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SCHEDULES.

NINTH SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS.

The Agricultural Holdings (Scotland) Act, 1923.

- 1 In section one (which relates to the right of the tenant to compensation for improvements)—
- (a) in paragraph (a) of subsection (2) after the word " which " there shall be inserted the words " under an agreement in writing " and the words " whether expressly stated in the lease to be so given or allowed or not " shall be omitted ;
 - (b) paragraph (b) of subsection (2) shall cease to have effect;
 - (c) in subsection (3) for the words " custom, agreement or other wise " there shall be substituted the words " an agreement in writing ".
- 2 In section three (which relates to the giving of notice to the landlord as to improvements comprised in Part II of the First Schedule)—
- (a) in subsection (1) the words " more than six nor " shall be omitted and for the words " may agree " there shall be substituted the words " may enter into an agreement in writing ";
 - (b) subsection (3) shall cease to have effect ;
 - (c) in subsection (4) after the word " agree," there shall be inserted the words " in writing ";
 - (d) after subsection (4) there shall be added the following subsections—
 - “(5) Subject to the provisions of the next following subsection, compensation under this Act shall not be payable in respect of an improvement comprised in Part II of the First Schedule to this Act if, within one month after receiving notice under subsection (1) of this section from the tenant of his intention to execute the improvement, the landlord gives notice in writing to the tenant that he objects to the execution of the improvement or to the manner in which the tenant proposes to do the intended work.
 - (6) Where notice of objection has been given as aforesaid, the tenant may, after giving notice in writing to the landlord of his intention so to do, apply to the Board for approval of the execution of the improvement, and on any such application—
 - (a) the Board may, after affording to the tenant and to the landlord an opportunity of making representations to the Board, whether in writing or on being heard by a person appointed by the Board, approve the carrying out of the improvement either unconditionally or upon such terms, whether as to reduction of the compensation which would be payable if the Board approved unconditionally or as to

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other matters, as appear to the Board to be just, or may withhold their approval, and in either case forthwith after coming to a decision on the application shall give notice in writing of their decision to the landlord and to the tenant;

- (b) if the Board grant their approval, the landlord may, within one month after receiving notice of the Board's decision, serve notice in writing on the tenant undertaking himself to execute the improvement ;
- (c) where the Board grant their approval, then if either no notice is served by the landlord under the last foregoing paragraph, or such a notice is served but on an application made by the tenant in that behalf the Board, after affording to the tenant and to the landlord such an opportunity as aforesaid, determine that the landlord has failed to execute the improvement within a reasonable time, the tenant may execute the improvement and shall be entitled to compensation under this Act in respect thereof as if notice of objection had not been given by the landlord, and any terms subject to which the approval was given shall have effect as if they were contained in an agreement in writing between the landlord and the tenant.”

3 In section five (which makes further provision as to improvements)—

- (a) in subsection (1) for the word-" desires," there shall be substituted the words " intimates to the landlord in writing his desire "; for the words " after hearing the landlord or his representative " there shall be substituted the words " after affording to the landlord and to the tenant an opportunity to make representations to the Board, whether in writing or on being heard by a person appointed by the Board " ; the proviso shall cease to have effect; and in paragraph (c) for the words " settled by the Board " there shall be substituted the words " determined by arbitration ";
- (b) subsections (3) and (4) shall cease to have effect;
- (c) after subsection (5) there shall be added the following subsection—

“(6) Nothing in Part I of the Agriculture (Scotland) Act, 1948, shall prevent the landlord and the tenant of a holding who have agreed that the holding shall be let or treated as a market garden from substituting, by agreement in writing, the provisions as to compensation set out in paragraphs (a) and (b) of subsection (1) of this section for the provisions as to compensation which would otherwise be applicable to the holding.”

4 In section nine (which relates to compensation for the continuous adoption of a special standard or system of farming), in subsection (1) the words " (if any) " shall be omitted ; after the words " required by the lease " there shall be inserted the words " or in so far as no system of farming is so required, than the system of farming normally practised on comparable holdings in the district " ; in paragraph (a) of the proviso, after the words " record so made " there shall be inserted the words " or, where more than one such record has been made during the tenancy, before the date of the first such record " ; and in paragraph (b) of the proviso, after the words " the tenant has " there shall be inserted the words " not later than one month "

5 In section eleven (which relates to compensation for damage by game)—

- (a) subsection (3) shall cease to have effect;

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(b) after subsection (4) there shall be inserted the following subsection—

“(4A) Any question arising under the last foregoing subsection shall be determined by arbitration under this Act in like manner as questions arising on a claim under this section by a tenant.”

6 In section twenty-one (which relates to the power of a landlord on paying compensation to obtain a charge on the holding) for subsections (1) to (4) there shall be substituted the following subsections—

“(1) Where after the commencement of Part I of the Agriculture (Scotland) Act, 1948, a landlord, not being the absolute owner of a holding, has paid to the tenant of the holding the amount due to him under this Act, or under custom or agreement or otherwise, in respect of compensation for an improvement comprised in the First Schedule hereto, or in respect of compensation for disturbance, or has himself defrayed the cost of an improvement proposed to be executed by the tenant, the Board may, on the application of the landlord and after giving not less than fourteen days notice to the absolute owner of the holding, make in favour of the landlord a charging order charging and burdening the holding with an annuity to repay the amount of the compensation or of the cost of the improvement, as the case may be, together with the expenses of obtaining the charging order and recording it in the appropriate Register of Sasines ; and the provisions of subsections (2) and (4) and of subsections (6) to (10) of section fifty-five of the Water (Scotland) Act, 1946, shall with the following and any other necessary modifications apply to any such charging order—

- (a) for any reference to the local authority there shall be substituted a reference to the Board ;
- (b) for any reference to the period of thirty years there shall be substituted in the case of a charging order made in respect of compensation for, or of the cost of, an improvement a reference to the period within which the improvement will, in the opinion of the Board, have become exhausted;
- (c) for references to Part III of the said Act of 1946 there shall be substituted references to the Agricultural Holdings (Scotland) Acts, 1923 to 1948.

(2) An annuity constituted a charge by a charging order recorded in the appropriate Register of Sasines shall be a charge on the holding specified in the order and shall rank after all prior charges heritably secured thereon.

(3) The creation of a charge on a holding under this section shall not be deemed to be a contravention of any prohibition against charging or burdening contained in the deed or instrument under which the holding is held.”

7 Section twenty-two (which relates to the incidence of charges) shall cease to have effect.

8 In section twenty-three (which relates to the power of land improvement companies to advance money) for the words from " an advance of money " to the end of the section there shall be substituted the words " an advance of money upon a charging order duly made and recorded under this Act, on such terms and conditions as may be agreed upon between the company and the person entitled to the order ".

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- 9 Section twenty-four (which relates to certificates as to charges) shall cease to have effect.
- 10 In section twenty-six, in subsection (2) (which subsection relates to the renewal of a lease by tacit relocation) for the word " renewed," in both places where it occurs, there shall be substituted the words " continued in force. "
- 11 In section twenty-eight (which relates to the right of a tenant of a holding to bequeath his lease)—
- (a) for any reference to the sheriff there shall be substituted a reference to the Land Court, and for any reference to a petition praying for decree there shall be substituted a reference to an application for an order ;
- (b) paragraph (f) shall cease to have effect.
- 12 Section twenty-nine (which provides that fixtures and buildings affixed to or erected on a holding by the tenant shall, subject to certain exceptions, be his property and removable by him on the termination of the tenancy) shall be amended in accordance with the following provisions of this paragraph, that is to say—
- (a) the right of the tenant to remove any fixture or building shall not unless otherwise agreed be exercisable after the expiration of six months from the termination of the tenancy;
- (b) for paragraph (iv) of the proviso to subsection (1) (which provides for notice to the landlord of the tenant's intention to remove a fixture or building) there shall be substituted the following paragraph:—
- “(iv) the tenant shall not remove any fixture or building without giving at least one month's previous notice in writing to the landlord of his intention to remove it, and any such notice shall be given at least one month before the termination of the tenancy”;
- (c) for subsection (2) there shall be substituted the following subsection :—
- “(2) Nothing in this section shall confer on a tenant or former tenant, as respects any period after his right of removal has ceased to be exercisable, any property in a fixture or building not removed by him.”
- 13 In section thirty (which enables a landlord to give notice to quit part of a holding where the notice is given for certain purposes and states that it is so given)—
- (a) in paragraph (iv) (which enables notice to quit part of a holding to be given for the purpose of the provision of small ' holdings under the Small Landholders (Scotland) Acts, 1886 to 1931) the reference to small holdings as so defined shall include a reference to such holdings as are mentioned in section sixty-four of this Act;
- (b) for the words from " and the notice states " to " any such use " there shall be substituted the words " or for the purpose of adjusting the boundaries between agricultural units or amalgamating agricultural units or parts thereof, and the notice states that it is given with a view to any such use as aforesaid or for the said purpose, as the case may be ";
- (c) in paragraph (c) for the words " as in case of compensation " there shall be substituted the words " by arbitration ";
- (d) in the proviso after the words " after service of the notice to. quit " there shall be inserted the words " or, in a case where the operation of the notice

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to quit depends on any proceedings under section seven of the Agriculture (Scotland) Act, 1948, within twenty-eight days after the time at which it is determined that the notice to quit has effect, " and for the words " the expiration of the then current year of tenancy " there shall be substituted the words " the same time as the original notice ".

- 14 In section thirty-three (which extends the meaning of the expression " holding " so as to include certain other lands)—
- (a) in subsection (1) for the words " Where the land " there shall be substituted the words " Where any land ";
 - (b) subsection (a) shall cease to have effect.
- 15 In section thirty-four (which provides that the landlord of a holding shall not be entitled to recover, in respect of a breach or non-fulfilment of a term or condition in the lease, any sum in excess of the damage actually suffered by him) the proviso shall cease to have effect.
- 16 Section thirty-five (which confers on the tenant of a holding freedom of cropping and of disposal of the produce of his holding notwithstanding any custom or agreement) shall be amended in accordance with the provisions of this paragraph, that is to say—
- (a) in subsection (1) references to the produce of the holding shall not include references to manure produced on the holding ;
 - (b) in subsection (2) for the words from " without prejudice " to the end of the subsection there shall be substituted the words
“have the following remedies, but no ether, that is to say—
 - (a) should the case so require, he shall be entitled to obtain an interdict restraining the exercise of the tenant's rights under this section in that manner ;
 - (b) in any case, on the tenant quitting the holding on the termination of the tenancy, the landlord shall be entitled to recover damages for any injury to or deterioration of the holding attributable to the exercise by the tenant of his rights under this section,and section forty-six of this Act shall have effect subject to the provisions of this section.”;
 - (c) for the purposes of any proceedings for an interdict brought under the said subsection (2) the question whether a tenant is exercising, or has exercised, his rights under the said section thirty-five in such a manner as to injure or deteriorate his holding, or to be likely to injure or deteriorate his holding, shall be determined by the Secretary of State after affording to the landlord and to the tenant an opportunity to make representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State ; and a certificate of the Secretary of State as to his determination of any such question as aforesaid shall for the purposes of any proceedings (including an arbitration) brought under the said section thirty-five be conclusive proof of the facts stated in the certificate ,"
 - (d) in subsection (4) any reference to the terms of any lease shall be construed as a reference to the terms of that lease as modified in pursuance of section twelve of this Act.
- 17 In section thirty-seven (which relates to the making of a record of a holding)—

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- (a) for the words " to be appointed in default of agreement by the Board " there shall be substituted the words " to be nominated by the Board ";
 - (b) at the end of the section there shall be added the following subsections—
 - “(2) Subject to the provisions of section thirteen of the Agriculture (Scotland) Act, 1948, a record may, if the landlord or the tenant so requires, be made under this section relating to a part only of the holding or to the fixed equipment only.
 - (3) Any record made under this section shall show any consideration or allowances which have been made by the landlord to the tenant or by the tenant to the landlord.
 - (4) A record made under this section shall be in such form as may be prescribed.
 - (5) Any question or difference between the landlord and the tenant arising out of the making of a record under this section shall, on the application of the landlord or the tenant, as the case may be, be referred to the Land Court, and the Land Court shall determine such question or difference accordingly.
 - (6) The remuneration of the person nominated by the Board to make a record under this section shall be such amount as the Board may fix, and any other expenses of and incidental to the making of the record shall be subject to taxation by the auditor of the sheriff court, but that taxation shall be subject to review by the sheriff.
 - (7) The remuneration of the person nominated by the Board to make a record under this section shall be recoverable by that person from either the landlord or the tenant, but any amount paid by either of those parties in respect of that remuneration, or of any other expenses of and incidental to the making of the record, in excess of the share payable by him as aforesaid of the cost of making the record shall be recoverable from the other party.”
- 18 In section thirty-nine (which makes provision for the exercise by limited owners of certain powers) the words "in relation to improvements in respect of which compensation is payable " shall be omitted.
- 19 In section forty (which provides for the application of the Act of 1923 to Crown lands), after subsection (2) there shall be inserted the following subsection :—
- “(3) Section fifteen of the Crown Lands Act, 1927 (which enables the Commissioners of Crown Lands to pay out of capital the cost of carrying out certain improvements and other works) shall apply to any compensation payable by them under this Act in respect of. an improvement comprised in Part I or Part II of the First Schedule to this Act as it applies to the cost specified in the said section fifteen.”
- 20 Section forty-one (which relates to the application of the Act to glebe and charity land) shall cease to have effect.
- 21 Section forty-four (which empowers the Court of Session to prescribe a scale of expenses for sheriff court proceedings under the Act of 1923) shall cease to have effect.

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- 22 In section forty-nine (which relates to the interpretation of the Act of 1923)—
- (a) in subsection (1) for the definitions of " holding ", " manuring " and " rules of good husbandry " there shall be substituted respectively the following definitions—
 - “ holding ' means the aggregate of the agricultural land, as denned in Part VII of the Agriculture (Scotland) Act, 1948, comprised in a lease, not being a lease under which the said land is let to the tenant during his continuance in any office, appointment or employment held under the landlord ;”
 - “ manuring ' means any of the improvements referred to in paragraphs 31 and 32 of Part III of the First Schedule to this Act;”
 - “ rules of good husbandry ' means the provisions set forth in the Sixth Schedule to the Agriculture (Scotland) Act, 1948”;
 - (b) in subsection (1) the following definitions shall be inserted—
 - “ building ' includes any part of a building;”
 - “ Whitsunday ' and ' Martinmas ' in relation to any lease entered into after the commencement of Part I of the Agriculture (Scotland) Act, 1948, mean respectively the twenty-eighth day of May and the twenty-eighth day of November”;
 - (c) in subsection (1), in the paragraph relating to the interpretation of the expression " landlord," or " tenant," after the word " assignees," there shall be inserted the word " heir-at-law ”;
 - (d) in subsection (4) after the word " landlord ", in both places where it occurs, there shall be inserted the words " or the tenant " , and the words " duly authorised in that behalf " shall be omitted.
- 23 In the Second Schedule (which relates to arbitration proceedings)—
- (a) after paragraph 6 there shall be inserted the following paragraph—

“Particulars of claim.

6A Each of the parties to the arbitration shall within fourteen days from the appointment of the arbiter deliver to him a statement of that party's case with all necessary particulars; and—

 - (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiration of the said fourteen 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 so delivered and any amendment thereof or addition thereto duly made”;
 - (b) in paragraph 9 for the words " in the form of a special case for the opinion of the sheriff " there shall be substituted the words " a case for the opinion of the sheriff on ".
- 24 In the Third Schedule (which specifies improvements which -are subject to special provisions in the case of market gardens), in paragraph (5), for the words " Erection or enlargement of buildings " there shall be substituted the words " Erection, alteration or enlargement of buildings ".