



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

1951 CHAPTER 65 14 and 15 Geo 6

PART III

PROTECTION AGAINST INSECURITY OF TENURE OF BUSINESS AND PROFESSIONAL PREMISES

Provisions as to Scotland

37 Application of sections thirty-eight to forty.

The three next following sections shall apply to Scotland only.

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

(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

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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
 - (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” [^{F1}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 [^{F2}spouse or civil partner], or held by him jointly with his [^{F2}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—

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- (i) are an agricultural holding within the meaning of the [^{F3}Agricultural Holdings (Scotland) Act 1991], or
- (ii) consist of or comprise premises (other than premises excepted from this provision) [^{F4}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, ^{F5} . . .

^{F5}(b)

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 ^{M1}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
- (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

- F1** 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)
- F2** 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
- F3** 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)
- F4** 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)
- F5** 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. 1** Group 5

Marginal Citations

- M1** 1910 c. 8.

39 Power of sheriff to grant new tenancy.

- (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.

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- (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
 - (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.

- (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

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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.

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