



# Agricultural Holdings Act 1986

## 1986 CHAPTER 5

### PART IV **E+W**

#### SUCCESSION ON DEATH OR RETIREMENT OF TENANT

##### *Succession on death of tenant*

### 35 Application of sections 36 to 48. **E+W**

(1) Sections 36 to 48 below (except sections 40(5), 42 and 45(8) which are of general application) shall apply where—

- (a) an agricultural holding is held under a tenancy which falls within paragraph (a) or (b) of section 34(1) above, and
- (b) the sole (or sole surviving) tenant (within the meaning of that section) dies and is survived by a close relative of his.

(2) In sections 36 to 48 below [<sup>F1</sup>(and in Part I of Schedule 6 to this Act)]—

“close relative” of a deceased tenant means—

- (a) the wife [<sup>F2</sup>, husband or civil partner] of the deceased;
- (b) a brother or sister of the deceased;
- (c) a child of the deceased;
- (d) any person (not within (b) or (c) above) who, in the case of any marriage [<sup>F3</sup>or civil partnership] to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage [<sup>F3</sup>or civil partnership];

“the date of death” means the date of the death of the deceased;

“the deceased” means the deceased tenant of the holding;

“the holding” (except where the context otherwise requires) means the agricultural holding mentioned in subsection (1) above;

“related holding” means, in relation to the holding, any agricultural holding comprising the whole or a substantial part of the land comprised in the holding;

“the tenancy” means the tenancy of the holding.

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[<sup>F4</sup>(3) Where this Act applies in relation to a tenancy by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, the reference in subsection (2) above (in the definition of related holding) to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.]

#### Textual Amendments

- F1 Words in s. 35(2) omitted (11.11.2020 for specified purposes) by virtue of [Agriculture Act 2020](#) (c. 21), s. 57(1)(b)(c), [Sch. 3 para. 10](#)
- F2 S. 35(2): words in definition of "close relative" substituted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), s. 263(2), [Sch. 8 para. 36\(2\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}
- F3 S. 35(2): words in definition of "close relative" inserted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), s. 263(2), [Sch. 8 para. 36\(3\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}
- F4 S. 35(3) inserted (19.10.2006) by [The Regulatory Reform \(Agricultural Tenancies\) \(England and Wales\) Order 2006](#) (S.I. 2006/2805), [art. 4\(2\)](#) (with art. 10)

### 36 **Right of any eligible person to apply for new tenancy on death of tenant.** E+W

- (1) Any eligible person may apply under section 39 below to the Tribunal for a direction entitling him to a tenancy of the holding unless excluded by subsection (2) or section 37 or 38 below.
  - (2) Subsection (1) above (and section 41 below) shall not apply if on the date of death the holding was held by the deceased under—
    - (a) a tenancy for a fixed term of years of which more than twenty-seven months remained unexpired, or
    - (b) a tenancy for a fixed term of more than one but less than two years.
  - (3) For the purposes of this section and sections 37 to 48 below, “eligible person” means (<sup>F5</sup>subject to the provisions of Part I of Schedule 6 to this Act and) without prejudice to section 41 below) any surviving close relative of the deceased in whose case the following [<sup>F6</sup>conditions are][<sup>F6</sup>condition is] satisfied—
    - (a) in the seven years ending with the date of death his only or principal source of livelihood throughout a continuous period of not less than five years, or two or more discontinuous periods together amounting to not less than five years, derived from his agricultural work on the holding or on an agricultural unit of which the holding forms part, [<sup>F7</sup>and
    - (b) he is not the occupier of a commercial unit of agricultural land.]
  - (4) In the case of the deceased’s wife the reference in subsection (3)(a) above to the relative’s agricultural work shall be read as a reference to agricultural work carried out by either the wife or the deceased (or both of them).
- [<sup>F8</sup>(4A) In the case of the deceased’s civil partner the reference in subsection (3)(a) above to the relative’s agricultural work shall be read as a reference to agricultural work carried out by either the civil partner or the deceased (or both of them).]
- [<sup>F9</sup>(5) For the purposes of the condition in subsection (3)(a), any period during which a close relative of the deceased was, in the period of seven years mentioned in that condition, attending a full-time course at a university, college or other establishment of higher or further education shall be treated as a period throughout which the relative’s only or principal source of livelihood derived from the relative’s agricultural work on

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the holding; but not more than three years in all shall be so treated by virtue of this subsection.]

- [<sup>F10</sup>(6) The reference in subsection (3)(a) above to agricultural work carried out by a person on the holding or on an agricultural unit of which the holding forms part includes—
- (a) agricultural work carried out by him from the holding or an agricultural unit of which the holding forms part, and
  - (b) other work carried out by him on or from the holding or an agricultural unit of which the holding forms part,
- which is of a description approved in writing by the landlord after the commencement of this subsection.]

#### Textual Amendments

- F5** Words in s. 36(3) omitted (11.11.2020 for specified purposes) by virtue of [Agriculture Act 2020 \(c. 21\), s. 57\(1\)\(b\)\(c\), Sch. 3 para. 11\(2\)\(a\)](#)
- F6** Words in s. 36(3) substituted (11.11.2020 for specified purposes) by [Agriculture Act 2020 \(c. 21\), s. 57\(1\)\(b\)\(c\), Sch. 3 para. 11\(2\)\(b\)](#)
- F7** S. 36(3)(b) and word omitted (11.11.2020 for specified purposes) by virtue of [Agriculture Act 2020 \(c. 21\), s. 57\(1\)\(b\)\(c\), Sch. 3 para. 11\(2\)\(c\)](#)
- F8** S. 36(4A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\), Sch. 8 para. 37; S.I. 2005/3175](#), {art. 2(1), Sch. 1}
- F9** S. 36(5) substituted (11.11.2020 for specified purposes) by [Agriculture Act 2020 \(c. 21\), s. 57\(1\)\(b\)\(c\), Sch. 3 para. 11\(3\)](#)
- F10** S. 36(6) inserted (19.10.2006) by [The Regulatory Reform \(Agricultural Tenancies\) \(England and Wales\) Order 2006 \(S.I. 2006/2805\), art. 5\(1\)](#) (with art. 10)

### 37 Exclusion of statutory succession where two successions have already occurred. **E+W**

- (1) Section 36(1) above (and section 41 below) shall not apply if on each of the last two occasions when there died a sole (or sole surviving) tenant of the holding or of a related holding there occurred one or other of the following things, namely—
- (a) a tenancy of the holding or of a related holding was obtained by virtue of a direction of the Tribunal under section 39 below, or such a tenancy was granted (following such a direction) in circumstances within section 45(6) below, or
  - (b) a tenancy of the holding or of a related holding was granted by the landlord to a person who, being a close relative of the tenant who died on that occasion, was or had become the sole or sole remaining applicant for such a direction.
- (2) If on any occasion prior to the date of death, as a result of an agreement between the landlord and the tenant for the time being of the holding or of a related holding, the holding or a related holding became let—
- (a) under a tenancy granted by the landlord, or
  - (b) by virtue of an assignment of the current tenancy,
- to a person who, if the said tenant had died immediately before the grant or assignment would have been his close relative, that occasion shall for the purposes of subsection (1) above be deemed to be an occasion such as is mentioned in that subsection on which a tenancy of the holding or a related holding was obtained by virtue of a direction of the Tribunal under section 39 below.

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- (3) If any such tenancy was granted as mentioned in subsection (2) above for a term commencing later than the date of the grant, the holding under that tenancy shall for the purposes of that subsection not be taken to have become let under that tenancy until the commencement of the term.
- (4) Subsections (1) and (2) above—
- (a) shall apply whether or not any tenancy granted or obtained (otherwise than by virtue of an assignment) as mentioned in those provisions related to the whole of the land held by the tenant on the occasion of whose death, or with whose agreement, the tenancy was so granted or obtained, as the case may be, and
  - (b) shall apply where a joint tenancy is granted by the landlord to persons one of whom is a person such as is mentioned in either of those subsections as they apply where a tenancy is granted by the landlord to any such person alone.
- (5) Subsection (2) above shall apply where a tenancy is assigned to joint tenants one of whom is a person such as is mentioned in that subsection as it applies where a tenancy is assigned to any such person alone.
- (6) Where a tenancy of the holding or of a related holding was obtained by virtue of a direction of the Tribunal under section 53(7) below, that occasion shall for the purposes of subsection (1) above be deemed to be an occasion such as is mentioned in that subsection on which a tenancy of the holding or a related holding was obtained by virtue of a direction of the Tribunal under section 39 below.
- (7) Subsection (2) above shall, in relation to any time before 12th September 1984, have effect with the substitution for the words from “as a result” to “grant or assignment” of the words “the holding or a related holding became let under a new tenancy granted by the landlord, with the agreement of the outgoing tenant, to a person who, if the outgoing tenant had died immediately before the grant”.
- (8) Subsections (4) and (5) above shall not apply in relation to any tenancy if—
- (a) it was granted before 12th September 1984,
  - (b) it was obtained by virtue of any direction given in any proceedings arising out of an application made under Part II of the <sup>M1</sup>Agriculture (Miscellaneous Provisions) Act 1976 before 12th September 1984, or
  - (c) it was granted (following such a direction) in circumstances within section 23(6) of the said Act of 1976.
- (9) In this section “tenant” has the same meaning as in section 34 above.

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**Marginal Citations**

**M1** 1976 c. 55.

**38 Other excluded cases. E+W**

- (1) Section 36(1) above (and section 41 below) shall not apply if on the date of death the tenancy is the subject of a valid notice to quit to which subsection (1) of section 26 above applies, being a notice given before that date in the case of which—
- (a) the month allowed by that subsection for serving a counter-notice under that subsection expired before that date without such a counter-notice having been served, or

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- (b) the Tribunal consented before that date to its operation.
- (2) Section 36(1) (and section 41) shall not apply if on the date of death the tenancy is the subject of a valid notice to quit given before that date and falling within Case C or F.
- (3) Those sections shall not apply if on the date of death the tenancy is the subject of a valid notice to quit given before that date and falling within Case B, D or E, and
  - (a) the time within which the tenant could have required any question arising in connection with the notice to be determined by arbitration under this Act expired before that date without such a requirement having been made by the tenant, and the month allowed for serving any counter-notice in respect of the notice expired before that date without any such counter-notice having been served, or
  - (b) questions arising in connection with the notice were referred to arbitration under this Act before that date and were determined before that date in such a way as to uphold the operation of the notice and (where applicable) the month allowed for serving any counter-notice in respect of the notice expired before that date without a counter-notice having been served, or
  - (c) the Tribunal consented before that date to the operation of the notice.
- (4) Those sections shall not apply if the holding consists of land held by a smallholdings authority or the Minister for the purposes of smallholdings within the meaning of Part III of the <sup>M2</sup>Agriculture Act 1970 (whether the tenancy was granted before or after the commencement of the said Part III).
- (5) Those sections shall not apply if the tenancy was granted by trustees in whom the land is vested on charitable trusts the sole or principle object of which is the settlement or employment in agriculture of persons who have served in any of Her Majesty's naval, military or air forces.

**Marginal Citations**

M2 1970 c. 40.

**39 Applications for tenancy of holding. E+W**

- (1) An application under this section by an eligible person to the Tribunal for a direction entitling him to a tenancy of the holding shall be made within the period of three months beginning with the day after the date of death.
- (2) Where only one application is made under this section the Tribunal, if satisfied—
  - (a) that the applicant was an eligible person at the date of death, and
  - (b) that he has not subsequently ceased to be such a person,shall determine whether he is in their opinion a suitable person to become the tenant of the holding.
- (3) Where two or more applications are made under this section, then, subject to subsection (4) below, subsection (2) above shall apply to each of the applicants as if he were the only applicant.
- (4) If the applicants under this section include a person validly designated by the deceased in his will as the person he wished to succeed him as tenant of the holding, the Tribunal shall first make a determination under subsection (2) above as regards that person,

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- and shall do so as regards the other applicant or each of the other applicants only if the Tribunal determine that the person so designated is not in their opinion a suitable person to become the tenant of the holding.
- (5) If under the preceding provisions of this section only one applicant is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, the Tribunal shall, subject to subsection (10) and section 44 below, give a direction entitling him to a tenancy of the holding.
- (6) If under the preceding provisions of this section each of two or more applicants is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, the Tribunal—
- (a) shall, subject to subsection (9) below, determine which of those applicants is in their opinion the more or most suitable person to become the tenant of the holding, and
  - (b) shall, subject to subsection (10) and section 44 below, give a direction entitling that applicant to a tenancy of the holding.
- (7) Before making a determination under subsection (2) above in the case of any applicant the Tribunal shall afford the landlord an opportunity of stating his views on the suitability of that applicant.
- [<sup>F11</sup>(8) For the purposes of this section, a person's suitability to become the tenant of a holding is to be determined (having regard to any views stated by the landlord) in accordance with criteria specified in regulations made by—
- (a) the Secretary of State, in relation to England, and
  - (b) the Welsh Ministers, in relation to Wales.
- (8A) The criteria referred to in subsection (8) must relate to the person's likely capacity to farm the holding commercially to high standards of efficient production and care for the environment, and may in particular include—
- (a) criteria relating to the person's experience, training or skills in agriculture or business management;
  - (b) criteria relating to the person's physical health, financial standing or character;
  - (c) criteria relating to the character or condition of the holding or the terms of the tenancy.]

(9) Where subsection (6) above would apply apart from this subsection, the Tribunal may, with the consent of the landlord, give instead a direction specifying any two, any three or any four of the applicants within that subsection, and entitling the specified applicants to a joint tenancy of the holding.

(10) Where the person or persons who would, subject to section 44 below, be entitled to a direction under this section entitling him or them to a tenancy or (as the case may be) to a joint tenancy of the holding agree to accept instead a tenancy or joint tenancy of a part of the holding, any direction given by the Tribunal under subsection (5), (6) or (9) above shall relate to that part of the holding only.

#### **Textual Amendments**

- F11** S. 39(8)(8A) substituted for s. 39(8) (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. 17](#) (with transitional provision (17.3.2021) in [S.I. 2021/324](#), regs. 1(1), 2)



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#### 40 Provisions supplementary to section 39. **E+W**

- (1) In section 39 above “will” includes codicil, and for the purposes of that section a person shall be taken to be validly designated by the deceased in his will as the person he wishes to succeed him as tenant of the holding if, but only if, a will of the deceased which is the subject of a grant of probate or administration—
  - (a) contains an effective specific bequest to that person of the deceased’s tenancy of the holding, or
  - (b) does not contain an effective specific bequest of that tenancy, but does contain a statement specifically mentioning the holding or the deceased’s tenancy of the holding and exclusively designating that person (in whatever words, and whether by name or description) as the person whom the deceased wishes to succeed him as tenant of the holding.
- (2) For the purposes of subsection (1) above a statement which is framed so as to designate as mentioned in paragraph (b) of that subsection different persons in different circumstances shall be taken to satisfy that paragraph if, in the events which have happened, the statement exclusively designates a particular person.
- (3) A direction under section 39 above given in favour of a person by reason of his being a person validly designated by the deceased as mentioned in subsection (4) of that section shall be valid even if the probate or administration by virtue of which he was such a person at the giving of the direction is subsequently revoked or varied.
- (4) For the purposes of this Part of this Act an application under section 39 above which is withdrawn or abandoned shall be treated as if it had never been made.
- [<sup>F12</sup>(5) Provision shall be made by Tribunal Procedure Rules and by order under section 73(3) of the Agriculture Act 1947 (procedure of Agricultural Land Tribunal) for requiring any person making an application to the Tribunal under section 39 or section 41 to give notice of the application to the landlord of the agricultural holding to which the application relates and to take such steps as the rules or the order may require for bringing the application to the notice of other persons interested in the outcome of the application.]

#### Textual Amendments

- F12** S. 40(5) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 205](#) (with [Sch. 3](#))

#### 41 Application by not fully eligible person to be treated as eligible. **E+W**

- (1) This section applies to any surviving close relative of the deceased who for some part of the seven years ending with the date of death engaged (whether full-time or part-time) in agricultural work on the holding, being a person in whose case—
  - [<sup>F13</sup>(a) the condition specified in paragraph (b) of the definition of “eligible person” in section 36(3) above is satisfied, and]
  - (b) the condition specified in paragraph (a) of that definition, though not fully satisfied, is satisfied to a material extent.
- (2) A person to whom this section applies may within the period of three months beginning with the day after the date of death apply to the Tribunal for a determination that he is to be treated as an eligible person for the purposes of sections 36 to 48 of this Act.

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- (3) If on an application under this section—
- (a) the Tribunal are satisfied that the applicant is a person to whom this section applies, and
  - (b) it appears to the Tribunal that in all the circumstances it would be fair and reasonable for the applicant to be able to apply under section 39 above for a direction entitling him to a tenancy of the holding,
- the Tribunal shall determine that he is to be treated as an eligible person for the purposes of sections 36 to 48 of this Act, but shall otherwise dismiss the application.
- (4) In relation to a person in respect of whom the Tribunal have determined as mentioned in subsection (3) above sections 36 to 48 of this Act shall apply as if he were an eligible person.
- (5) A person to whom this section applies may make an application under section 39 above as well as an application under this section; and if the Tribunal determine as mentioned in subsection (3) above in respect of a person who has made an application under that section, the application under that section shall (without prejudice to subsection (4) above) be treated as made by an eligible person.
- (6) Without prejudice to the generality of paragraph (b) of subsection (1) above, cases where the condition mentioned in that paragraph might be less than fully satisfied include cases where the close relative's agricultural work on the holding fell short of providing him with his principal source of livelihood because the holding was too small.
- [<sup>F14</sup>(7) The references in subsections (1) and (6) above to agricultural work carried out by a person on the holding include—
- (a) agricultural work carried out by him from the holding, and
  - (b) other work carried out by him on or from the holding,
- which is of a description approved in writing by the landlord after the commencement of this subsection.]

#### Textual Amendments

**F13** S. 41(1)(a) omitted (11.11.2020 for specified purposes) by virtue of [Agriculture Act 2020 \(c. 21\)](#), s. 57(1)(b)(c), [Sch. 3 para. 12](#)

**F14** S. 41(7) inserted (19.10.2006) by [The Regulatory Reform \(Agricultural Tenancies\) \(England and Wales\) Order 2006 \(S.I. 2006/2805\)](#), [art. 5\(2\)](#) (with [art. 10](#))

#### [<sup>F15</sup>42 Procedure where deceased held more than one holding. **E+W**

- (1) This section has effect where at the expiry of the period of three months beginning with the day after the date of death of a tenant there are pending before the First-tier Tribunal, or the Agricultural Land Tribunal, or both of them, separate applications made under section 39 above by any person or (as the case may be) by each one of a number of persons, in respect of more than one agricultural land holding.
- (2) If the applications are pending in both the First-tier Tribunal and the Agricultural Land Tribunal, they (together with any associated application made under section 41 above) shall be heard and determined by—
  - (a) the First-tier Tribunal, if the largest holding is in England, and



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- (b) the Agricultural Land Tribunal, if the largest holding is in Wales.
- (3) The order in which the applications (together with any associated application made under section 41 above) are heard and determined shall, subject to and in accordance with the provisions of any such order as is referred to in section 40(5) above, be such as may be decided—
  - (a) where the applications were made by one person, by that person,
  - (b) where the applications were made by two or more persons, by agreement between those persons or, in default of agreement—
    - (i) by the First-tier Tribunal (if that tribunal is hearing and determining the applications), or
    - (ii) by the chairman of the Agricultural Land Tribunal (if that tribunal is hearing and determining the applications).
- (4) Any decision under subsection (3)(b)(i) or (ii) shall be made according to the respective size of the holdings concerned so that any application in respect of any holding which is larger than any of those holdings shall be heard and determined before any application in respect of that other holding.]

#### Textual Amendments

**F15** S. 42 substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 206](#) (with [Sch. 3](#))

#### 43 **Restriction on operation of notice to quit given by reason of death of tenant.** **E** **+W**

- (1) A notice to quit the holding given to the tenant of the holding by reason of the death of the deceased and falling within Case G shall not have effect unless—
  - (a) no application to become the tenant of the holding is made (or has already at the time of the notice to quit been made) under section 39 above within the period mentioned in subsection (1) of that section, or
  - (b) one or more such applications having been made within that period—
    - (i) none of the applicants is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, or
    - (ii) the Tribunal consent under section 44 below to the operation of the notice to quit in relation to the whole or part of the holding.
- (2) Where the Tribunal consent under section 44 below to the operation of a notice to quit to which subsection (1) above applies in relation to part only of the holding, the notice shall have effect accordingly as a notice to quit that part and shall not be invalid by reason that it relates only to part of the holding.

#### 44 **Opportunity for landlord to obtain Tribunal's consent to operation of notice to quit.** **E+W**

- (1) Before giving a direction under section 39(5) or (6) above in a case where a notice to quit to which section 43(1) above applies has been given the Tribunal shall afford the landlord an opportunity of applying for their consent under this section to the operation of the notice.

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- (2) Subject to subsection (5) below, section 27 above shall apply in relation to an application for, or the giving of, the Tribunal's consent under this section as it applies in relation to an application for, or the giving of, their consent under section 26 above.
- (3) The Tribunal shall not entertain an application for their consent to the operation of a notice to quit to which section 43(1) above applies unless it is made in pursuance of subsection (1) above.
- (4) Subject to subsection (5) below, if the Tribunal give their consent on an application made in pursuance of subsection (1) above, they shall dismiss the application or each of the applications made under section 39 above.
- (5) Where in any case—
  - (a) a notice to quit to which section 43(1) above applies has been given, and
  - (b) section 39(10) above applies,
 the Tribunal shall give their consent to the operation of the notice to quit in relation to the part of the holding which would, in accordance with section 39(10), be excluded from any direction given by the Tribunal with respect to the holding under section 39; and subsections (2) and (4) above shall not apply.
- (6) If on an application made in pursuance of subsection (1) above the Tribunal give their consent to the operation of a notice to quit—
  - (a) within the period of three months ending with the date on which the notice purports to terminate the tenancy ("the original operative date"), or
  - (b) at any time after that date,
 the Tribunal may, on the application of the tenant, direct that the notice shall have effect from a later date ("the new operative date").
- (7) The new operative date, in the case of a notice to quit, must be a date not later than the end of the period of three months beginning with—
  - (a) the original operative date, or
  - (b) the date on which the Tribunal give their consent to the operation of the notice, whichever last occurs.

#### **45 Effect of direction under section 39. E+W**

- (1) A direction by the Tribunal—
  - (a) under section 39(5) or (6) above entitling an applicant to a tenancy of the holding, or
  - (b) under section 39(9) above entitling two or more applicants to a joint tenancy of the holding,
 shall entitle him or them to a tenancy or joint tenancy of the holding as from the relevant time on the terms provided by sections 47 and 48 below; and accordingly such a tenancy or joint tenancy shall be deemed to be at that time granted by the landlord to, and accepted by, the person or persons so entitled.
- (2) Where the deceased's tenancy was not derived from the interest held by the landlord at the relevant time, the tenancy or joint tenancy deemed by virtue of subsection (1) above to be granted to, and accepted by, the person or persons so entitled shall be deemed to be granted by the person for the time being entitled to the interest from which the deceased's tenancy was derived, instead of by the landlord, with like effect

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as if the landlord's interest and any other supervening interest were not subsisting at the relevant time.

- (3) The reference in subsection (2) above to a supervening interest is a reference to any interest in the land comprised in the deceased's tenancy, being an interest created subsequently to that tenancy and derived (whether immediately or otherwise) from the interest from which that tenancy was derived and still subsisting at the relevant time.
- (4) Subsection (2) above shall not be read as affecting the rights and liabilities of the landlord under this Part of this Act.
- (5) Any tenancy of the holding inconsistent with the tenancy to which a direction such as is mentioned in subsection (1) above entitles the person or persons concerned shall, if it would not cease at the relevant time apart from this subsection, cease at that time as if terminated at that time by a valid notice to quit given by the tenant.
- (6) If the person or persons whom such a direction entitles to a tenancy or joint tenancy of the holding as from the relevant time becomes or become the tenant or joint tenants of the holding before that time under a tenancy granted by the landlord to, and accepted by, the person or persons concerned, the direction shall cease to have effect and section 48 below shall not apply.
- (7) The rights conferred on any person by such a direction (as distinct from his rights under his tenancy of the holding after he has become the tenant or joint tenant of the holding) shall not be capable of assignment.
- (8) The Lord Chancellor may by regulations provide for all or any of the provisions of sections 36 to 48 of this Act (except this subsection) to apply, with such exceptions, additions or other modifications as may be specified in the regulations, in cases where the person or any of the persons whom such a direction entitles to a tenancy or joint tenancy of the holding dies before the relevant time.

#### 46 Interpretation of section 45. **E+W**

- (1) Subject to subsection (2) below, in sections 45 above and 48 below "the relevant time"—
  - (a) except where the following paragraph applies, means the end of the twelve months immediately following the end of the year of tenancy in which the deceased died,
  - (b) if a notice to quit the holding was given to the tenant by reason of the death of the deceased, being a notice falling within Case G which, apart from section 43 above, would have terminated the tenancy at a time after the end of those twelve months, means that time.
- (2) Where the Tribunal give a direction under section 39(5), (6) or (9) above in relation to the holding at any time after the beginning of the period of three months ending with the relevant time apart from this subsection ("the original relevant time"), then—
  - (a) if the direction is given within that period, the Tribunal may, on the application of the tenant, specify in the direction, as the relevant time for the purposes of this section and section 48 below, such a time falling within the period of three months immediately following the original relevant time as they think fit,
  - (b) if the direction is given at any time after the original relevant time the Tribunal shall specify in the direction, as the relevant time for those purposes, such a

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time falling within the period of three months immediately following the date of the giving of the direction as they think fit,  
and any time so specified shall be the relevant time for those purposes accordingly.

- (3) Where in accordance with section 39(10) above, the tenancy to which a direction under that section entitles the person or persons concerned is a tenancy of part of the deceased's holding, references in sections 45 above and 48 below to the holding shall be read as references to the whole of the deceased's holding or to the part of that holding to which the direction relates, as the context requires.

**<sup>F16</sup>47 Terms of new tenancy unless varied by arbitration [<sup>F16</sup>or third party determination ]. E+W**

- (1) Subject to the provisions of this section and section 48 below, the terms of the tenancy or joint tenancy to which a direction under section 39(5), (6) or (9) above entitles the person or persons concerned shall be the same as the terms on which the holding was let immediately before it ceased to be let under the contract of tenancy under which it was let at the date of death.
- (2) If on the date of death the holding was held by the deceased under a tenancy for a fixed term of years, subsection (1) above shall have effect as if the tenancy under which the holding was let at the date of death had before that date become a tenancy from year to year on (with that exception) the terms of the actual tenancy as far as applicable.
- (3) If the terms of the tenancy to which such a direction entitles the person or persons concerned would not, apart from this subsection, include a covenant by the tenant or each of the tenants not to assign, sub-let or part with possession of the holding or any part of it without the landlord's consent in writing, subsection (1) above shall have effect as if those terms included such a covenant.

**Textual Amendments**

**F16** Words in s. 47 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. 15](#)

**<sup>F17</sup>48 Arbitration [<sup>F17</sup>or third party determination ] on terms of new tenancy. E+W**

- (1) Where the Tribunal give a direction such as is mentioned in subsection (1) of section 45 above, the provisions of this section shall apply unless excluded by subsection (6) of that section.
- (2) In the following provisions of this section—
- “the landlord” means the landlord of the holding;
- “the prescribed period” means the period between the giving of the direction and—
- (a) the end of the three months immediately following the relevant time, or
- (b) the end of the three months immediately following the date of the giving of the direction,
- whichever last occurs;
- “the relevant time” has the meaning given by subsection (1) or (as the case may require) subsection (2) of section 46 above;

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“the tenant” means the person or persons entitled to a tenancy or joint tenancy of the holding by virtue of the direction;

and references to the holding shall be read in accordance with section 46(3) above.

- [<sup>F18</sup>(3) Where the provisions of this section apply—
- (a) the landlord or tenant may by notice in writing served on the other within the prescribed period demand a reference to arbitration under this Act of one or both of the questions specified in subsection (4) below, or
  - (b) the landlord and tenant may refer for third party determination under this Act one or both of those questions.]
- (4) Those questions (referred to in the following provisions of this section as “question (a)” and “question (b)” respectively) are—
- (a) what variations in the terms of the tenancy which the tenant is entitled to or has obtained by virtue of the direction are justifiable having regard to the circumstances of the holding and the length of time since the holding was first let on those terms;
  - (b) what rent should be or should have been properly payable in respect of the holding at the relevant time.
- (5) Where question (a) is referred to arbitration [<sup>F19</sup>or third party determination] under subsection (3) above (with or without question (b)), the arbitrator [<sup>F20</sup>or (as the case may be) the third party ]—
- (a) shall determine what variations, if any, in the terms mentioned in that question are justifiable as there mentioned, and
  - (b) without prejudice to the preceding paragraph, shall include in his award [<sup>F21</sup>or determination] such provisions, if any, as are necessary—
    - (i) for entitling the landlord to recover from the tenant under those terms a sum equal to so much as is in all the circumstances fair and reasonable of the aggregate amount of the compensation mentioned in subsection (8)(a) below, and
    - (ii) for entitling the tenant to recover from the landlord under those terms a sum equal to so much as is in all the circumstances fair and reasonable of the aggregate amount of the compensation mentioned in subsection (8)(b) below,and shall accordingly, with effect from the relevant time, vary those terms in accordance with his determination or direct that they are to remain unchanged.
- (6) Where question (a) but not question (b) is referred to arbitration [<sup>F22</sup>or third party determination] under subsection (3) above and it appears to the arbitrator [<sup>F23</sup> or (as the case may be) the third party] that by reason of any provision included in his award [<sup>F24</sup>or determination] under subsection (5) above (not being a provision of a kind mentioned in paragraph (b) of that subsection) it is equitable that the rent of the holding should be varied, he may vary the rent accordingly with effect from the relevant time.
- (7) Where question (b) is referred to arbitration [<sup>F25</sup>or third party determination] under subsection (3) above (with or without question (a)), the arbitrator [<sup>F26</sup>or (as the case may be) the third party] shall determine what rent should be or should have been properly payable in respect of the holding at the relevant time and accordingly shall, with effect from that time, increase or reduce the rent which would otherwise be or have been payable or direct that it shall remain unchanged.
- (8) The compensation referred to in subsection (5)(b) above is—

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- (a) the compensation paid or payable by the landlord, whether under this Act or under agreement or custom, on the termination of the deceased's tenancy of the holding,
  - (b) the compensation paid or payable to the landlord, whether under this Act or under agreement, on that termination in respect of any such dilapidation or deterioration of, or damage to, any part of the holding or anything in or on the holding as the tenant is or will be liable to make good under the terms of his tenancy.
- (9) For the purposes of this section the rent properly payable in respect of the 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 all relevant factors, including (in every case) the terms of the tenancy or prospective tenancy (including those relating to rent) and any such other matters as are specifically mentioned in subparagraph (1) of paragraph 1 of Schedule 2 to this Act (read with sub-paragraphs (2) and (3) of that paragraph).
- (10) On any reference under subsection (3) above the arbitrator may include in his award [<sup>F27</sup>or (as the case may be) the third party may include in his determination] such further provisions, if any, relating to the tenancy which the tenant is entitled to or has obtained by virtue of the direction as may be agreed between the landlord and the tenant.
- (11) If the award of an arbitrator [<sup>F28</sup>or (as the case may be) the determination of a third party] under this section is made before the relevant time, section 47(1) above shall have effect subject to, and in accordance with, the award [<sup>F29</sup>or determination].
- (12) If the award of an arbitrator [<sup>F30</sup>or (as the case may be) the determination of a third party ] under this section is made after the relevant time, it shall have effect as if the terms of the award [<sup>F31</sup>or determination] were contained in an agreement in writing entered into by the landlord and the tenant and having effect as from the relevant time.

#### **Textual Amendments**

- F17** Words in s. 48 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. 16\(9\)](#)
- F18** S. 48(3) substituted (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. 16\(2\)](#)
- F19** Words in s. 48(5) 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. 16\(3\)\(a\)\(i\)](#)
- F20** Words in s. 48(5) 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. 16\(3\)\(a\)\(ii\)](#)
- F21** Words in s. 48(5)(b) 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. 16\(3\)\(b\)](#)
- F22** Words in s. 48(6) 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. 16\(4\)\(a\)](#)
- F23** Words in s. 48(6) 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. 16\(4\)\(b\)](#)
- F24** Words in s. 48(6) 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. 16\(4\)\(c\)](#)
- F25** Words in s. 48(7) 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. 16\(5\)\(a\)](#)
- F26** Words in s. 48(7) 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. 16\(5\)\(b\)](#)



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- F27** Words in s. 48(10) 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. 16\(6\)](#)
- F28** Words in s. 48(11) 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. 16\(7\)\(a\)](#)
- F29** Words in s. 48(11) 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. 16\(7\)\(b\)](#)
- F30** Words in s. 48(12) 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. 16\(8\)\(a\)](#)
- F31** Words in s. 48(12) 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. 16\(8\)\(b\)](#)

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