

SCHEDULES

SCHEDULE 1

Section 13.

TENANTS' COMPENSATION FOR MILK QUOTA

PART I

RIGHT TO COMPENSATION

Tenants' rights to compensation

- 1 (1) Subject to the following provisions of this Schedule, where on the termination of the tenancy of any land the tenant has milk quota registered as his in relation to a holding consisting of or including the land, the tenant shall be entitled, on quitting the land, to obtain from his landlord a payment—
- (a) if the tenant had milk quota allocated to him in relation to land comprised in the holding (" allocated quota "), in respect of so much of the relevant quota as consists of allocated quota; and
 - (b) if the tenant had milk quota allocated to him as aforesaid or was in occupation of the land as a tenant on 2nd April 1984 (whether or not under the tenancy which is terminating), in respect of so much of the relevant quota as consists of transferred quota transferred to him by virtue of a transaction the cost of which was borne wholly or partly by him.
- (2) In sub-paragraph (1) above—
- " the relevant quota " means—
 - (a) in a case where the holding mentioned in subparagraph (1) above consists only of the land subject to the tenancy, the milk quota registered in relation to the holding; and
 - (b) otherwise, such part of that milk quota as falls to be apportioned to that land on the termination of the tenancy;
 - " transferred quota " means milk quota transferred to the tenant by virtue of the transfer to him of the whole or part of a holding.
- (3) A tenant shall not be entitled to more than one payment under this paragraph in respect of the same land.

Succession on death or retirement of tenant

- 2 (1) This paragraph applies where on the termination of the tenancy of any land after 2nd April 1984 a new tenancy of the land or part of the land has been granted to a different tenant (" the new tenant ") and that tenancy—
- (a) was obtained by virtue of a direction under section 39 or 53 of the Agricultural Holdings Act 1986 (direction for grant of tenancy to successor on death or retirement of previous tenant);

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- (b) was granted (following a direction under section 39 of that Act) in circumstances within section 45(6) of that Act (new tenancy granted by agreement to persons entitled to tenancy under direction); or
 - (c) is such a tenancy as is mentioned in section 37(1)(b) or (2) of that Act (tenancy granted by agreement to close relative).
- (2) Where this paragraph applies—
- (a) any milk quota allocated or transferred to the former tenant (or treated as having been allocated or transferred to him) in respect of the land which is subject to the new tenancy shall be treated as if it had instead been allocated or transferred to the new tenant; and
 - (b) in a case where milk quota is treated under paragraph (a) above as having been transferred to the new tenant, he shall be treated for the purposes of any claim in respect of that quota—
 - (i) as if he had paid so much of the cost of the transaction by virtue of which the milk quota was transferred as the former tenant bore (or is treated as having borne); and
 - (ii) in a case where the former tenant was in occupation of the land on 2nd April 1984 (or is treated as having been in occupation of the land on that date), as if he had been in occupation of it on that date.
- (3) Sub-paragraph (1) above applies in relation to the grant of a new tenancy before the date on which the Agricultural Holdings Act 1986 comes into force as if the references in that sub-paragraph to sections 39, 53 and 45(6) of that Act were references to section 20 of the Agriculture (Miscellaneous Provisions) Act 1976, paragraph 5 of Schedule 2 to the Agricultural Holdings Act 1984 and section 23(6) of the said Act of 1976 respectively.

Assignments

- 3 Where the tenancy of any land has been assigned after 2nd April 1984 (whether by deed or by operation of law)—
- (a) any milk quota allocated or transferred to the assignor (or treated as having been allocated or transferred to him) in respect of the land shall be treated as if it had instead been allocated or transferred to the assignee; and
 - (b) in a case where milk quota is treated under paragraph (a) above as having been transferred to the assignee, he shall be treated for the purposes of any claim in respect of that quota—
 - (i) as if he had paid so much of the cost of the transaction by virtue of which the milk quota was transferred as the assignor bore (or is treated as having borne); and
 - (ii) in a case where the assignor was in occupation of the land on 2nd April 1984 (or is treated as having been in occupation of the land on that date), as if he had been in occupation of it on that date;
- and accordingly the assignor shall not be entitled to a payment under paragraph 1 above in respect of that land.

Sub-tenancies

- 4 Where the sub-tenancy of any land terminates after 2nd April 1984 then, for the purposes of determining the sub-landlord's entitlement under paragraph 1 above—

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- (a) any milk quota allocated or transferred to the sub-tenant (or treated as having been allocated or transferred to him) in respect of the land shall be treated as if it had instead been allocated or transferred to the sub-landlord;
- (b) in a case where milk quota is treated under paragraph (a) above as having been transferred to the sub-landlord, he shall be treated for the purposes of any claim in respect of that quota—
 - (i) as if he had paid so much of the cost of the transaction by virtue of which the milk quota was transferred as the sub-tenant bore (or is treated as having borne); and
 - (ii) in a case where the sub-tenant was in occupation of the land on 2nd April 1984 (or is treated as having been in occupation of the land on that date), as if he had been in occupation of it on that date;
- (c) if the sub-landlord does not occupy the land after the sub-tenancy has ended and the sub-tenant has quitted the land, the sub-landlord shall be taken to have quitted the land when the sub-tenant quitted it.

PART II

AMOUNT OF COMPENSATION PAYABLE

Calculation of payment

- 5
- (1) The amount of the payment to which the tenant of any land is entitled under paragraph 1 above on the termination of his tenancy shall be determined in accordance with the following provisions of this paragraph.
 - (2) The amount of the payment to which the tenant is entitled under paragraph 1 above in respect of allocated quota shall be an amount equal—
 - (a) in a case where the allocated quota exceeds the standard quota for the land, to the value of the sum of—
 - (i) the tenant's fraction of the standard quota, and
 - (ii) the amount of the excess;
 - (b) in a case where the allocated quota is equal to the standard quota, to the value of the tenant's fraction of the allocated quota; and
 - (c) in a case where the allocated quota is less than the standard quota, to the value of such proportion of the tenant's fraction of the allocated quota as the allocated quota bears to the standard quota.
 - (3) The amount of the payment the tenant is entitled to under paragraph 1 above in respect of transferred quota shall be an amount equal—
 - (a) in a case where the tenant bore the whole of the cost of the transaction by virtue of which the transferred quota was transferred to him, to the value of the transferred quota; and
 - (b) in a case where the tenant bore only part of that cost, to the value of the corresponding part of the transferred quota.

" Standard quota "

- 6
- (1) Subject to the following provisions of this paragraph the standard quota for any land for the purposes of this Schedule shall be calculated by multiplying the relevant

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number of hectares by the prescribed quota per hectare; and for the purposes of this paragraph—

- (a) " the relevant number of hectares " means the average number of hectares of the land in question used during the relevant period for the feeding of dairy cows kept on the land or, if different, the average number of hectares of the land which could reasonably be expected to have been so used (having regard to the number of grazing animals other than dairy cows kept on the land during that period); and
 - (b) " the prescribed quota per hectare " means such number of litres as the Minister may from time to time by order prescribe for the purposes of this sub-paragraph.
- (2) Where by virtue of the quality of the land in question or climatic conditions in the area the amount of milk which could reasonably be expected to have been produced from one hectare of the land during the relevant period (" the reasonable amount ") is greater or less than the prescribed average yield per hectare, then sub-paragraph (1) above shall not apply and the standard quota shall be calculated by multiplying the relevant number of hectares by such proportion of the prescribed quota per hectare as the reasonable amount bears to the prescribed average yield per hectare; and the Minister shall by order prescribe the amount of milk to be taken as the average yield per hectare for the purposes of this sub-paragraph.
- (3) Where the relevant quota of the land includes milk quota allocated in pursuance of an award of quota made by the Dairy Produce Quota Tribunal for England and Wales which has not been allocated in full, the standard quota for the land shall be reduced by the amount by which the milk quota allocated in pursuance of the award falls short of the amount awarded (or, in a case where only part of the milk quota allocated in pursuance of the award is included in the relevant quota, by the corresponding proportion of that shortfall).
- (4) In sub-paragraph (3) above the references to milk quota allocated in pursuance of an award of quota include references to quota allocated by virtue of the amount awarded not originally having been allocated in full.
- (5) In this paragraph—
- (a) references to land used for the feeding of dairy cows kept on the land do not include land used for growing cereal crops for feeding to dairy cows in the form of loose grain; and
 - (b) references to dairy cows are to cows kept for milk production (other than uncalved heifers).
- (6) An order under this paragraph may make different provision for different cases.
- (7) The power to make an order under this paragraph shall be exercisable by statutory instrument and any instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

" Tenant's fraction "

- 7 (1) For the purposes of this Schedule " the tenant's fraction " means the fraction of which—
- (a) the numerator is the annual rental value at the end of the relevant period of the tenant's dairy improvements and fixed equipment; and

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- (b) the denominator is the sum of that value and such part of the rent payable by the tenant in respect of the relevant period as is attributable to the land used in that period for the feeding, accommodation or milking of dairy cows kept on the land.
- (2) For the purposes of sub-paragraph (1)(a) above the rental value of the tenant's dairy improvements and fixed equipment shall be taken to be the amount which would fall to be disregarded under paragraph 2(1) of Schedule 2 to the Agricultural Holdings Act 1986 on a reference made in respect of the land in question under section 12 of that Act (arbitration of rent), so far as that amount is attributable to tenant's improvements to, or tenant's fixed equipment on, land used for the feeding, accommodation or milking of dairy cows kept on the land in question.
- (3) Where—
- (a) the relevant period is less than or greater than 12 months; or
 - (b) rent was only payable by the tenant in respect of part of the relevant period, the average rent payable in respect of one month in the relevant period or, as the case may be, in that part shall be determined and the rent referred to in sub-paragraph (1) (b) above shall be taken to be the corresponding annual amount.
- (4) For the purposes of sub-paragraph (2) above "tenant's improvements" and "tenant's fixed equipment" have the same meanings as in paragraph 2 of Schedule 2 to the 1986 Act, except that—
- (a) any allowance made or benefit given by the landlord after the end of the relevant period in consideration of the execution of improvements wholly or partly at the expense of the tenant shall be disregarded for the purposes of subparagraph (2)(a) of that paragraph;
 - (b) any compensation received by the tenant after the end of the relevant period in respect of any improvement or fixed equipment shall be disregarded for the purposes of subparagraph (3) of that paragraph; and
 - (c) where paragraph 2 above applies in respect of any land, improvements or equipment which would be regarded as tenant's improvements or equipment on the termination of the former tenant's tenancy (if he were entitled to a payment under this Schedule in respect of that land) shall be regarded as the new tenant's improvements or equipment.

" Relevant period "

- 8 In this Schedule "the relevant period" means—
- (a) the period in relation to which the allocated quota was determined; or
 - (b) where it was determined in relation to more than one period, the period in relation to which the majority was determined or, if equal amounts were determined in relation to different periods, the later of those periods.

Valuation of milk quota

- 9 The value of milk quota to be taken into account for the purposes of paragraph 5 above is the value of the milk quota at the time of the termination of the tenancy in question and in determining that value at that time there shall be taken into account such evidence as is available, including evidence as to the sums being paid for interests in land—
- (a) in cases where milk quota is registered in relation to the land; and

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- (b) in cases where no milk quota is so registered.

PART III

SUPPLEMENTAL PROVISIONS

Determination of standard quota and tenant's fraction before end of tenancy

- 10 (1) Where, on the termination of a tenancy of any land, the tenant may be entitled to a payment under paragraph 1 above, the landlord or tenant may at any time before the termination of the tenancy by notice in writing served on the other demand that the determination of the standard quota for the land or the tenant's fraction shall be referred to arbitration.
- (2) On a reference under this paragraph the arbitrator shall determine the standard quota for the land or, as the case may be, the tenant's fraction (so far as determinable at the date of the reference).
- (3) Section 84 of the Agricultural Holdings Act 1986 (arbitrations) shall apply as if the matters mentioned in this paragraph were required by that Act to be determined by arbitration under that Act.

Settlement of tenant's claim on termination of tenancy

- 11 (1) Subject to the provisions of this paragraph, any claim arising under paragraph 1 above shall be determined by arbitration under the Agricultural Holdings Act 1986 and no such claim shall be enforceable unless before the expiry of the period of two months from the termination of the tenancy the tenant serves notice in writing on his landlord of his intention to make the claim.
- (2) The landlord and tenant may within the period of eight months from the termination of the tenancy by agreement in writing settle the claim but where the claim has not been settled during that period it shall be determined by arbitration under the Agricultural Holdings Act 1986.
- (3) In any case where on the termination of the tenancy in question a new tenancy of the land or part of the land may be granted to a different tenant by virtue of a direction under section 39 of the Agricultural Holdings Act 1986 then, as respects any claim in respect of that land or part, references in sub-paragraphs (1) and (2) above to the termination of the tenancy shall be construed as references to the following time, namely—
- (a) in a case where no application is made under that section within the period within which such an application may be made, the expiry of that period;
 - (b) in a case where every such application made within that period is withdrawn, the expiry of that period or the time when the last outstanding application is withdrawn (whichever is the later);
 - (c) in a case where the Agricultural Land Tribunal refuse every such application for a direction under that section, the time when the last outstanding application is refused; and
 - (d) in a case where the Tribunal give such a direction, the relevant time for the purposes of section 46 of that Act;
- and no notice may be served under sub-paragraph (1) above before that time.

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- (4) Where a tenant lawfully remains in occupation of part of the land subject to the tenancy after the termination of the tenancy or, in a case where sub-paragraph (3) above applies, after the time substituted for the termination of the tenancy by virtue of that sub-paragraph, the references in sub-paragraphs (1) and (2) above to the termination of the tenancy shall be construed as references to the termination of the occupation.
- (5) Section 84 of the Agricultural Holdings Act 1986 (arbitrations) shall apply as if the requirements of this paragraph were requirements of that Act, but paragraph 18 of Schedule 11 to that Act (arbitration award to fix day for payment not later than one month after award) shall have effect for the purposes of this paragraph as if for the words " one month " there were substituted the words " three months".
- (6) Where—
- (a) before the termination of the tenancy of any land the landlord and tenant have agreed in writing the amount of the standard quota for the land or the tenant's fraction or the value of milk quota which is to be used for the purpose of calculating the payment to which the tenant will be entitled under this Schedule on the termination of the tenancy; or
 - (b) the standard quota or the tenant's fraction has been determined by arbitration in pursuance of paragraph 10 above,
- the arbitrator determining the claim under this paragraph shall, subject to sub-paragraph (7) below, award payment in accordance with that agreement or determination.
- (7) Where it appears to the arbitrator that any circumstances relevant to the agreement or determination mentioned in subparagraph (6) above were materially different at the time of the termination of the tenancy from those at the time the agreement or determination was made, he shall disregard so much of the agreement or determination as appears to him to be affected by the change in circumstances.

Enforcement

- 12 Section 85 of the Agricultural Holdings Act 1986 (enforcement) and section 86(1), (3) and (4) of that Act (power of landlord to obtain charge on holding) shall apply to any sum which becomes due to a tenant by virtue of this Schedule as they apply to the sums mentioned in those sections.

Termination of tenancy of part of tenanted land

- 13 References in this Schedule to the termination of a tenancy of land include references to the resumption of possession of part of the land subject to the tenancy—
- (a) by the landlord by virtue of section 31 or 43(2) of the Agricultural Holdings Act 1986 (notice to quit part);
 - (b) by the landlord in pursuance of a provision in the contract of tenancy; or
 - (c) by a person entitled to a severed part of the reversionary estate in the land by virtue of a notice to quit that part given to the tenant by virtue of section 140 of the Law of Property Act 1925;
- and in the case mentioned in paragraph (c) above this Schedule shall apply as if the person resuming possession were the landlord of the land of which he resumes possession.

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Severing of reversionary estate

- 14 (1) Where the reversionary estate in the land is for the time being vested in more than one person in several parts, the tenant shall be entitled, on quitting all the land, to require that any amount payable to him under this Schedule shall be determined as if the reversionary estate were not so severed.
- (2) Where sub-paragraph (1) above applies, the arbitrator shall, where necessary, apportion the amount awarded between the persons who for the purposes of this Schedule together constitute the landlord of the land, and any additional costs of the award caused by the apportionment shall be paid by those persons in such proportions as the arbitrator may determine.

Powers of limited owners

- 15 Notwithstanding that a landlord of any land is not the owner in fee simple of the land or, in a case where his interest is an interest in a leasehold, that he is not absolutely entitled to the leasehold, he may for the purposes of this Schedule do anything which he might do if he were such an owner or, as the case may be, were so entitled.

Notices

- 16 (1) Any notice under this Schedule shall be duly served on the person on whom it is to be served if it is delivered to him, or left at his proper address, or sent to him by post in a registered letter or by the recorded delivery service.
- (2) Any such notice shall be duly served on an incorporated company or body if it is served on the secretary or clerk of the company or body.
- (3) Any such notice to be served on a landlord or tenant of any land shall, where an agent or servant is responsible for the control of the management or farming, as the case may be, of the land, be duly served if served on that agent or servant.
- (4) For the purposes of this paragraph and of section 7 of the Interpretation Act 1978 (service by post), the proper address of any person on whom any such notice is to be served shall, in the case of the secretary or clerk of an incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person in question.
- (5) Unless or until the tenant of any land has received—
- (a) notice that the person who before that time was entitled to receive the rents and profits of the land (" the original landlord ") has ceased to be so entitled; and
 - (b) notice of the name and address of the person who has become entitled to receive the rents and profits,
- any notice served on the original landlord by the tenant shall be deemed for the purposes of this Schedule to have been served on the landlord of the land.

Crown land

- 17 (1) The provisions of this Schedule shall apply to land which belongs to Her Majesty in right of the Crown or to the Duchy of Lancaster, the Duchy of Cornwall or a Government department or which is held in trust for Her Majesty for the purposes of

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a Government department, subject in each case to such modifications as the Minister may by regulations prescribe.

- (2) For the purposes of this Schedule—
- (a) as respects land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or the proper officer or body having charge of the land for the time being, or, if there is no such officer or body, such person as Her Majesty may appoint in writing under the Royal Sign Manual, shall represent Her Majesty and shall be deemed to be the landlord,
 - (b) as respects land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy shall represent Her Majesty and shall be deemed to be the landlord;
 - (c) as respects land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints shall represent the Duchy and shall be deemed to be the landlord and may do any act or thing which a landlord is authorised or required to do under this Act.
- (3) Any sum payable under this Schedule by the Duke of Cornwall (or any other possessor for the time being of the Duchy of Cornwall) may be raised and paid as if it were an expense incurred in permanently improving the possessions of the Duchy as mentioned in section 8 of the Duchy of Cornwall Management Act 1863.
- (4) Any sum payable under this Schedule by the Chancellor of the Duchy of Lancaster may—
- (a) be raised and paid as if it were an expense incurred in the improvement of land belonging to Her Majesty in right of the Duchy within section 25 of the Duchy of Lancaster Act 1817; or
 - (b) be paid out of the annual revenues of the Duchy.
- (5) The power to make regulations under this paragraph shall be exercisable by statutory instrument and any statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

- 18 (1) In this Schedule—
- " allocated quota " has the meaning given in paragraph 1(1) above;
 - " holding " has the same meaning as in the 1986 Regulations;
 - " landlord " means any person for the time being entitled to receive the rents and profits of any land and " sub-landlord " shall be construed accordingly;
 - " milk quota " means—
 - (a) in the case of a tenant registered in the direct sales register maintained under the 1986 Regulations, a direct sales quota (within the meaning of the 1986 Regulations); and
 - (b) in the case of a tenant registered in the wholesale register maintained under those Regulations, a wholesale quota (within the meaning of those Regulations);
 - " the Minister " means—
 - (a) in the case of land in England, the Minister of Agriculture, Fisheries and Food; and

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- (b) in the case of land in Wales, the Secretary of State;
 - " registered ", in relation to milk quota, means—
 - (a) in the case of direct sales quota (within the meaning of the 1986 Regulations) registered in the direct sales register maintained under those Regulations; and
 - (b) in the case of a wholesale quota (within the meaning of those Regulations) registered in a wholesale register maintained under those Regulations;
 - " relevant quota " has the meaning given in paragraph 1(2) above;
 - " standard quota " has the meaning given in paragraph 6 above;
 - " the 1986 Regulations " means the Dairy Produce Quotas Regulations 1986;
 - " tenancy " means a tenancy from year to year (including any arrangement which would have effect as if it were such a tenancy by virtue of section 2 of the Agricultural Holdings Act 1986 if it had not been approved by the Minister) or a tenancy to which section 3 of that Act applies (or would apply apart from section 5 of that Act); and " tenant " and " sub-tenant " shall be construed accordingly;
 - " tenant's fraction " has the meaning given in paragraph 7 above;
 - " termination ", in relation to a tenancy, means the cesser of the letting of the land in question or the agreement for letting the land, by reason of effluxion of time or from any other cause;
 - " transferred quota " has the meaning given in paragraph 1(2) above.
- (2) In this Schedule references to land used for the feeding of dairy cows kept on the land and to dairy cows have the same meaning as in paragraph 6 above.
- (3) The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Schedule.