

SCHEDULE 19 LEASES

PART 5

CHARGEABLE CONSIDERATION: RENT AND CONSIDERATION OTHER THAN RENT

Rent

- 12 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, is to be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of schedule 2 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

Variable or uncertain rent

- 13 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
- (a) varies in accordance with provision in the lease, or
 - (b) is contingent, uncertain or unascertained.
- (2) The provisions of this Act apply as in relation to other chargeable consideration and accordingly the provisions of sections 18 and 19 apply if the amount is contingent, uncertain or unascertained.
- (3) But section 20(b) does not apply.
- (4) For the purposes of this paragraph, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—
- (a) section 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991 (c.55), or
 - (b) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003 (asp 11).
- (5) No account is to be taken for the purposes of this paragraph of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index.

Reverse premium

- 14 (1) In the case of the grant, assignation or renunciation of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant,
 - (b) in relation to the assignation of a lease, a premium moving from the assignor to the assignee,
 - (c) in relation to the renunciation of a lease, a premium moving from the tenant to the landlord.

Status: This is the original version (as it was originally enacted).

Tenant's obligations etc. that do not count as chargeable consideration

- 15 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—
- (a) any undertaking by the tenant to repair, maintain or insure the leased premises,
 - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord's costs of management,
 - (c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market,
 - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease,
 - (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease,
 - (f) any other obligation of the tenant to bear the landlord's reasonable costs or expenses of or incidental to the grant of a lease,
 - (g) any obligation under the lease to transfer to the landlord, on the termination of the lease, payment entitlements granted to the tenant under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No. 73/2009) in respect of the land subject to the lease).
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of any such obligations as in mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the renunciation of the lease.

Assignment of lease: assumption of obligations by assignee

- 16 In the case of an assignment of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
 - (b) to perform or observe any other undertaking of the tenant under the lease,
- does not count as chargeable consideration for the assignment.

Loan or deposit in connection with grant or assignment of lease

- 17 (1) Where, under arrangements made in connection with the grant of a lease—
- (a) a tenant, or any person connected with or acting on behalf of the tenant, pays a deposit, or makes a loan, to any person, and
 - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant or on the death of the tenant,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.
- (2) Where, under arrangements made in connection with the assignment of a lease—
- (a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and
 - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee or on the death of the assignee,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignation of the lease.

- (3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or (as the case requires) assignation of the lease is not more than twice the relevant maximum rent.
- (4) The relevant maximum rent is—
 - (a) in relation to the grant of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease,
 - (b) in relation to the assignation of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding as at the date of the assignation.
- (5) In determining the highest amount of rent for the purposes of sub-paragraph (4), take into account (if necessary) any amounts determined by virtue of paragraph 13(2) but disregard paragraph 24(2) (deemed reduction of rent, where further lease granted, for periods during which rents overlap).
- (6) Tax is not chargeable by virtue of this paragraph merely because of paragraph 9 (which excludes the nil rate tax band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year).

Renunciation of existing lease in return for new lease

- 18 (1) Where a lease is granted in consideration of the renunciation of an existing lease between the same parties—
 - (a) the grant of the new lease does not count as chargeable consideration for the renunciation, and
 - (b) the renunciation does not count as chargeable consideration for the grant of the new lease.
- (2) Paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.