

SCHEDULES

SCHEDULE 11

Sections 84 and 94.

ARBITRATIONS

Appointment and remuneration of arbitrator

- 1 (1) The arbitrator shall be a person appointed by agreement between the parties or, in default of agreement, a person appointed on the application of either of the parties by the President of the Royal Institution of Chartered Surveyors (referred to in this Schedule as " the President") from among the members of the panel constituted for the purposes of this paragraph.
- (2) No application may be made to the President for an arbitrator to be appointed by him under this paragraph unless the application is accompanied by such fee as may be prescribed as the fee for such an application; but once the fee has been paid in connection with any such application no further fee shall be payable in connection with any subsequent application for the President to exercise any function exercisable by him in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him in an appropriate case of a new arbitrator).
- (3) Any such appointment by the President shall be made by him as soon as possible after receiving the application; but where the application is referable to a demand for arbitration made under section 12 of this Act any such appointment shall in any event not be made by him earlier than four months before the next termination date following the date of the demand (as defined by subsection (4) of that section).
- (4) A person appointed by the President as arbitrator shall, where the arbitration relates to an agricultural holding in Wales, be a person who possesses a knowledge of Welsh agricultural conditions, and, if either party to the arbitration so requires, a knowledge also of the Welsh language.
- (5) For the purposes of this Schedule there shall be constituted a panel consisting of such number of persons as the Lord Chancellor may determine, to be appointed by him.
- 2 If the arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.
- 3 In relation to an arbitrator who is appointed in place of another arbitrator (whether under paragraph 2 above or otherwise) the reference in section 12(2) of this Act to the date of the reference shall be construed as a reference to the date when the original arbitrator was appointed.
- 4 Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party; and his appointment shall not be revoked by the death of either party.
- 5 Every appointment, application, notice, revocation and consent under the foregoing paragraphs must be in writing.

- 6 The remuneration of the arbitrator shall be—
- (a) where he is appointed by agreement between the parties, such amount as may be agreed upon by him and the parties or, in default of agreement, fixed by the registrar of the county court (subject to an appeal to the judge of the court) on an application made by the arbitrator or either of the parties,
 - (b) where he is appointed by the President, such amount as may be agreed upon by the arbitrator and the parties or, in default of agreement, fixed by the President,
- and shall be recoverable by the arbitrator as a debt due from either of the parties to the arbitration.

Conduct of proceedings and witnesses

- 7 The parties to the arbitration shall, within thirty-five days from the appointment of the arbitrator, deliver to him a statement of their respective cases with all necessary particulars and—
- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said thirty-five days except with the consent of the arbitrator,
 - (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.
- 8 The parties to the arbitration and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute and shall, subject to any such objection, produce before the arbitrator all samples and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbitrator may require.
- 9 Witnesses appearing at the arbitration shall, if the arbitrator thinks fit, be examined on oath or affirmation, and the arbitrator shall have power to administer oaths to, or to take the affirmation of, the parties and witnesses appearing.
- 10 The provisions of county court rules as to the issuing of witness summonses shall, subject to such modifications as may be prescribed by such rules, apply for the purposes of the arbitration as if it were an action or matter in the county court.
- 11 (1) Subject to sub-paragraphs (2) and (3) below, any person who—
- (a) having been summoned in pursuance of county court rules as a witness in the arbitration refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced, or
 - (b) having been so summoned or being present at the arbitration and being required to give evidence, refuses to be sworn or give evidence,
- shall forfeit such fine as the judge of the county court may direct.
- (2) A judge shall not have power under sub-paragraph (1) above to direct that a person shall forfeit a fine of an amount exceeding £10.
- (3) No person summoned in pursuance of county court rules as a witness in the arbitration shall forfeit a fine under this paragraph unless there has been paid or tendered to him at the time of the service of the summons such sum in respect of his expenses (including, in such cases as may be prescribed by county court rules,

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compensation for loss of time) as may be so prescribed for the purposes of section 55 of the County Courts Act 1984.

- (4) The judge of the county court may at his discretion direct that the whole or any part of any such fine, after deducting costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.
- 12 (1) Subject to sub-paragraph (2) below, the judge of the county court may, if he thinks fit, upon application on affidavit by either party to the arbitration, issue an order under his hand for bringing up before the arbitrator any person (in this paragraph referred to as a "prisoner") confined in any place under any sentence or under committal for trial or otherwise, to be examined as a witness in the arbitration.
- (2) No such order shall be made with respect to a person confined under process in any civil action or matter.
- (3) Subject to sub-paragraph (4) below, the prisoner mentioned in any such order shall be brought before the arbitrator under the same custody, and shall be dealt with in the same manner in all respects, as a prisoner required by a writ of habeas corpus to be brought before the High Court and examined there as a witness.
- (4) The person having the custody of the prisoner shall not be bound to obey the order unless there is tendered to him a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner in going to, remaining at, and returning from, the place where the arbitration is held.
- 13 The High Court may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before the arbitrator, if the prisoner is confined in any prison under process in any civil action or matter.

Award

- 14 (1) Subject to sub-paragraph (2) below, the arbitrator shall make and sign his award within fifty-six days of his appointment.
- (2) The President may from time to time enlarge the time limited for making the award, whether that time has expired or not.
- 15 The arbitrator may if he thinks fit make an interim award for the payment of any sum on account of the sum to be finally awarded.
- 16 The arbitrator shall—
- (a) state separately in the award the amounts awarded in respect of the several claims referred to him, and
 - (b) on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award.
- 17 Where by virtue of this Act compensation under an agreement is to be substituted for compensation under this Act for improvements or for any such matters as are specified in Part II of Schedule 8 to this Act, the arbitrator shall award compensation in accordance with the agreement instead of in accordance with this Act.
- 18 The award shall fix a day not later than one month after the delivery of the award for the payment of the money awarded as compensation, costs or otherwise.
- 19 The award shall be final and binding on the parties and the persons claiming under them respectively.

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- 20 The arbitrator shall have power to correct in the award any clerical mistake or error arising from any accidental slip or omission.

Reasons for award

- 21 Section 12 of the Tribunals and Inquiries Act 1971 (reasons to be given for decisions of tribunals etc.) shall apply in relation to the award of an arbitrator appointed under this Schedule by agreement between the parties as it applies in relation to the award of an arbitrator appointed under this Schedule otherwise than by such agreement.

Interest on awards

- 22 Any sum directed to be paid by the award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Costs

- 23 The costs of, and incidental to, the arbitration and award shall be in the discretion of the arbitrator who may direct to and by whom and in what manner the costs, or any part of the costs, are to be paid.

- 24 On the application of either party, any such costs shall be taxable in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may be directed by the arbitrator under paragraph 23 above, or, in the absence of any such direction, by the county court

- 25 (1) The arbitrator shall, in awarding costs, take into consideration—
- (a) the reasonableness or unreasonableness of the claim of either party, whether in respect of amount or otherwise,
 - (b) any unreasonable demand for particulars or refusal to supply particulars, and
 - (c) generally all the circumstances of the case.
- (2) The arbitrator may disallow the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been unnecessarily incurred.

Special case, setting aside award and remission

- 26 The arbitrator may, at any stage of the proceedings, and shall, upon a direction in that behalf given by the judge of the county court upon an application made by either party, state in the form of a special case for the opinion of the county court any question of law arising in the course of the arbitration and any question as to the jurisdiction of the arbitrator.

- 27 (1) Where the arbitrator has misconducted himself, the county court may remove him.
- (2) Where the arbitrator has misconducted himself, or an arbitration or award has been improperly procured, or there is an error of law on the face of the award, the county court may set the award aside.

- 28 (1) The county court may from time to time remit the award, or any part of the award, to the reconsideration of the arbitrator.

- (2) In any case where it appears to the county court that there is an error of law on the face of the award, the court may, instead of exercising its power of remission under sub-

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paragraph (1) above, vary the award by substituting for so much of it as is affected by the error such award as the court considers that it would have been proper for the arbitrator to make in the circumstances; and the award shall thereupon have effect as so varied.

- (3) Where remission is ordered under that sub-paragraph, the arbitrator shall, unless the order otherwise directs, make and sign his award within thirty days after the date of the order.
- (4) If the county court is satisfied that the time limited for making the said award is for any good reason insufficient, the court may extend or further extend that time for such period as it thinks proper.

Miscellaneous

- 29 Any amount paid, in respect of the remuneration of the arbitrator by either party to the arbitration, in excess of the amount, if any, directed by the award to be paid by him in respect of the costs of the award shall be recoverable from the other party.
- 30 The provisions of this Schedule relating to the fixing and recovery of the remuneration of an arbitrator and the making and enforcement of an award as to costs, together with any other provision in this Schedule applicable for the purposes of or in connection with those provisions, shall apply where the arbitrator has no jurisdiction to decide the question referred to him as they apply where the arbitrator has jurisdiction to decide that question.
- 31 For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment; and in the case of any such arbitrator the periods mentioned in paragraphs 7 and 14 above shall accordingly run from that time.
- 32 Any instrument of appointment or other document purporting to be made in the exercise of any function exercisable by the President under paragraph 1, 6 or 14 above and to be signed by or on behalf of the President shall be taken to be such an instrument or document unless the contrary is shown.