

## SCHEDULES.

### FIFTEENTH SCHEDULE

Section 145.

#### PROVISIONS RELATING TO PERPETUALLY RENEWABLE LEASES AND UNDERLEASES.

##### *Conversion of perpetually renewable leases into long terms.*

- 1 (1) Land comprised in a perpetually renewable lease which was subsisting at the commencement of this Act shall, by virtue of this Act, vest in the person who at such commencement was entitled to such lease, for a term of two thousand years, to be calculated from the date at which the existing term or interest commenced, at the rent and subject to the lessees' covenants and conditions (if any) which under the lease would have been payable or enforceable during the subsistence of such term or interest.
- (2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the term created by this Act; and that term shall take effect in substitution for the term or interest created by the lease, and be subject to the like power of re-entry (if any) and other provisions which affected the term or interest created by the lease, but without any right of renewal.

##### *Conversion of perpetually renewable under-leases into long terms.*

- 2 (1) Land comprised in any underlease, which at the commencement of this Act was perpetually renewable and was derived out of a head term affected by this Act, shall, by virtue of this Act, vest in the person who at such commencement was entitled to the subterm or interest for a term of two thousand years less one day, to be calculated from the date at which the head term created by this Act commenced, at the rent and subject to the underlessee's covenants and conditions (if any) which under the underlease would have been payable or enforceable during the subsistence of such subterm or interest.
- (2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the sub-term created by this Act; and that subterm shall take effect in substitution for the subterm or interest created by the underlease, and be subject to the like power of re-entry (if any) and other provisions which affected the subterm or interest created by the underlease, but without any right of renewal.
- (3) The foregoing provisions of this section shall also apply to any perpetually renewable subterm or interest which, at the commencement of this Act, was derived out of any other subterm or interest, but so that in every case the subterm created by this Act shall be one day less in duration than the derivative term created by this Act, out of which it takes effect.

*Incidence of equities, incumbrances, and sub-terms.*

- 3 (1) Every term or subterm created by this Part of this Act shall be subject to all the same trusts, powers, executory limitations over, rights and equities (if any), and to all the same incumbrances and obligations of every kind, as the term, subterm, or other interest which it replaces would have been subject to if this Part of this Act had not been passed, but without prejudice to the provisions of Part I. of this Act, and where an infant is entitled, the person, of full age, who by virtue of that part of this Act, becomes entitled to the legal estate of the infant shall be deemed to have been entitled to the said lease, sub-term or interest at the commencement of this Act.
- (2) Where any subterm or interest, subsisting at the commencement of this Act, was derived out of a lease or underlease affected by this Act, but was not perpetually renewable, the same shall be deemed to take effect out of the term created by this Act or out of any derivative subterm so created, as the case may require.

*Title acquired and stamps.*

- 4 (1) This Part of this Act shall not operate to confer any better title to any term or subterm hereby created than the title to the perpetually renewable term, subterm, or interest which it replaces.
- (2) This Act shall not render any lease or instrument which has been duly stamped according to the law in force at its date, liable to be further stamped, nor shall any stamp duty be payable by reason only of the creation by this Act of any term or subterm.

*Dispositions purporting to create perpetually renewable leaseholds.*

- 5 A grant, after the commencement of this Act, of a term, subterm, or other leasehold interest with a covenant or obligation for perpetual renewal, which would have been valid if this Part of this Act had not been passed, shall (subject to the express provisions of this Act) take effect as a den use for a term of two thousand years or in the case of a subdemise for a term less in duration by one day than the term out of which it is derived, to commence from the date fixed for the commencement of the term, subterm, or other interest, and in every case free from any obligation for renewal or for payment of any fines, fees, costs, or other money in respect of renewal.

*Satisfaction of existing contracts to grant perpetually renewable interests.*

- 6 (1) Any obligation in force at the commencement of this Act for the grant (otherwise than by way of renewal) of a lease, subterm, or other leasehold interest with a covenant or obligation for perpetual renewal shall be deemed to be an obligation for the grant of a lease for a term of two thousand years, or, in the case of an underlease, for a term less in duration by one day than the term out of which it is to be derived, but the amount of the rent to be paid shall, if necessary be adjusted, having regard to the loss of fines and other payments (if any) which would have been payable on renewal.
- (2) In case any dispute arises respecting the adjustment of the rent, the matter shall be submitted to the Minister for determination, in the manner provided by this Act.

*Future contracts for renewal and as to leases for lives.*

- 7 (1) Any contract entered into after the commencement of this Act, for the grant of a lease, subterm, or other leasehold interest with a covenant or obligation for perpetual renewal shall (subject to the express provisions of this Part of this Act) operate as an agreement for a demise for a term of two thousand years, or in the case of a contract for a subdemise, for a term less in duration by one day than the term out of which it is derived, to commence from the date agreed for the commencement of the term, subterm or other interest, and in every case free from the obligation for renewal or for payment of any fines, fees, costs or other money in respect of renewal.
- (2) Any contract entered into after such commencement for the renewal of a lease or underlease for a term exceeding sixty years from the termination of the lease or underlease, and whether or not contained in the lease or underlease, shall (subject to the express provisions of this Part of this Act) be void.
- (3) Any lease or underlease, at a rent, or in consideration of a fine, for life or lives or for any term of years determinable with life or lives, or on the marriage of the lessee, or any contract therefor, made before or after the commencement of this Act, or created by virtue of Part V. of this Act, shall take effect as a lease, underlease or contract therefor, for a term of ninety years determinable after the death or marriage (as the case may be) of the original lessee, or of the survivor of the original lessees, by at least one month's notice in writing given to determine the same on one of the quarter days applicable to the tenancy, either by the lessor or the persons deriving title under him to the person entitled to the leasehold interest, or if no such person is in existence by affixing the same to the premises, or by the lessee or other persons in whom the leasehold interest is vested to the lessor or the persons deriving title under him ; but this subsection does not apply to any term taking effect in equity under a settlement or created out of an equitable interest under a settlement for mortgage indemnity or other like purposes. The person in whom the leasehold interest is vested by virtue of Part V. of this Act shall, for the purposes of this subsection, be deemed an original lessee :

Provided that, if the lease, underlease, or contract therefor is made determinable on the dropping of the lives of persons other than or besides the lessees, then the notice shall be capable of being served after the death of any person or of the survivor of any persons (whether or not including the lessees) on the cesser of whose life or lives the lease, underlease, or contract is made determinable, instead of after the death of the original lessee or of the survivor of the original lessees.

*Effect of powers to grant renewable leases.*

- 8 (1) Every power conferred by custom or contained in a statute (except as hereinafter mentioned) or other instrument authorising a tenant for life of full age, statutory owner, trustee, or other person to grant a lease or underlease with a covenant or obligation for perpetual renewal, shall have effect, in regard to any grant made after the commencement of this Act, as if the same authorised the grant of a lease or underlease for a term not exceeding two thousand years at the best rent that can be reasonably obtained, having regard to any fine which may be taken and to all the circumstances of the case, or, if the power authorises a grant at a peppercorn rent or other rent less than the best rent, then at any rent so authorised.
- (2) Every power to grant a lease or underlease at a rent or in consideration of a fine for life or lives, or for any term of years determinable with life or lives or on the marriage of any person, shall have effect in regard to any grant made after the commencement

of this Act, as if the same authorised the grant of a lease or underlease for a term not exceeding ninety years determinable after the death or marriage (as the case may be) of the original lessee or of the survivor of the original lessees by at least one month's notice in writing given to determine the same on one of the usual quarter days, either by the lessor or the persons deriving title under him to the person entitled to the leasehold interest, or by the lessee or other persons in whom the leasehold interest is vested to the lessor or the persons deriving title under him.

*Saving of rights and powers under 8 Edw. 7. c. 36.*

- 9 Nothing in this Act shall prejudicially affect any right of renewal conferred by section forty-four of the Small Holdings and Allotments Act, 1908, or the power conferred by section forty of that Act, to grant leases for the purposes of that Act, with a similar right of renewal.

*Powers and covenants implied in leases and underleases affected.*

- 10 (1) Every lease or underlease which, by virtue of this Part of this Act, takes effect for a term of two thousand years or for a derivative term of two thousand years less one or more days (as the case may require) shall be deemed to contain—

- (i) A power (exercisable only with the consent of the persons, if any, interested in any derivative interest which might be prejudicially affected) for the lessee or underlessee by giving notice in writing to the lessor at least ten days before the lease or underlease would but for this Act) have expired if it had not been renewed after the commencement of this Act, to determine the lease or underlease at the date on which (but for this Act) it would have expired if it had not been renewed as aforesaid ;

Also a like power (exercisable with the like consent if any) to determine subsequently by notice as aforesaid the lease or underlease at the time at which, if this Act had not been passed and all renewals had in the meantime been made in due course, the lease or underlease would have expired if it had not been further renewed after the date of the notice:

Provided that if any such notice be given all uncommuted additional rent attributable to a fine or other money which, if this Act had not been passed, would have been payable on a renewal made after the date of the notice, shall not become payable:

- (ii) A covenant by the lessee or underlessee to register every assignment or devolution of the term or subterm, including all probates or letters of administration affecting the same, with the lessor or his solicitor or agent, within six months from the date of the assignment, devolution, or grant of probate or letters of administration, and to pay a fee of one guinea (which shall be accepted in satisfaction of all costs) in respect of each registration; and the covenant so deemed to be contained shall be in substitution for any express covenant to register with the lessor or his solicitor or agent, assignments or devolutions of the term or sub-term, and to pay fees or costs in respect of such registration:
- (iii) A covenant by the lessee or underlessee within one year from the commencement of this Act to produce his lease or underlease or sufficient evidence thereof (including an assignment of part of the land comprised in the lease or underlease) with any particulars required to show that a perpetual right of renewal was subsisting at the commencement of this Act, to the lessor or his solicitor or agent, who shall, subject to the payment of his costs,

if the right of renewal is admitted or proved, endorse notice of that fact on the lease, underlease, assignment, or copy thereof, at the expense of the lessee or underlessee; and such endorsement signed by or on behalf of the lessor shall, in favour of a purchaser, be sufficient evidence that the right of renewal was subsisting as aforesaid, either in respect of the whole or part of the land as the case may require :

and the power of re-entry (if any) contained in the lease or underlease shall apply and extend to the breach of every covenant deemed to be contained as aforesaid.

- (2) If any dispute arises respecting the date on which a notice is authorised to be served by this section, or whether or not a lease or underlease or assignment or a copy thereof ought to be endorsed as aforesaid, the matter shall be submitted to the Minister for determination in the manner provided by this Act.

#### *Liability of lessees and underlessees.*

- 11 (1) In the case of every term or subterm created by this Act or under any power conferred by this Part of this Act, each lessee or underlessee, although he may be the original lessee or underlessee, and notwithstanding any stipulation to the contrary, shall be liable only for rent accruing and for breaches of covenants or conditions occurring while he or his personal representatives shall have the term or subterm vested in him or them, and in like manner, as respects an original lessee or underlessee, as if the term or subterm had, immediately after its creation, been assigned to him.
- (2) Nothing in this Part of this Act shall affect the liability of any person in respect of rent accruing or the breach of any covenant or condition occurring before the commencement of this Act.

#### *Conversion of fines into additional rent.*

- 12 (1) Where, under the lease, underlease, or otherwise, any fine or other money, including a heriot, is payable by the lessee or underlessee on renewal, then and in every such case the like amount as would have been payable if this Act had not been passed and the lease or underlease or all successive leases or underleases have been renewed in due course shall, save as in this Act provided and unless commuted, become payable to the lessor as additional rent, during the subsistence of the term or subterm created by this Act, by as nearly as may be equal yearly instalments the first instalment to be paid at the end of one year from the commencement of this Act; but no sums payable for costs of examination of the lessee's or underlessee's title or of granting a new lease or underlease or of any other work which is rendered unnecessary by this Act shall be taken into account in ascertaining the additional rent.
- (2) Where the lessee or underlessee was entitled to renew at different times and the amount payable on renewal varied according to the time selected for renewal under a sliding scale or otherwise, then for the purpose of ascertaining the amount of the annual instalments of additional rent the fines and other payments shall be deemed to have been payable on the last day on which the lessee or underlessee would have been entitled to renew the lease or underlease if it had remained renewable, regard being had to the date of the last renewal.
- (3) But where the time at or within which the said fine or other money must be paid is not definitely fixed by or ascertainable from the lease or underlease the same shall, for the purpose of ascertaining the amount of the annual instalments of additional rent, be deemed to have been payable on such date as may, within one year from

the commencement of this Act, be agreed between the lessor and the lessee or underlessee and, in default of such agreement, as may be fixed by the Minister.

- (4) The additional rent shall be deemed part of the rent reserved by the lease or underlease for all purposes, including any covenant for payment of rent or proviso for re-entry contained in the lease or underlease.
- (5) Subject to any order by the Minister or the court to the contrary, and in default of agreement, the amount of each annual instalment of additional rent shall be ascertained by dividing the aggregate amount payable by the lessee or under-lessee on renewal by the number of years which represents the interval or average interval occurring between the dates of renewal.
- (6) If the lessee or underlessee is liable to forfeit his right of renewal if he makes default in payment of a fine or other money or in doing any other act or thing within a time ascertainable by the dropping of a life, but not otherwise, then five per cent. of the annual value of the land (ascertained as provided by this Act in the case of enfranchised land for the extinguishment of manorial incidents) shall be treated as added to the fines and other money payable by the lessee or under-lessee on renewal for the purpose of ascertaining the amount of the annual instalment of additional rent, and as compensation to the lessor for loss of his right of re-entry (present or future) which would have accrued by reason of any failure to exercise the right of renewal.

*Interest on fines.*

- 13 (1) Where, under the lease or underlease, any unpaid fine or other money payable on a renewal carries interest, then any annual instalment of additional rent payable in lieu thereof shall, until paid, carry interest from the date on which the instalment becomes payable, and at the same rate at which such interest would have been payable if this Act had not been passed.
- (2) Where the lease or underlease does not provide for payment of such interest, then each annual instalment of additional rent shall, until paid, carry interest at the current rate from the time when demand in writing is made claiming the money.

*Provisions respecting commutation of additional rent and other matters.*

- 14 (1) The lessor and lessee or underlessee may agree—
  - (a) For the commutation or discharge of any claims in respect of additional rent;
  - (b) The amount (if any) of the annual instalments of additional rent payable;
  - (c) The dates for payment of additional rent;
  - (d) The interval or average interval between dates of renewal ;
  - (e) The dates on which the lessee or underlessee has power under this Act to determine the lease or underlease ;
  - (f) The amount of the rent (including the annual instalments of additional rent) to be apportioned in respect of any part of the land comprised in the lease or underlease, and thereupon the lessee's or underlessee's covenants shall be apportioned in regard to the land to which the apportionment relates.
- (2) A statement in writing respecting any such agreement, which is endorsed on any such lease or underlease, or the counterpart or assignment, and signed by the lessor and lessee or underlessee, shall be conclusive evidence of the matters stated, and the

costs of and incidental to the agreement and any negotiations therefor shall be borne by the lessee or underlessee.

- (3) The additional rent may, by such endorsement, be made payable by instalments at the times at which the original rent is made payable or otherwise.

*Compensation of lessor's agents.*

- 15 Any claims for compensation by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration (not being remuneration attributable to work rendered unnecessary by this Act) which would have been payable by the lessee or underlessee on any renewal, if this Act had not been passed, shall be treated as part of the fines or other money payable to the lessor and be discharged out of the additional rent or commutation money or otherwise by the lessor, and the lessee or underlessee shall not otherwise be concerned therewith.

*Disputes to be submitted to the Minister.*

- 16 (1) If the lessor and lessee or underlessee or the lessor's agent (as the case may require) do not agree, or any dispute arises as to the amount or date for payment of any annual instalment of additional rent, or the amount for which the same ought to be commuted, or the amount at which any rent ought to be adjusted, or apportioned, or the amount of compensation (if any) payable by the lessor to his officer, solicitor or other agent, the question or dispute shall be submitted to the Minister for determination, when the parties may be represented by solicitors or counsel, and the award of the Minister shall (subject only to such appeal to the court as may be prescribed by rules of court) be final,
- (2) The Minister may issue regulations in respect of any of the matters aforesaid, and determine by whom and in what proportions the cost of any application to the Minister shall be paid.
- (3) If a dispute as to the amount for which any annual instalment of additional rent ought to be commuted is submitted to the Minister, and if the lessor would (under the lease or under lease subsisting at the commencement of this Act, or any lease or underlease which would have been subsisting if this Act had not been passed and the successive renewable leases or underleases had been renewed in the ordinary course) have had a right to refuse renewal by reason of a default in payment of a fine, then the Minister shall, in the arbitration, have regard to the value of such right (unless compensation has been given for the loss of the right) in like manner as if a corresponding; absolute right to determine the term or subterm created by this Act had, by reason of a corresponding default, been made exerciseable by the lessor at the time at which the renewable lease or underlease would have expired if the lessor had lawfully refused to renew it.

*Power to raise and apply capital for commuting additional rent.*

- 17 (1) A power authorising a tenant for life of full age, statutory owner, trustee, or other person to apply or direct the application of or raise any money for or in the discharge of the costs, fines, and other sums payable on the renewal of any such lease or underlease shall be deemed to authorise the payment, application, or raising of money for the commutation of any additional rent made payable by this Act.

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

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- (2) Out of the money so applicable or raiseable, the lessor may discharge any compensation payable to his officer, solicitor, or other agent.
- (3) If the reversion is settled land, or held on trust for sale, any commutation money shall be treated as capital money or proceeds of sale arising from such land (as the case may require).
- (4) If the land comprised in the lease or underlease is settled land or held on trust for sale, the commutation money may be paid out of capital money or personal estate (not being chattels real) held on the same trusts as the land.

*Notices.*

- 18        The provisions of section sixty-seven of the Conveyancing Act, 1881, shall apply to any notice required or authorised to be given under this Part of this Act or under any provision implied by this Part of this Act.

*Registered leases and underleases.*

- 19        Where any lease or underlease to which this Part of this Act applies is registered under the Land Transfer Acts, effect shall be given to the provisions of this Act by making such alterations in the register as may be prescribed under those Acts.

*Office copies and searches.*

- 20        (1) The original or counterpart of any lease or underlease or assignment to which this Part of this Act applies may be deposited at the Central Office of the Supreme Court.
- (2) A separate file of instruments so deposited shall be kept, and any person who furnishes the prescribed evidence to show that he has a sufficient interest in the lease or underlease or reversion expectant thereon may search that file and inspect the lease or underlease or counterpart or assignment, and an office copy thereof shall be delivered to him at his request.
- (3) A copy of an instrument so deposited, with any plan or endorsements thereon, may be presented at any time at the Central Office, and, if found correct, may be stamped as an office copy, and when so stamped shall become and be an office copy.
- (4) An office copy of the instrument so deposited with the plan and endorsements (if any) shall without further proof be sufficient evidence of the contents of the instrument, plan, and endorsements (if any), and of the deposit thereof at the Central Office.
- (5) Where an instrument so deposited has perished or become undecipherable, an office copy thereof may be similarly deposited, and office copies thereof may be issued in lieu of office copies of the original, and the provisions of this section shall apply thereto as if office copies so issued were office copies of the original instrument.
- (6) General rules may be made for the purposes of this section prescribing the evidence to be furnished before a search is authorised, regulating the practice of the Central Office, and prescribing, with the concurrence of the Treasury, the fees to be taken therein.