting in the commencement of a new contract of tenancy between the parties, and
  - (b) any increase or reduction of rent solely attributable to any such adjustment or variation as aforesaid shall be disregarded for the purposes of paragraph (b) of that sub-paragraph.

[<sup>F147</sup> (1) This paragraph applies in any case where—

- (a) a tenancy of an agricultural holding (the new tenancy) is granted to a person who, immediately before the grant of the new tenancy, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, under a contract of tenancy (“the previous tenancy”),
- (b) this Act applies in relation to the new tenancy by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, and
- (c) the rent payable under the new tenancy is unchanged from that payable under the previous tenancy, disregarding any increase or reduction in rent solely attributable to an adjustment of the boundaries of the holding.

(2) The reference in sub-paragraph (1) above to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.

(3) In any case to which this paragraph applies—

- (a) paragraph (a) of sub-paragraph (1) of paragraph 4 above shall be read as referring to the commencement of the previous tenancy, and
- (b) references to rent in paragraphs (b) and (c) of that sub-paragraph shall be read as references to the rent payable under the previous tenancy,

until the first occasion following the commencement of the new tenancy on which any such increase or reduction of, or direction with respect to, the rent payable under the new tenancy as is mentioned in paragraph (b) or (c) takes effect.]

#### Textual Amendments

**F14** Sch. 2 para. 7 inserted (19.10.2006) by [The Regulatory Reform \(Agricultural Tenancies\) \(England and Wales\) Order 2006 \(S.I. 2006/2805\)](#), **art. 8** (with art. 10)

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