

Reprint  
as at 3 June 2017



## Mortgagors and Lessees Rehabilitation Act 1936

Public Act 1936 No 33  
Date of assent 1 October 1936  
Commencement 1 October 1936

Mortgagors and Lessees Rehabilitation Act 1936: repealed, on 3 June 2017, by section 3(1) of the Statutes Repeal Act 2017 (2017 No 23).

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

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**An Act to provide for the adjustment of the liabilities of mortgagors and lessees in certain cases, and for matters incidental thereto**

**1 Short Title**

This Act may be cited as the Mortgagors and Lessees Rehabilitation Act 1936.

**2 General purposes of Act in relation to farmer applicants, home applicants, and other applicants**

- (1) The general purpose of this Act in relation to farmer applicants is to retain them in the use and occupation of their farms as efficient producers, and to make such adjustments of their liabilities as will ensure that the liabilities secured on any property do not exceed the value of that property, that the rent of any leasehold property does not exceed the rental value of that property, and that the total amount and terms of payment of all their liabilities (whether secured or unsecured) are such that, after allowing for all normal current expenditure and providing for the maintenance of themselves and their families in a reasonable standard of comfort, the applicants may reasonably be expected to meet their liabilities as they become due, either out of their own moneys or by borrowing on reasonable terms.
- (2) The general purpose of this Act in relation to home applicants is to retain them in the occupation of their homes, and to make such adjustments of their liabilities as will ensure that the liabilities secured on any property do not exceed the value of that property, that the rent of any leasehold property does not exceed the rental value of that property, and that the total amount and terms of payment of those of their liabilities that are secured by adjustable securities or are adjustable debts are such that the applicants may reasonably be expected to meet them as they become due, either out of their own moneys or by borrowing on reasonable terms.
- (3) The general purpose of this Act in relation to applicants who are not farmer applicants or home applicants is to enable them to retain possession of their mortgaged or leasehold property, and to make such adjustments of their liabilities as will ensure that the liabilities secured on any property do not exceed the value of that property, that the rent of any leasehold property does not exceed the

rental value of that property, and that the total amount and terms of payment of those of their liabilities that are secured by adjustable securities or are adjustable debts are such that the applicants may reasonably be expected to meet them as they become due, either out of their own moneys or by borrowing on reasonable terms.

### 3 Act divided into Parts

This Act is divided into Parts as follows:

Part 1—Preliminary (sections 4 to 9).

Part 2—The Court of Review, and Adjustment Commissions (sections 10 to 28).

Part 3—Rehabilitation of Mortgagors and Lessees (sections 29 to 54).

Part 4—Miscellaneous (sections 55 to 88).

## Part 1 Preliminary

### 4 Interpretation

(1) In this Act, unless the context otherwise requires,—

**adjustable charge** means an adjustable security, as hereinafter defined, that is not a mortgage

**adjustable debts** means unsecured debts or liabilities, present or future, certain or contingent, arising out of any liability or obligation under an adjustable security or adjustable lease or under any guarantee in respect thereof; and, in the case of a farmer applicant, includes all his other unsecured debts or liabilities; and, in the case of a home applicant, includes such of his other unsecured debts or liabilities as arise directly out of the acquisition, extension, improvement, or maintenance of the premises occupied by him as a dwelling

**adjustable lease** means a lease to which this Act applies

**adjustable mortgage** means a mortgage that is an adjustable security as hereinafter defined

**adjustable security** means a mortgage to which this Act applies; and, in the case of a farmer applicant, includes any other mortgage and any statutory or other charge on any property belonging to him; and, in the case of any applicant who is not a farmer applicant, includes any other mortgage and any charge on any property belonging to him, if the property is subject to a mortgage to which this Act applies or is comprised in a lease to which this Act applies

**Adjustment Commission** means an Adjustment Commission appointed under this Act; and the expression **the Adjustment Commission**, when used in relation to the affairs of any mortgagor, lessee, or guarantor, means the particular

Adjustment Commission to which any application or other matter arising under this Act and relating to that mortgagor, lessee, or guarantor has been referred

**agricultural purposes** has a meaning corresponding to the term **agriculture**, which for the purposes of this definition means the cultivation of the soil for the production of food products or other useful products of the soil, and includes the use of land for horticultural or pastoral purposes, or for the keeping of pigs, bees, or poultry

**applicant** means a mortgagor, lessee, or guarantor for the adjustment of whose liabilities an application has been filed under section 29 or section 30

**court** means the Court of Review constituted under this Act

**creditor**, in relation to an applicant, includes every person to whom the applicant is under any legal liability, secured or unsecured, present or future, certain or contingent; and includes a guarantor; and also includes every mortgagee or other person entitled to any security over any property of the applicant, notwithstanding that in any particular case there may be no privity of contract between the applicant and the mortgagee or other person as aforesaid

**farm lease** means a lease of any land that at the passing of this Act is used by or on account of the lessee, being a farmer, exclusively or principally for agricultural purposes

**farm mortgage** means a mortgage, as hereinafter defined, granted over any land that at the passing of this Act is used by or on account of the mortgagor, being a farmer, exclusively or principally for agricultural purposes

**farmer** means a person whose normal income is derived wholly or principally from the use of lands for agricultural purposes; and includes a trustee where the income derived from the trust estate is derived wholly or principally from the use of lands for agricultural purposes; and also includes the personal representatives of a deceased farmer

**farmer applicant** means an applicant, as hereinbefore defined, who is a farmer

**guarantor** means a person who has guaranteed the performance by the mortgagor or lessee, as the case may be, or by any other person of any covenant, condition, or agreement expressed or implied in a mortgage or lease, whether the guarantee is expressed in the mortgage or lease or in any other instrument; and includes any person (not being the mortgagor or lessee, as hereinafter defined) who is liable under the provisions of the mortgage or lease, or against whom any person has a legal or equitable right of indemnity in respect of any liabilities under the mortgage or lease; and **guarantee** has a corresponding meaning

**home applicant** means an applicant, as hereinbefore defined, who is the mortgagor under a home mortgage to which this Act applies or is the lessee under a home lease to which this Act applies

**home lease** means a lease of any premises that at the passing of this Act are used by the lessee, not being a farmer, exclusively or principally for his own occupation as a dwelling

**home mortgage** means a mortgage, as hereinafter defined, granted over any premises that at the passing of this Act are used by the mortgagor, not being a farmer, exclusively or principally for his own occupation as a dwelling

**lease** means an instrument whereby a leasehold interest in land is created, whether at law or in equity; and **sublease** has a corresponding meaning

**lessee** means the lessee named in a lease or, if the rights of the lessee have been disposed of by way of sublease or assignment or have been transferred by operation of law, means the person for the time being entitled to those rights

**lessor** means the person entitled to the rent reserved by a lease

**mortgage** means a deed, memorandum of mortgage, instrument, or agreement whereby security for the payment of any moneys or for the performance of any contract is granted over any property as hereinafter defined; and includes an agreement for the sale and purchase of land

**mortgagee** means the person entitled to the benefit of the security of a mortgage

**mortgagor** means the owner of the property that is subject to a mortgage; and includes any person claiming to be entitled under an agreement for sale and purchase to any property that is subject to a mortgage

**property** includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest

**Registrar** means a Registrar of the Court of Review, and includes a Deputy Registrar of that court

**table mortgage** means a mortgage that is made repayable by instalments at regular intervals throughout the term of the mortgage, each of the instalments consisting partly of principal and partly of interest.

- (2) Where the use of any land by or on account of any mortgagor or lessee exclusively or principally for agricultural purposes or the use of any premises by any mortgagor or lessee for his own occupation as a dwelling has ceased before the passing of this Act by reason of the fact that the mortgagor or lessee has abandoned the land or premises, or has temporarily left the land or premises unoccupied or occupied by any other person, or by reason of the fact that the mortgagee or lessor has exercised, commenced to exercise, or indicated his intention to exercise any of his powers in respect of the mortgage or lease, the use as aforesaid of the land or premises shall, for the purposes of the foregoing definitions of the terms farm lease, farm mortgage, home lease, and home mortgage, be deemed to have continued until the passing of this Act, unless that mortga-



gor or lessee has theretofore ceased to be the mortgagor or lessee of the land or premises.

- (3) For the purposes of this Act a person shall be deemed to have guaranteed the performance by a mortgagor or by any other person of a covenant, condition, or agreement expressed or implied in a mortgage if he has guaranteed the performance by the mortgagor or other person of any obligation that is the same or is substantially the same as an obligation expressed or implied in the mortgage, notwithstanding that the instrument of guarantee may have been executed before the execution of the mortgage, and whether in contemplation thereof or not, or notwithstanding that, whether the guarantee was executed before or after the execution of the mortgage, the existence of the mortgage or the terms thereof, or the proposal that a mortgage be executed, may not have been adverted to in the guarantee.
- (4) For the purposes of this Act every lease that contains a compulsory purchasing clause, and every lease that contains an optional purchasing clause in respect of which the lessee has notified or is deemed under section 12 of the Mortgagors and Tenants Relief Act 1933 to have notified his intention to exercise the option to purchase, shall be deemed to be an agreement for sale and purchase, and the rent reserved by any such lease shall be deemed to be interest. The term of the lease shall, if necessary, be deemed to be extended for the purpose of giving effect to this provision.
- (5) For the purposes of this Act every licence to occupy land pending the purchase thereof from His Majesty the King on a system of deferred payments shall be deemed to be an agreement for sale and purchase.
- (6) For the purposes of this Act the owner of the equity of redemption in any property that is subject to a mortgage shall be deemed to be the owner of the property.
- (7) For the purposes of this Act every liability under a judgment obtained in any court in respect of any cause of action arising directly or indirectly out of a mortgage, lease, or guarantee shall be deemed to be a liability under the mortgage, lease, or guarantee.
- (8) For the purposes of this Act the exercise of a power of sale shall be deemed to be completed when the vendor becomes bound by an agreement or contract of sale.

## **5 Act to bind the Crown**

This Act shall bind the Crown.

### *Application of this Act to mortgages*

## **6 Mortgages to which this Act applies**

- (1) Subject to the provisions of this section, this Act shall apply to mortgages of any of the following classes:

- (a) mortgages that were executed before the passing of this Act:
  - (b) mortgages that were in fact operative or designed to take effect before the date of the passing of this Act, though not executed before that date:
  - (c) mortgages to which this Act has at any time applied and which have been varied by the parties thereto:
  - (d) mortgages that have been executed in replacement or substantial replacement of mortgages to which this Act has at any time applied.
- (2) If any question arises under this section as to whether any mortgage is in replacement or in substantial replacement of another mortgage it shall be determined as a matter of fact by the court. For the purposes of this section a mortgage may be held by the court to be in substantial replacement of a former mortgage notwithstanding any variation of the amount secured, or of the rate of interest, or of the property over which security is given, or of the parties, if the court is satisfied that the new mortgage is intended to secure (whether exclusively or not) the whole or a part of the original mortgage debt.
- (3) This Act shall apply with respect to any mortgage as aforesaid, notwithstanding that, whether before or after the passing of this Act, any power of sale, rescission, or entry into possession conferred by the mortgage may have been exercised.
- (4) This Act shall not apply to mortgages exempted from the operation of this Act by the Governor-General by Order in Council under the next succeeding subsection.
- (5) The Governor-General may from time to time, by Order in Council, exempt from the operation of this Act any specified mortgages or any specified class of mortgages, and may in like manner vary or revoke any such Order in Council.

## 7 Agreements for sale and purchase of land

In the application of this Act to an agreement for the sale and purchase of land the agreement shall be deemed to be a mortgage of the land to secure payment of the unpaid purchase money and interest thereon and fulfilment of the conditions set forth in the agreement; the term **mortgagee** shall mean the vendor named in the agreement or, if the rights of the vendor have been assigned or have been transferred by operation of law or otherwise, the person for the time being entitled to those rights; and the term **mortgagor** shall mean the purchaser named in the agreement or, if the rights of the purchaser have been assigned or have been transferred by operation of law or otherwise, shall mean the person for the time being entitled to those rights. In any case where the rights of the purchaser have been assigned or transferred as aforesaid the original purchaser and any purchaser intermediate between him and the person for the time being entitled to the rights of the purchaser shall be included in the term **guarantor** as hereinbefore defined.

*Application of this Act to leases*

**8 Leases to which this Act applies**

- (1) Subject to the provisions of this section, this Act shall apply to all leases that were executed before the passing of this Act, and to all leases that have been executed in renewal of such leases.
- (2) The provisions of this Act shall, so far as they are applicable, apply with respect to any lease as aforesaid, notwithstanding that, whether before or after the passing of this Act, the lease may have expired or been determined.
- (3) This Act shall not apply to leases exempted from the operation of this Act by the Governor-General by Order in Council under the next succeeding subsection.
- (4) The Governor-General may from time to time, by Order in Council, exempt from the operation of this Act any specified leases or any specified class of leases, and may in like manner vary or revoke any such Order in Council.

**9 Power to apply this Act to licences and other instruments providing for payment of royalties**

- (1) The Governor-General may from time to time, by Order in Council, extend the provisions of this Act to apply to any of the licences and other instruments referred to in the next succeeding subsection as if such licence or other instrument were a lease, and as if the royalties or other moneys payable thereunder were rent.
- (2) The licences and other instruments to which the last preceding subsection relates are the following:
  - (a) any licence or other instrument for the cutting and removal of timber or flax, or for the extraction of coal or fireclay:
  - (b) any way-leave or other easement granted in relation to the rights conferred by any such licence or instrument as aforesaid:
  - (c) any contract or instrument by virtue of which any person entitled under any licence or other instrument to cut timber or flax or extract coal or fireclay from any land is under an obligation to pay, whether periodically or otherwise, to any other person any moneys calculated wholly or partially by reference to the quantity of timber or flax cut or to be cut, or to the quantity of coal or fireclay extracted or to be extracted, or fixed as minimum payments, whether or not the person entitled to receive payment under such contract or instrument has any right, title, estate, or interest in such timber, flax, coal, or fireclay, as the case may be, or in the land containing the same.
- (3) Any Order in Council under this section may relate to any specified licence or other instrument, or to any specified class or classes thereof, and may further

relate to any assignment or other disposition of the rights or of any of the rights conferred by any such licence or other instrument.

## **Part 2**

### **The Court of Review, and Adjustment Commissions**

#### *The Court of Review*

#### **10 Court of Review**

- (1) There is hereby established a court of record, to be called the Court of Review, which, in addition to the jurisdiction and powers specially conferred on it by this Act, shall have all the powers inherent in a court of record.
- (2) The court established under this Act is hereby declared to be the same court as the Court of Review of Mortgagors' Liabilities established under Part 1 of the Rural Mortgagors Final Adjustment Act 1934–35.

#### **11 Constitution of court**

Subject to the provisions of section 23, the court shall consist of 3 members, who shall be appointed by the Governor-General in Council. Of the 3 members of the court, 1 shall be the Judge of the court and shall be so appointed, and the other 2 members shall be appointed as hereinafter provided.

#### **12 Appointment of Judge of court**

- (1) No person shall be eligible for appointment as the Judge of the court unless he is eligible for appointment as a Judge of the Supreme Court.
- (2) So long as the court continues in existence, the Judge so appointed shall, as to tenure of office, salary, emoluments, and privileges, have the same rights and be subject to the same provisions as a Judge of the Supreme Court.
- (3) This Act shall be deemed to be a permanent appropriation of the salary of the Judge of the court.
- (4) Notwithstanding anything to the contrary in the foregoing provisions of this section, the Governor-General may appoint a Judge of the Supreme Court to be the Judge of the Court of Review, and in that case the Judge so appointed shall hold both offices concurrently.
- (5) If and so long as a Judge of the Supreme Court holds office as the Judge of the Court of Review he shall be deemed to be absent from his office as a Judge of the Supreme Court, and a Judge may be appointed in his stead, pursuant to section 11 of the Judicature Act 1908, to hold office during the pleasure of the Governor-General:

provided that nothing herein shall be construed to deprive the Judge of the Court of Review, in any such case, of power to exercise any jurisdiction as a Judge of the Supreme Court.

- (6) The person who at the passing of this Act holds office as Judge of the Court of Review under the Rural Mortgagors Final Adjustment Act 1934–35 shall, without further appointment, be deemed to have been appointed the Judge of the court under this section.

**13 Appointment of other members**

- (1) The members of the court (other than the Judge) shall be appointed to hold office for such term as the Governor-General in Council in each case thinks fit.
- (2) The remuneration and travelling allowances of such members shall be fixed from time to time by the Governor-General in Council, and shall be paid out of moneys to be appropriated by Parliament for the purpose.
- (3) On the passing of this Act the members of the court holding office under section 8 of the Rural Mortgagors Final Adjustment Act 1934–35 shall be deemed to have vacated their offices, but shall be eligible for reappointment under this section.

**14 Judge of court to take judicial oath**

The Judge of the court (not being a Judge of the Supreme Court), as soon as may be after his acceptance of office, shall take and subscribe the Oath of Allegiance and the Judicial Oath, in accordance with section 7 of the Promissory Oaths Act 1908, as if he had been appointed a Judge of the Supreme Court.

**15 Oath to be taken by other members**

Before entering on the exercise of the duties of their office, the members of the court other than the Judge shall take and subscribe an oath before the Judge that they will faithfully and impartially perform the duties of their office.

**16 Registrars and other officers of court**

- (1) There shall from time to time be appointed such Registrars and Deputy Registrars of the court as may be required.
- (2) There may also from time to time be appointed such clerks and other officers of the court as may be necessary. Without limiting the general power hereinbefore conferred, officers may be appointed for the purpose of advising and assisting mortgagors, lessees, and guarantors in relation to their rights and powers under this Act and in relation to any applications made by them under this Act.
- (3) The office of Registrar or Deputy Registrar or any other office may be held either separately or in conjunction with any other office in the Public Service.
- (4) All persons who at the passing of this Act hold offices to which they have been appointed under section 12 of the Rural Mortgagors Final Adjustment Act 1934–35 shall, without further appointment, be deemed to have been appointed under this section.

**17 Rules of court**

- (1) The Governor-General may from time to time, by Order in Council, make rules for regulating the practice and procedure of the court in all matters within its jurisdiction, and prescribing the fees payable in respect of any matters relating to the proceedings of the court.
- (2) Subject to the provisions of this Act and of any rules made under the authority of this section, the practice and procedure of the court shall be determined by the court as it thinks proper:  
provided that the sittings of the court shall not be open to the public.
- (3) All rules that were made under section 13 of the Rural Mortgagors Final Adjustment Act 1934–35, and are subsisting or in force at the passing of this Act, shall enure for the purposes of this Act as fully and effectually as if they had been made under this section, and accordingly shall, where necessary, be deemed to have been so made.

**18 Evidence in proceedings before court**

- (1) The court may receive as evidence any statement, document, information, or matter that in the opinion of the court may assist it to deal effectually with the matters before it, whether or not the same would be otherwise admissible in a court of law.
- (2) Subject to the foregoing provisions of this section, the Evidence Act 2006 shall apply to the court and to the members thereof, and to all proceedings therein, in the same manner as if the court were a court within the meaning of that Act.

Section 18(2): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

**19 Quorum of court**

- (1) The presence of the Judge and of at least 1 other member shall be necessary to constitute a sitting of the court.
- (2) The decision of a majority (one of whom shall be the Judge) of the members present at a sitting of the court shall be the decision of the court. If the members present are unable to agree the decision of the Judge shall be the decision of the court.

**20 Seal of court**

The court shall have in the custody of each Registrar and Deputy Registrar a seal of the court for the sealing of all orders of the court and other documents that require to be sealed.

**21 Court may issue general directions to Adjustment Commissions**

It shall not only be the duty of the court to sit as a judicial body for the determination of appeals and other matters formally submitted to it, but it may also of its own motion issue general directions to be observed by the Adjustment Commissions in the exercise of their powers and functions under this Act, and

may at any time exercise any power or function of an Adjustment Commission under this Act.

**22 Proceedings before court not to be questioned for want of form or appealed against**

Proceedings before the court shall not be held bad for want of form. No appeal shall lie from any order of the court, and no proceeding or order as aforesaid shall be liable to be challenged, reviewed, quashed, or called in question in any court.

**23 Power to appoint additional members of court**

- (1) Notwithstanding anything in the foregoing provisions of this Part, the Governor-General may from time to time, by Order in Council, if he thinks fit, appoint not more than 2 additional Judges of the court and not more than 4 other additional members of the court, to hold office as such during his pleasure. Any person may be appointed and may hold office as a Judge under this section, notwithstanding that he may have attained the age of retirement prescribed for Judges of the Supreme Court by section 13 of the Judicature Act 1908.
- (2) Except as provided in this section, the foregoing provisions of this Part shall apply with respect to any Judge or Judges appointed under this section.
- (3) Where any additional Judge is in office under this section references in this Act to the Judge of the court shall be deemed to include a reference to such additional Judge.

*Adjustment Commissions*

**24 Power to establish Adjustment Commissions**

- (1) For the purposes of this Act there shall be established such number of Adjustment Commissions as the Governor-General in Council thinks necessary. Every Adjustment Commission shall be given such distinctive name as the Governor-General in Council determines, and any such name may from time to time be changed by the Governor-General in Council.
- (2) Every Adjustment Commission shall consist of such number of persons, not exceeding 3, as the Governor-General in Council in each case thinks fit, to be appointed by the Governor-General in Council and to hold office during his pleasure. Where a Commission consists of more than 1 person one of the members shall be appointed by the Governor-General in Council to be the Chairman of the Commission, and the quorum at sittings of the Commission shall be such number as the Governor-General in Council determines.
- (3) Any person may be appointed to hold office concurrently as a member of 2 or more Adjustment Commissions.

- (4) All Adjustment Commissions established under the Mortgagors and Tenants Relief Act 1933 are hereby abolished, but the members thereof shall be eligible for appointment under this section.
- (5) In the event of the sickness or other incapacity of any member of an Adjustment Commission, the Governor-General in Council may appoint any person to act in the place of such member during his incapacity.
- (6) Every Adjustment Commission shall, within the scope of its jurisdiction, be deemed to be a Commission under the Commissions of Inquiry Act 1908, and all the provisions of that Act shall apply thereto accordingly.
- (7) The procedure of an Adjustment Commission shall, subject to this Act and to any regulations thereunder, be such as that Adjustment Commission thinks fit: provided that the sittings of an Adjustment Commission shall not be open to the public.

#### **25 Oath to be taken by members of Adjustment Commissions**

Before entering upon the exercise of the duties of their office the members of every Adjustment Commission shall take and subscribe an oath before the Judge or a Registrar that they will faithfully and impartially perform the duties of their office.

#### **26 Orders of Adjustment Commissions to be filed in court**

- (1) Every order made by an Adjustment Commission under this Act shall be signed by the Chairman or a member of the Commission and shall be filed in the court. The Adjustment Commission shall cause notice of the filing of any order under this section to be given, in such manner as, subject to any rules or regulations made under this Act, the Commission deems sufficient, to all persons affected by the order.
- (2) If an appeal is not lodged under the next succeeding section, the order may be sealed by the court, and thereupon it shall be deemed to be an order of the court.

#### **27 Appeals to Court of Review**

- (1) Within 21 days after the filing of any order of an Adjustment Commission as provided in the last preceding section, or within such further time as may be allowed by the court, any person affected by the order may, in accordance with the rules of the court, appeal to the court from the order or from any part thereof.
- (2) If an appeal is not lodged as aforesaid, the court, at any time before it seals the order of the Adjustment Commission, may, of its own motion, direct that the order be reviewed before the court as if an appeal had been lodged, or that the matter be referred to the Adjustment Commission for further consideration.



- (3) Upon any such appeal or review the court may confirm, discharge, or vary the order of the Adjustment Commission, or direct that the matter be referred to the Commission for further consideration, as it thinks fit, and generally may make such order as it deems just and equitable in the circumstances of the case.

**28 Proceedings before Adjustment Commission not to be questioned, except by Court of Review**

- (1) Every Adjustment Commission shall in the exercise of its powers and functions be subject to the general jurisdiction of the Court of Review.
- (2) Proceedings before an Adjustment Commission shall not be held bad for want of form. No proceeding or order of an Adjustment Commission shall be liable to be challenged, reviewed, quashed, or called in question in any court except the Court of Review.

**Part 3**

**Rehabilitation of mortgagors and lessees**

*Applications for adjustment of liabilities*

**29 Mortgagor, lessee, or guarantor may apply for an adjustment of his liabilities**

- (1) Any mortgagor, lessee, or guarantor under a mortgage or lease to which this Act applies may, in accordance with this section, make application in the prescribed form for an adjustment of his liabilities under this Act. The application shall relate specially to a mortgage or lease to which this Act applies and, if the applicant is a farmer applicant or a home applicant, shall specify to which of those classes he belongs.
- (2) Every application under this section shall be filed in the office of the court nearest to the place where the mortgaged or leasehold property is situated. If any application is filed in the wrong office it shall be sent by the Registrar to the proper office and shall be deemed to have been duly filed therein. Instead of filing his application himself any applicant may deliver it to the Postmaster at any post office, and in any such case the Postmaster shall send the application to the proper office of the court, and the date of delivery to the Postmaster shall be deemed to be the date of the filing of the application. An acknowledgment in writing signed by or on behalf of any Registrar or Postmaster of the receipt of any application under this section shall be conclusive evidence that the application has been duly filed in the proper office of the court.
- (3) Every application filed under this section shall be accompanied by a complete list of all the creditors and debtors of the applicant, together with a statement containing particulars of his assets and liabilities, and of the securities held by any secured creditors.

- (4) A copy of any application filed under this section shall be forthwith served by the applicant on the mortgagee or lessor under the mortgage or lease to which the application relates.
- (5) No application shall be filed under this section at any time after 31 January 1937:  
provided that where the court is satisfied that the failure to file any application before that date was unavoidable, or was otherwise for any special reason excusable, it may extend the time for filing the application to any date not later than 28 February 1937.

**30 Mortgagee or lessor or any guarantor may apply for an adjustment of mortgagor's or lessee's liabilities**

- (1) Where the mortgagor or lessee under a mortgage or lease to which this Act applies has made default in complying with any obligation under the mortgage or lease but has not filed any application under the last preceding section in relation to that mortgage or lease, or in relation to any other mortgage or lease to which this Act applies, the mortgagee or lessor or any guarantor in respect of the mortgage or lease may make application in the prescribed form for an adjustment of the mortgagor's or lessee's liabilities under this Act. No application shall be filed under this section at any time after 31 January 1937.
- (2) Every application under this section shall be filed in the office of the court nearest to the place where the mortgaged or leasehold property is situated, and a copy of the application shall be forthwith served by the mortgagee, lessor, or guarantor on the mortgagor or lessee. If any application is filed in the wrong office it shall be sent by the Registrar to the proper office and shall be deemed to have been duly filed therein.
- (3) Within 21 days after the service on him of a copy of an application under this section, the mortgagor or lessee shall forward to the Registrar of the court in whose office the application has been filed a complete list of all his creditors and debtors, together with a statement containing particulars of his assets and liabilities, and of the securities held by any secured creditors.
- (4) If any mortgagor or lessee on whom a copy of an application has been served under this section fails without sufficient cause, the proof whereof shall be on him, to comply with the requirements of the last preceding subsection within the time therein specified or within such extended time as the Adjustment Commission may in any case allow, on application in that behalf made either before or after the expiration of the said period of 21 days, the Adjustment Commission may order that the mortgage or lease to which the application relates shall cease to be subject to this Act.

**31 Notices for adjustment under Rural Mortgagors Final Adjustment Act 1934–35 deemed to be applications under this Act, and fresh applications may be made where that Act has ceased to apply**

- (1) All notices for the adjustment of the liabilities of farmer mortgagors under the Rural Mortgagors Final Adjustment Act 1934–35 that were given by the mortgagor under section 18 of that Act or by the mortgagee under section 19 of that Act and are subsisting at the passing of this Act shall enure for the purposes of this Act as if they were applications duly filed under section 29 or section 30, as the case may be, of this Act, and accordingly shall, where necessary, be deemed to be such applications.
- (2) Where any mortgage in respect of which a notice has been filed as aforesaid has before the passing of this Act ceased to be subject to the Rural Mortgagors Final Adjustment Act 1934–35 an application relating to that mortgage may be filed under section 29 or under section 30.

**32 Amendment of applicant’s statement of his assets and liabilities**

The applicant may from time to time file in the court an amended list of creditors or debtors, or an amended statement of his assets and liabilities.

**33 Verification of applicant’s statements**

Every list of creditors or debtors and every statement of assets and liabilities, and every amendment of any such list or statement, filed by an applicant pursuant to the foregoing provisions of this Act shall be verified by the statutory declaration of the applicant.

**34 Right to inspect filed statements**

- (1) Any person whose name appears on any list of creditors or debtors filed by an applicant pursuant to the foregoing provisions of this Act, and any other person who claims, in writing addressed to the Registrar, that he is a creditor of the applicant, may at any time during the office hours of the court inspect the filed list of creditors or debtors or the filed statement of the applicant’s assets and liabilities, and any amendment of such list or statement. If any person, not being a creditor of the applicant, knowingly makes to the Registrar for the purposes of this section a false representation to the effect that he is a creditor of the applicant, he shall be guilty of an offence, and shall be liable on conviction to a fine of 50 pounds.
- (2) Any inspection under this section may be made personally by the creditor or debtor or person claiming to be a creditor, as aforesaid, or may be made by any other person acting as the authorised agent of a creditor or debtor.
- (3) Any person inspecting the list of creditors or debtors or statement of assets and liabilities pursuant to the foregoing provisions of this section may take any copy thereof or extract therefrom.

Section 34(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **35 Application for adjustment of liabilities to be referred to an Adjustment Commission**

- (1) As soon as conveniently may be after the filing of any application under the foregoing provisions of this Part, the Registrar in whose office the application has been filed shall refer the matter to an Adjustment Commission to be dealt with by that Commission in accordance with the following provisions of this Part:

provided that the court may at any time, if it thinks fit, direct that any application shall be dealt with by the court without reference to an Adjustment Commission, or that any application that has been referred to an Adjustment Commission, or any specified matter in relation to any such application, shall be dealt with by the court.

- (2) Unless the court otherwise directs, the Adjustment Commission to which any matter is referred as aforesaid shall be the Commission usually exercising its functions under this Act in the locality in which the property, the subject matter of the mortgage or lease to which the application relates, is situated.

### **36 Adjustment Commission to fix time and place for hearing of application**

- (1) The Adjustment Commission to which any application has been referred pursuant to the last preceding section shall as soon as practicable fix a time and place for the hearing of the application, and shall give notice of the time and place so fixed to the applicant and all his creditors if he is a farmer, and, if not, to such of his creditors as in the opinion of the Adjustment Commission are interested in the application.
- (2) The applicant and every creditor whose name appears in the applicant's list of creditors, and every other person who satisfies the Adjustment Commission that he is a creditor of the applicant and that he is interested in the hearing, shall be entitled to appear at the hearing personally or by his solicitor, counsel, or agent, and to call such evidence as he thinks fit relating to the matters before the Commission.
- (3) The Adjustment Commission may from time to time alter the time and place fixed for the hearing and may adjourn the hearing from time to time and from place to place.
- (4) The Adjustment Commission may from time to time before the hearing or during any adjournment thereof exercise such of its powers of inquiry and investigation and such of its other powers as it thinks fit.
- (5) The Adjustment Commission may also, if it thinks fit, obtain the opinion of such expert valuers or other persons as in the circumstances it may require.

*Adjustment of liabilities*

**37 Adjustment Commission to adjust liabilities of applicant**

- (1) Subject to the provisions of this Act, the Adjustment Commission shall proceed at the hearing of the application to adjust the liabilities of the applicant as hereinafter provided.
- (2) In so far as it may be necessary or desirable in the interests of any creditor or guarantor of the applicant, an adjustment of the liabilities of any applicant may be made under this Act, notwithstanding that the whereabouts of the applicant may be unknown or that he may have failed to comply with any of the requirements of this Act.

**38 Adjustment Commission to determine whether or not applicant is a farmer applicant or a home applicant, the value of his property, the basic rent of his leasehold property, and whether he is entitled to retain property**

- (1) In so far as it may be necessary in order to enable an adjustment to be made of the liabilities of any applicant the Adjustment Commission shall make an order determining—
  - (a) whether the applicant is a farmer applicant, or is a home applicant, or is neither a farmer applicant nor a home applicant:
  - (b) the value of any property of the applicant other than his interest (if any) in any farm lands:
  - (c) the basic value of the applicant's interest (if any) in any farm lands:
  - (d) the basic rent of any property held by the applicant as lessee under any lease:
  - (e) whether or not the applicant is entitled to retain any property that is subject to an adjustable security or is comprised in an adjustable lease, or of any part of the property:
  - (f) the amount of principal and other moneys secured on any property of the applicant by any adjustable security, after allowing for any remissions made under subsection (3).
- (2) In determining the value of any property of any applicant other than his interest (if any) in any farm lands, the Adjustment Commission shall have regard to the values subsisting at the passing of this Act, but shall make such increases or reductions in those values as it deems necessary in order to make them fair values to serve as a basis for the adjustment of the liabilities of the applicant in accordance with this Part.
- (3) In determining the amount secured by any adjustable security the Adjustment Commission shall take into account (in addition to all other amounts properly included therein) all interest that has accrued due before the date of the order and has not been remitted under this subsection or under any other enactment. The Adjustment Commission may remit the whole or any part of any interest

accrued due before the date of the order (whether or not it has been capitalised), or the whole or any part of any additional charge of 10% added to any rates pursuant to section 76 of the Rating Act 1925. The Adjustment Commission may also remit any amount claimed under any adjustable mortgage for costs incurred by the mortgagee at any time after 25 August 1936.

- (4) Any order made under this section may be in like manner from time to time varied at any time before the application for adjustment is finally disposed of.

### **39 Basic value of farm lands**

- (1) For the purposes of this Part the basic value of the interest of any applicant in any farm lands means the productive value of those lands, as ascertained in manner provided by this section, increased or reduced by such amount as the Adjustment Commission deems necessary in order to make it a fair value to serve as a basis for the adjustment of the liabilities of the applicant in accordance with this Part.
- (2) In determining whether it is necessary to make any increase or reduction in the productive value as aforesaid the Adjustment Commission shall consider the nature and extent of the applicant's interest in the lands, the extent (if any) to which the productive capacity of the farm can be increased by the applicant, and such other matters affecting the farm property as it considers relevant.
- (3) For the purposes of this Part the productive value of any farm lands shall be deemed to be an amount equal to the net annual income that can be derived from the lands by the average efficient farmer, capitalised at a rate to be fixed for the purpose pursuant to the provisions in that behalf of subsection (6).
- (4) In order to ascertain the net annual income referred to in the last preceding subsection, there shall be deducted from the gross income that can be derived from the lands as aforesaid all expenses, other than capital expenditure, required to be incurred in the production of such income. The amount of the gross income aforesaid shall be determined on the basis of such prices for farm products as may be fixed for the purposes of this section by the Governor-General by Order in Council, or, in default of any such Order in Council or in so far as any such Order in Council does not extend, by the court. The said prices shall be fixed after taking into consideration the prices received in respect of products of the same or approximately the same kind, grade, and quality produced in New Zealand during a period of from 8 to 10 years immediately prior to 31 July 1935. The Governor-General may from time to time, by Order in Council, fix prices for the purposes of this section as hereinbefore provided.
- (5) For the purposes of the last preceding subsection the expenses required to be incurred in the production of the income shall be deemed to include (in addition to all other amounts properly included therein) rates and taxes, reasonable remuneration for the work performed by the applicant or any other person in the production of the income, and interest on the average annual value of the stock and chattels required to be used in the farming operations, computed at a

rate to be fixed for the purpose pursuant to the provisions in that behalf of the next succeeding subsection.

- (6) The Governor-General may from time to time, by Order in Council, fix the rate at which income is to be capitalised for the purposes of subsection (3), and the rate at which interest is to be computed for the purposes of the last preceding subsection.

#### **40 Basic rent**

- (1) For the purposes of this Part the basic rent of any property means such rent as in the opinion of the Adjustment Commission is a fair rent to serve as a basis for the adjustment of the liabilities of the applicant in accordance with this Part.
- (2) In determining the basic rent of any property the Adjustment Commission shall have regard to the value of the property, or in the case of farm lands the productive value of the lands as ascertained under the last preceding section, the value of the lessee's interest (if any) in the improvements on the property, and all other relevant considerations.

#### **41 Method of determining whether applicant is entitled to retain farm lands or other property**

- (1) In determining whether or not any farmer applicant is entitled to retain his farm lands or any part thereof, the Adjustment Commission shall take into consideration the following matters, namely:
  - (a) the conduct of the applicant in relation to the care and management of the lands and the disbursement of his income:
  - (b) the extent (if any) to which the area of the farm lands exceeds or is less than the area required to enable the applicant to obtain a reasonable standard of comfort for himself and his family:
  - (c) whether any relief granted pursuant to this Act would be reasonably likely to enable the applicant to meet his future liabilities in respect of the farm lands:
  - (d) any other matters that it deems relevant.
- (2) In determining whether or not any applicant is entitled to retain any property (not being farm lands), that is subject to an adjustable security or is comprised in an adjustable lease, or any part of the property, the Adjustment Commission shall take into consideration the following matters, namely:
  - (a) the conduct of the applicant in relation to the care of the property and the disbursement of his income:
  - (b) whether any relief granted pursuant to this Act would be reasonably likely to enable the applicant to meet his future liabilities in respect of the property:
  - (c) any other matters that it deems relevant.

**42 Moneys secured on farm lands or other property to be reduced to value of security, and balance to be an adjustable debt**

- (1) Subject to subsection (3), if the basic value of any applicant's interest in any farm lands is less than the total amount of the principal and other moneys secured on his interest in those lands by any adjustable security or adjustable securities, as determined by the Adjustment Commission, the amount so secured shall be deemed to be reduced to an amount equal to the basic value.
- (2) Subject to the next succeeding subsection, if the value as determined by the Adjustment Commission of any property of any applicant (other than his farm lands, if any) is less than the total amount of the principal and other moneys secured on that property by any adjustable security or adjustable securities, as determined by the Adjustment Commission, the amount so secured shall be deemed to be reduced to an amount equal to the value of that property determined as aforesaid.
- (3) Nothing in the foregoing provisions of this section shall apply with respect to any property that is sold under section 46 or section 47, or in respect of any property to which section 48 applies.
- (4) If different portions of the applicant's property (including his farm lands, if any) are subject to different adjustable securities, the foregoing provisions of this section shall apply with respect to each portion separately.
- (5) If there is more than 1 adjustable security on the same property the total amount deemed to be secured thereby shall for the purposes of this section be appropriated to the several securities in the order of their priority so that the first security shall be satisfied in full before any amount is appropriated to the second security, and so on.
- (6) The reduction effected by the operation of this section in the amount secured by any adjustable security shall take effect on a date to be specified in that behalf by an order of the Adjustment Commission. The date so specified may be earlier or later than the date of the order of the Adjustment Commission.
- (7) The amount by which any adjustable security is reduced in accordance with the foregoing provisions of this section shall be deemed to be a debt due by the applicant to the person entitled to the security, and, except to the extent (if any) to which it may be otherwise secured, shall be deemed to be an adjustable debt, and the provisions of section 49 shall apply accordingly with respect to that amount.

**43 Variation of terms of repayment and other terms of adjustable securities**

- (1) For the purpose of giving effect to the provisions of this section and the other provisions of this Act the Adjustment Commission may make such orders as it thinks fit, having regard to the general purposes specified in section 2, for the variation of the terms and conditions of any adjustable security or for the substitution of a new security for any adjustable security, whether or not the



amount secured by the adjustable security has been reduced by the operation of the last preceding section.

- (2) The whole or any part of the amount secured by any adjustable security, whether or not it is a table mortgage, may be made repayable by instalments of principal and interest as under a table mortgage, payable at such regular intervals and throughout such period as may be specified in that behalf by an order of the Adjustment Commission. The period so specified may commence earlier or later than the date of the order.
- (3) Where the amount secured on any land has been reduced by the operation of the last preceding section, so much of the reduced amount as is secured by mortgage and is not to be repayable by instalments of principal and interest as under a table mortgage shall be repayable as follows—that is to say, as to a sum to be specified in that behalf by an order of the Adjustment Commission, at the expiration of 5 years from the date on which the reduction took effect, and as to the balance, on such later date as the Adjustment Commission thinks fit. The sum so specified to be repayable at the expiration of the said period of 5 years shall not exceed such amount as, in the opinion of the Adjustment Commission, the mortgagor will then be able to borrow on first mortgage of the land on reasonable terms; and the terms of the mortgage or mortgages (as varied in accordance with this section), or of any new mortgage or mortgages given pursuant to this section, may provide that the mortgagor shall be entitled to borrow the whole or any part of the sum so specified on first mortgage of the land, and to give a second mortgage or, if necessary, 2 or more subsequent mortgages for so much of the reduced amount secured on the land as remains owing after the said sum has been repaid.
- (4) The interest payable on any adjustable security (or on any new security given pursuant to this section) in respect of any period after a date to be specified in that behalf by an order of the Adjustment Commission shall not exceed the appropriate rate of interest to be prescribed for the purpose pursuant to the provisions in that behalf of the next succeeding subsection. The date so specified may be earlier or later than the date of the order of the Adjustment Commission.
- (5) The Governor-General may from time to time, by Order in Council, fix rates of interest for the purposes of the last preceding subsection. Different rates of interest may be fixed in respect of different classes of securities.
- (6) The amount secured by any adjustable charge shall be payable at such time or times and in such manner as the Adjustment Commission thinks fit.
- (7) The terms of any adjustable security (as varied in accordance with this section), or of any new security given pursuant to this section, may provide for the repayment of the moneys secured thereby in the event of the sale or transfer, before the date fixed for repayment, of the property that is subject to the security.

- (8) For the purpose of better enabling the owner of any property to pay the amount secured on the property by any adjustable charge or, in the case of any leasehold property, to pay any arrears of rent, the Adjustment Commission may make such orders as it thinks fit for the postponement, capitalisation, reduction, or remission of any interest payable or to become payable under any mortgage of the property, whether in respect of a period before or after the date of the order.
- (9) Subject to the foregoing provisions of this section, the terms and conditions of every adjustable security (as varied in accordance with this section), or of any security substituted therefor as provided in subsection (1), shall be such as the Adjustment Commission thinks fit.
- (10) Nothing in this section shall be construed to render it obligatory on the Adjustment Commission to make an order for the variation of any term or condition of a mortgage unless that term or condition is less favourable to the mortgagor than the corresponding term or condition (if any) specified in this section.

#### **44 Rent payable under any adjustable lease to be reduced to basic rent, and arrears of rent to be an adjustable debt**

- (1) If the basic rent of any property held by any applicant as lessee under any adjustable lease is less than the rent payable under the lease, the rent payable under the lease shall be deemed to be reduced to an amount equal to the basic rent for such period as may be specified in that behalf by an order of the Adjustment Commission. The period so specified may commence before or after the date of the order of the Adjustment Commission.
- (2) The amount of rent owing by any applicant under any adjustable lease up to a date to be specified in that behalf by an order of the Adjustment Commission shall be deemed to be a debt due by the applicant to the lessor, and, except to the extent (if any) to which it may be otherwise secured, shall be deemed to be an adjustable debt, and the provisions of section 49 shall apply accordingly with respect to that amount. The date so specified may be earlier or later than the date of the order of the Adjustment Commission.

#### **45 Variation of provisions of adjustable leases**

For the purpose of giving effect to the provisions of this Act the Adjustment Commission may make such orders as it thinks fit, having regard to the general purposes specified in section 2, for the variation of the provisions of any adjustable lease, whether or not the rent payable under the adjustable lease is reduced under the last preceding section.

#### **46 Adjustment Commission may order sale of any property of applicant in certain cases**

- (1) The Adjustment Commission may make such orders as it thinks fit for the sale or offering for sale, on such terms and conditions as the Commission may fix in that behalf, either by public auction or public tender, with a right for any mort-

gagee to become the purchaser, or by private contract, whether to any specified mortgagee, creditor, or other person, or otherwise howsoever,—

- (a) of any property of any applicant that is subject to an adjustable security or is comprised in an adjustable lease, if the Adjustment Commission has determined that the applicant shall not be entitled to retain the property, or if the applicant has elected not to retain the property or has abandoned the property:
  - (b) in the case of a farmer applicant, of any other property, if the Adjustment Commission considers that its sale is desirable for the purposes of the adjustment of the liabilities of the applicant.
- (2) If the net proceeds of the sale of any property under this section are not sufficient to pay the total amount (if any) secured on that property by any adjustable security, the amount remaining unpaid shall be deemed to be a debt due by the applicant to the person entitled to the security, and, except to the extent (if any) to which it may be otherwise secured, shall be deemed to be an adjustable debt, and the provisions of section 49 shall apply accordingly with respect to that amount.

**47 Right of vendor mortgagee to repurchase property at same price, subject to allowances for improvements and depreciation**

- (1) Where a mortgage of any property secures the whole or any part of the purchase money payable to the vendor on a sale of that property, and the amount secured by the mortgage has been reduced by the operation of section 42, the mortgagee shall, if the Adjustment Commission so orders, be entitled to purchase the property at such price, and otherwise on such terms and conditions, as the Adjustment Commission may fix in that behalf in accordance with the provisions of this section.
- (2) The price to be fixed as aforesaid shall be an amount equal to the price payable on the sale first hereinbefore mentioned, increased by the value for the time being of the improvements to the property (if any) made since that sale, and reduced by a proper allowance for depreciation. The amounts to be allowed as aforesaid for the improvements and for depreciation shall be determined by the Adjustment Commission for the purposes of this section.
- (3) If the net proceeds of the sale of any property under this section are not sufficient to pay the total amount secured on that property by any adjustable security, the amount remaining unpaid shall be deemed to be a debt due by the applicant to the person entitled to the security, and, except to the extent (if any) to which it may be otherwise secured, shall be deemed to be an adjustable debt, and the provisions of section 49 shall apply accordingly with respect to that amount.
- (4) In any case where a mortgagee who is entitled to purchase any property under this section does not do so, nothing in this section shall be construed to limit

the powers conferred on the Adjustment Commission by the last preceding section.

- (5) Where the mortgagees under 2 or more mortgages desire to purchase any property under this section, preference shall be given to the mortgagee under the mortgage that was last registered.

#### **48 Moneys secured on property that is abandoned to be an adjustable debt**

- (1) Where the Adjustment Commission has determined that any applicant shall not be entitled to retain any property, or where any applicant has elected not to retain any property or has abandoned the property, whether before or after the passing of this Act, and the property has not been sold under section 46 or section 47, or as mentioned in the next succeeding subsection, the total amount owing by the applicant under any adjustable security affecting the property shall, except to the extent (if any) to which it may be otherwise secured, be deemed to be an adjustable debt, and the provisions of section 49 shall apply accordingly with respect to that amount. The discharge, through the operation of this subsection, of the applicant's liability for the whole or any part of the amount owing under any adjustable security shall not be deemed to release any property from the whole or any part of the amount secured thereon by the adjustable security.
- (2) Where any property of any applicant has, whether before or after the passing of this Act, been lawfully sold (otherwise than under section 46 or section 47) under a power conferred by or in respect of any adjustable security, or under the powers conferred by the Rating Act 1925 in respect of judgments for unpaid rates, and the net proceeds of the sale are not sufficient to pay the total amount secured on the property by any adjustable security, the amount remaining unpaid, except to the extent (if any) to which it may be otherwise secured or may not be owing by the applicant, shall be deemed to be an adjustable debt, and the provisions of the next succeeding section shall apply accordingly with respect to that amount.

#### **49 Adjustable debts to be discharged, except so far as the Adjustment Commission provides for their payment in whole or in part**

- (1) Except to the extent to which provision for their payment or satisfaction is made by an order under this section, all adjustable debts to which any applicant is subject at the date of the application for the adjustment of his liabilities under this Act, and such of the adjustable debts to which he subsequently becomes subject as the Adjustment Commission determines for the purposes of this section, shall be deemed to be discharged on a date to be fixed in that behalf by an order of the Adjustment Commission.
- (2) Unless the Adjustment Commission otherwise orders, where at the date of adjustment the creditor in respect of any adjustable debt to which any applicant is subject is himself subject to any liability, present or future, certain or contingent, in favour of the applicant, the adjustable debt and the creditor's liability

may be set off one against the other, and the last preceding subsection shall apply only with respect to the excess (if any) of the adjustable debt over the amount of the creditor's liability.

- (3) The Adjustment Commission may make such orders as it thinks fit, having regard to the general purposes specified in section 2, and to the other provisions of this Act, and to the circumstances in which the debts were contracted, and to all other relevant considerations, for the payment or satisfaction in whole or in part of the adjustable debts of any applicant, whether or not he continues in the use and occupation of his property or of any part thereof:

provided that where the applicant has no assets available for the payment or satisfaction of any adjustable debt, no order shall be made for the payment or satisfaction of that debt unless the Adjustment Commission deems it just and equitable to make such an order, after taking into consideration the amount of the income of the applicant, any hardship that would be inflicted on the creditor by failure to make the order, and all other relevant matters.

- (4) In particular, without limiting the general power hereinbefore conferred, orders may be made under this section for all or any of the following purposes:
- (a) determining the time or times at which and the manner in which any adjustable debts shall be paid or satisfied:
  - (b) providing for the payment or satisfaction of any adjustable debts or classes thereof in priority to or to the exclusion of other adjustable debts or classes thereof:
  - (c) providing for the securing of any adjustable debt in whole or in part on any property of the applicant, whether or not it is already subject to any prior security, but so that the total amount secured on any property shall not exceed the value of that property or, in the case of farm lands, the basic value thereof:
  - (d) providing for the borrowing of money on the security of any property of the applicant, to be applied in or towards the satisfaction of any adjustable debts:
  - (e) providing for the application of any property of the applicant in its existing form in or towards the satisfaction of any adjustable debts:
  - (f) providing for the payment to the mortgagee or lessor, or to such other person as may be specified, of the whole or any part of the amount of the applicant's liability under any guarantee.

Section 49(2): amended, on 22 December 1937, by section 3(3) of the Mortgagors and Lessees Rehabilitation Amendment Act 1937 (1937 No 30).

## **50 Power to give priority to moneys advanced in respect of farming operations**

- (1) Where at any time within 12 months before the passing of this Act, or at any time after the passing thereof, any moneys have been advanced to any farmer

applicant for the provision of seeds, manure, or stock, or for current working or living expenses, or otherwise in respect of his farming operations, or any debts have been incurred by him for any such purpose, the Adjustment Commission may make such orders as it thinks fit to provide for the payment or securing of the moneys so advanced or of the debts so incurred in priority to any other secured or unsecured debts of the applicant.

- (2) Where the person by whom any moneys have been so advanced or to whom any debts have been so incurred during any farming season is a creditor of the applicant in respect of any other moneys, the last preceding subsection shall apply only with respect to so much of the amount of the moneys so advanced or of the debts so incurred as exceeds the total amount received by the creditor during that farming season in respect of any of the applicant's liabilities to him.

#### **51 Restriction of rights of vendor under customary hire purchase agreement**

- (1) If at any time while an application for the adjustment of the liabilities of any farmer applicant under this Act is pending he has in his possession any chattel that is the subject matter of a customary hire purchase agreement within the meaning of section 57 of the Chattels Transfer Act 1924 the owner of that chattel shall not, except with the authority of an order of the Adjustment Commission, terminate the agreement or remove the chattel from the possession of the applicant.
- (2) The owner of any such chattel may at any time apply to the Adjustment Commission for authority to terminate the agreement or to remove the chattel from the possession of the applicant, and the Adjustment Commission shall give such authority except in cases where in its opinion the chattel is required by the applicant for the purposes of his farming operations.
- (3) If in the opinion of the Adjustment Commission the chattel is required by the applicant for the purposes of his farming operations, the Adjustment Commission may refuse to consent to the termination of the agreement or the removal of the chattel and may from time to time make such orders as it deems just and equitable for the variation of the agreement, or may at any time order that the agreement be terminated and that the chattel be returned to the owner upon such terms and conditions as the Adjustment Commission thinks fit.
- (4) For the purposes of this section the term **owner** in relation to any chattel means the vendor or bailor of that chattel within the meaning of section 57 of the Chattels Transfer Act 1924.

#### **52 Provision of moneys for increasing productive capacity of farm lands**

Where in the case of any farmer applicant the Adjustment Commission, having regard to the general purpose specified in subsection (1) of section 2, considers that provision should be made for the expenditure of moneys for any purpose that in the opinion of the Adjustment Commission would increase the productive capacity or the value of the farm lands of the applicant or would increase

the income that can be derived from those lands, and that the available moneys of the applicant are not sufficient for that purpose, the Adjustment Commission may make such orders as it thinks fit for the borrowing of moneys for that purpose on the security of any property of the applicant, and for the securing of any moneys so borrowed in priority to any other moneys that may be already secured on the said farm lands.

*Adjustment of liability of guarantors*

**53 Relief of mortgagor, lessee, or guarantor not to relieve any other person**

No concession, benefit, or discharge from liability granted to any mortgagor, lessee, or guarantor under this Act shall operate to relieve any other person from any liability under the mortgage, lease, or guarantee.

**54 Adjustment of liability of applicant under guarantee**

(1) The liability or obligation of any applicant under any guarantee in respect of an adjustable mortgage or adjustable lease shall, except to the extent (if any) to which it may be otherwise secured, be deemed to be an adjustable debt, and the provisions of section 49 shall apply accordingly with respect thereto.

(2) Where no application for the adjustment of the liabilities of any guarantor under this Act is filed on or before 31 January 1937 his liability under the guarantee shall be deemed to be discharged on that date unless there has been served on him on or before 31 December 1936 a notice from the mortgagee, lessor, or other person to whom he is liable, specifying the nature and extent of his liability and containing a statement to the effect that an application for the adjustment of his liability under this Act may be filed not later than 31 January 1937:

provided that where the court is satisfied that the failure to serve a notice under this subsection on any guarantor on or before 31 December 1936 was unavoidable, or was otherwise for any special reason excusable, it may extend the time for serving the notice to any date not later than 31 January 1937. An application for any such extension may be made at any time (whether before or after the service of the notice) not later than the said 31 January 1937. Where the court makes an order granting any such extension, a copy of the order, under the seal of the court, shall be served on the guarantor, and he may, notwithstanding anything to the contrary in subsection (5) of section 29, file an application for an adjustment of his liabilities under this Act at any time within 1 month after the date of such service.

(3) The discharge, through the operation of this section, of any person's liability for the whole or any part of the amount owing under any mortgage shall not be deemed to release any property from the whole or any part of the amount secured thereon by the mortgage.

- (4) Every guarantor in respect of any adjustable mortgage or adjustable lease shall be subrogated to the rights of the mortgagee or lessor in respect of any amount paid by him under the guarantee:
- provided that nothing in this subsection shall be construed to increase the liabilities of any mortgagor, lessee, or guarantor as adjusted under this Act.

## **Part 4**

### **Miscellaneous**

#### **55 Limitation of rights of creditors until 31 January 1937 and thereafter while an application for adjustment is pending**

- (1) While an application for the adjustment of the liabilities of any mortgagor, lessee, or guarantor under any mortgage or lease is pending under this Act, it shall not be lawful, except with the leave of the court, granted upon such terms and conditions as the court thinks fit, for any mortgagee, lessor, creditor, or other person whomsoever to do in respect of the mortgagor or lessee, or of any guarantor under the mortgage or lease, or in respect of any property of the mortgagor or lessee or of any such guarantor, any of the acts referred to in subsection (3), or to continue or complete the doing of any such act.
- (2) Until after 31 January 1937 the provisions of the last preceding subsection shall apply with respect to every mortgagor, lessee, or guarantor under a mortgage or lease to which this Act applies, for the adjustment of whose liabilities no application has been filed under this Act, in the same manner in all respects as if such an application were pending.
- (3) The acts to which this section relates are the following:
- (a) to commence or continue proceedings in any court for the enforcement directly or indirectly of any adjustable debt or of any debt secured by an adjustable security:
  - (b) to exercise any power of sale, rescission, or entry into possession conferred by any adjustable security:
  - (c) to exercise any power of re-entry conferred by any adjustable lease or any power of determining any adjustable lease:
  - (d) to seize or sell any property by way of distress for rent payable under any adjustable lease:
  - (e) to issue or proceed with any process of execution in pursuance of any judgment, decree, or order of any court in its civil jurisdiction if the judgment, decree, or order was obtained in respect of an adjustable debt or in respect of a debt secured by an adjustable security, or if the property affected by the process of execution is subject to an adjustable security or is comprised in an adjustable lease:



- (f) to issue or proceed with a summons under section 5 of the Imprisonment for Debt Limitation Act 1908 in respect of any judgment or order of any court obtained in respect of an adjustable debt or in respect of a debt secured by an adjustable security, except in cases in which fraud is alleged against the judgment debtor:
  - (g) to file or proceed with a bankruptcy petition or a winding-up petition in respect of any adjustable debt or in respect of any debt secured by an adjustable security:
  - (h) to sell or lease any property that is subject to an adjustable security or is comprised in an adjustable lease, under the powers conferred by the Rating Act 1925 in respect of judgments for unpaid rates.
- (4) Where any mortgagor, lessee, or guarantor, being the person primarily liable for the payment of any rates, is protected in respect of his liability for the payment of those rates through the operation of the foregoing provisions of this section, then, notwithstanding anything in section 70 of the Rating Act 1925, every other person from whom the rates could be recovered pursuant to that section shall be protected to the same extent.
- (5) The period during which the commencement of proceedings in any court for the enforcement of any debt or liability is prohibited by the operation of this section shall not be taken into account for the purpose of any enactment limiting the period within which those proceedings may be commenced.

Section 55(3)(e): amended, on 31 October 1936, by section 56 of the Statutes Amendment Act 1936 (1936 No 58).

#### **56 Power to reopen transactions in certain cases where creditors have exercised their rights**

- (1) Where, with respect to any such person or property as is mentioned in subsection (1) or subsection (2) of the last preceding section, the doing of any of the acts referred to in subsection (3) of that section has been completed (whenever commenced) before the passing of this Act but after 25 August 1936, the court on the application of any person who claims to have been affected by the doing of such act, may make such orders as it deems just and equitable for the purpose of reopening the transaction and setting aside the doing of such act, and reinstating the parties as nearly as may be in their former positions.
- (2) No application to the court under this section shall be heard by the court unless the application is made within 1 month after the passing of this Act.

#### **57 Court may make orders to protect creditors from acts intended to delay or defeat their claims**

On the application of any creditor of any mortgagor, lessee, or guarantor for the adjustment of whose liabilities an application is pending under this Act, upon the ground that the mortgagor, lessee, or guarantor, or any creditor or other person whosoever has committed or is committing or is about to commit a breach

of any order for the time being in force under this Act, or has done or is doing or is about to do anything that is intended or calculated to delay or defeat the claims of the creditors of the mortgagor, lessee, or guarantor or of any of the creditors, the court may make such order as in the circumstances it deems just and equitable for the purpose of protecting the interests of the creditors or of any of them.

**58 Applicants restrained from disposing of property, or obtaining credit without disclosure, while application pending**

- (1) Every mortgagor, lessee, or guarantor who, while any application for the adjustment of his liabilities under this Act is pending,—
- (a) without the consent of the Adjustment Commission, granted upon such terms and conditions as the Commission thinks fit, mortgages, charges, pledges, or creates any lien upon or otherwise encumbers any part of his property, or transfers, assigns, or parts with the possession or control of any part of his property otherwise than in the ordinary course of business; or
  - (b) being a farmer applicant, obtains credit to the extent of 20 pounds or upwards from any person without informing that person that he is a farmer applicant in respect of whom an application is pending under this Act,—
- shall be liable to the penalties to which he would be liable under section 58 of the Chattels Transfer Act 1924, if, being the grantor of an instrument by way of security under that Act, he had defrauded or attempted to defraud the grantee under such instrument.
- (2) Any mortgage, charge, pledge, lien, encumbrance, transfer, assignment, or delivery in contravention of paragraph (a) of the last preceding subsection may be declared by the court to be void, in whole or in part, if the court considers it just and equitable so to do after considering the interests of all the creditors of the applicant and (in addition to all other relevant circumstances) whether the person to or in favour of whom the mortgage, charge, pledge, lien, encumbrance, transfer, assignment, or delivery was made has taken reasonable steps to ensure that the provisions of that paragraph would not be contravened by the transaction, and has acted in good faith and without notice of the contravention.

**59 Court may dismiss frivolous or vexatious applications, etc**

The court may at any time dismiss any application made under this Act if it is satisfied that the application is frivolous or vexatious or is made solely for the purpose of delay, or that, having regard to the provisions of this Act, the applicant is not entitled to any relief or, as the case may be, to any further relief under this Act.

**60 Application for adjustment not affected by death of applicant**

- (1) In the event of the death of any mortgagor, lessee, or guarantor for the adjustment of whose liabilities an application is pending under this Act, the application and all proceedings in respect thereof shall enure and be continued as if the application had been made by or in respect of the personal representatives of the deceased person.
- (2) In the event of the death, whether before or after the passing of this Act, of any person who, if alive, would be entitled to apply for an adjustment of his liabilities under this Act, his personal representatives may apply for an adjustment of the liabilities of his estate in accordance with this Act.
- (3) If there are no personal representatives of any person who has died as aforesaid, an application for the adjustment of the liabilities of his estate under this Act may be made by his wife (or in the case of a woman by her husband), or by any of his children, or by any solicitor or agent who was acting for him at the time of his death. Every application made under this subsection shall be deemed to have lapsed at the expiration of 3 months from the date of its filing, unless it has theretofore been confirmed by the personal representatives of the deceased person.

**61 Service of notices or documents**

- (1) In any case where it is provided by this Act that any notice or document is to be served on any person, the notice or document shall be delivered to that person, and may be delivered to him either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. A notice or document so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.
- (2) If the person is absent from New Zealand, the notice or document may be delivered as aforesaid to his agent in New Zealand. If he is deceased the notice or document may be delivered as aforesaid to his personal representatives.
- (3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or document shall be delivered in such manner as may be directed by an order of the court or of the Adjustment Commission.
- (4) For the purposes of this section, any notice or document shall be deemed to have been delivered to the Maori owners of any Maori land if the land is described in the notice or document and the notice or document is delivered to the Registrar of the Maori Land Court for the district in which the land is situated, either personally or by posting it by registered letter addressed to the Registrar at his office.
- (5) Notwithstanding anything in the foregoing provisions of this section, the court or the Adjustment Commission may in any case make an order directing the

manner in which any notice or document is to be delivered, or dispensing with the delivery thereof.

Section 61(4): amended, on 27 November 1947, pursuant to section 2(2) of the Maori Purposes Act 1947 (1947 No 59).

Section 61(4): amended, on 27 November 1947, pursuant to section 9(2)(a) of the Maori Purposes Act 1947 (1947 No 59).

## **62 Costs in proceedings before court or Adjustment Commission**

No party to any proceedings before the court or an Adjustment Commission shall be liable to pay the costs of any other party to any such proceedings unless the court or the Commission, as the case may be, makes an order for the payment by any party of such costs on the ground that in its opinion the conduct of that party has been for the purpose of causing delay or has in any other respect been vexatious, or on the ground that it is desirable for any other special reason to make such an order.

## **63 Power to fix solicitors' fees in respect of proceedings under this Act or National Expenditure Adjustment Act**

- (1) The Governor-General may from time to time, by Order in Council, fix the maximum fees that may be charged by any solicitor to any client in respect of proceedings in the court or before any Adjustment Commission under this Act, or in respect of any proceedings under Part 3 of the National Expenditure Adjustment Act 1932.
- (2) All Orders in Council that were issued under section 25 of the Mortgagors and Tenants Relief Act 1933, and are in force at the passing of this Act, shall enure for the purposes of this Act as fully and effectually as if they had been issued under this section, and accordingly shall, where necessary, be deemed to have been so issued.

## **64 Publication in *Gazette* of lists of applicants for adjustment**

Provision may from time to time be made by regulations under this Act for the publication in the *Gazette* of lists of the persons for the adjustment of whose liabilities applications are made under this Act, and of the applicants whose applications are finally disposed of, with such particulars as may be prescribed.

## **65 Prohibiting publication of reports of proceedings of court or Adjustment Commission**

- (1) Except with the consent of the court or Adjustment Commission, no report or account of any sitting of the court or of any Adjustment Commission, or of any application, evidence, or proceedings before the court or Adjustment Commission, or of any list published in the *Gazette* as provided in the last preceding section, shall be published in any newspaper or other document.

- (2) Every person who publishes or causes to be published any report or account in contravention of the provisions of this section commits an offence, and shall be liable on conviction to a fine of 50 pounds.

Section 65(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**66 Application of fire insurance moneys in restitution of destroyed or damaged property**

Notwithstanding anything to the contrary in any rule of law or in any Act or instrument, where any property that is subject to a mortgage to which this Act applies or that is comprised in an adjustable lease is destroyed or damaged by fire, the court or any Adjustment Commission may, if it considers that the circumstances of the case warrant such a course, order that any moneys received by any mortgagee or lessor under any contract of insurance in respect of the destruction or damage shall be applied in or towards rebuilding, repairing, or replacing the destroyed or damaged property.

**67 Power to apportion mortgages**

- (1) For the purpose of better enabling it to give effect to the provisions of this Act, any Adjustment Commission may make such orders as it thinks fit for the apportionment of the moneys secured by any adjustable security between 2 or more parts of the property that is subject to the security, or for the release of any specified part of the property on payment of a specified part of the moneys, or for the discharge of the security and the substitution of 2 or more separate securities over separate parts of the property.
- (2) Where any adjustable security is subject to any mortgage or charge the powers conferred by the last preceding subsection may be exercised with respect to that mortgage or charge as well as with respect to the adjustable security.

**68 Special provisions as to mortgages securing annuities, etc**

Where by reason of the fact that the security secures an annuity or a rent charge, or is in an unusual form or contains unusual provisions, or for any other reason, the application of any of the provisions of this Act with respect to any adjustable security would not, in the opinion of the Adjustment Commission, give effect to the intent and purpose of this Act, the Adjustment Commission may make such orders as it thinks fit for the determination of the amount that shall be deemed to be secured by the security, or for the reduction of the amount secured thereby, or generally for giving effect as far as possible to the intent and purpose of this Act in relation to the security.

**69 Power to vary or cancel assignments or orders given by applicants**

Where any person is by virtue of any mortgage, assignment, order, or other instrument, whether executed before or after the passing of this Act, entitled to receive any moneys or property that any applicant would but for that mortgage,

assignment, order, or instrument be entitled to receive, the Adjustment Commission may make such orders as it thinks fit to provide for the cancellation or variation of that person's right to receive such moneys or property or for the application or disposal of any moneys or property received by him as aforesaid that are the proceeds of farming operations carried on by the applicant at any time since the commencement of the farming season that is current at the passing of this Act, and of any other moneys or property received by him as aforesaid at any time after the passing of this Act.

**70 Recovery of possession from tenants of mortgaged or leasehold property**

Where any land or premises that are subject to an adjustable mortgage or are comprised in an adjustable lease are for the time being occupied by a tenant, not being the mortgagor or lessee, the court, subject to the provisions of the Fair Rents Act 1936, shall have jurisdiction to make orders for the recovery of possession of the land or premises from the tenant.

**71 General jurisdiction of court and Adjustment Commissions**

- (1) In order that full effect may be given to the intent and purpose of this Act the court and (subject to the control of the court) every Adjustment Commission shall, in every matter coming before it, have full power and jurisdiction to deal with and determine the matter in such manner and to make such order, not inconsistent with this Act, as it deems just and equitable in the circumstances of the case, notwithstanding that express provision in respect of that matter is not contained herein.
- (2) In the course of any proceedings before it the court and every Adjustment Commission may, with or without any application and upon such terms as to notice to parties and otherwise as it thinks fit, proceed to exercise any part of its jurisdiction the exercise of which in those proceedings it deems necessary or advisable.

**72 Court may require execution of instruments to give effect to orders**

- (1) The court may direct any person to execute any instrument that in the opinion of the court may be required for the purposes of this Act, whether to enable any order to be made or to give effect to any order made under this Act.
- (2) If any person required to execute any such instrument fails or refuses to execute it, or if for any other reason the court deems it necessary so to do, the court may authorise the Registrar to execute the instrument in the name and on behalf of that person.

**73 Registration of orders under Land Transfer Act, Chattels Transfer Act, and other Acts**

- (1) Any order of the court affecting any property may, if the court so orders, or if the rules of the court so provide, be registered in respect of that property under

the Land Transfer Act 1915, the Deeds Registration Act 1908, the Chattels Transfer Act 1924, or any other Act.

- (2) For the purposes of such registration a copy of the order, under the seal of the court, shall be transmitted by the Registrar of the court to the District Land Registrar, Registrar of Deeds, Registrar of the Supreme Court, or other person charged with the duty of keeping the register concerned, and the said Registrar or other person shall thereupon register it accordingly without payment of any fee. Unless the court otherwise orders, or the rules of the court otherwise provide, the production of any certificate of title or other instrument shall not be necessary for the purpose of any such registration.
- (3) Where an order of the court affects any estate or interest in land that is subject to the Land Transfer Act 1915, or affects any other property that is subject to an Act providing that registration is necessary to give effect to dealings with the legal title thereto, the order, until it is registered in accordance with this section, shall affect only the equitable title to the property.

#### **74 Exemption from stamp duty of orders and certain other instruments**

*[Repealed]*

Section 74: repealed, on 17 March 1988, by section 7(2) of the Stamp and Cheque Duties Amendment Act (No 2) 1988 (1988 No 16).

#### **75 Enforcement of orders**

For the purpose of enforcing any order of the court a copy of the order, under the seal of the court, may be filed without payment of any fee in any office of the Supreme Court or of a Magistrate's Court, as the Court of Review directs, whereupon the order shall be enforceable in the same manner as a final judgment of the Supreme Court or of the Magistrate's Court, as the case may be, in its civil jurisdiction.

#### **76 Applications for revaluations of rural Crown lands deemed to be applications for adjustment under this Act**

- (1) Where an application for a revaluation of the land comprised in any lease or licence has been made under section 216 or section 246 of the Land Act 1924 and has not been finally disposed of at the passing of this Act, the application shall be deemed to be an application duly filed under section 29 of this Act for an adjustment of the liabilities of the lessee or licensee, and shall be dealt with accordingly.
- (2) The powers conferred by sections 216 and 246 of the Land Act 1924, and sections 11, 12, and 13 of the Land Laws Amendment Act 1927 shall not be exercised between the passing of this Act and 1 February 1937.

#### **77 State lending departments and local authorities may agree to adjustments**

- (1) Notwithstanding anything to the contrary in any Act, the Crown or any person acting for and on behalf of the Crown or any incorporated department of State

or any local authority or public body may agree to an adjustment of the liabilities of any mortgagor, lessee, or guarantor in accordance with the provisions of this Act:

provided that no adjustment shall be agreed to under this section by any department except with the concurrence of the Board (if any) charged with the control of the investments of that department.

- (2) Nothing in this section shall be construed to limit any powers possessed by the Crown, or by any person, department, local authority, or public body independently of this section.

### **78 Trustees may agree to adjustments**

- (1) It shall be lawful for any trustee to agree to an adjustment of the liabilities of any mortgagor, lessee, or guarantor in accordance with the provisions of this Act.
- (2) Nothing in this section shall be construed to limit the powers conferred on a trustee by section 2 of the Trustee Amendment Act 1924 or by section 4 of the Trustee Amendment Act 1935 or otherwise howsoever.

### **79 Voluntary adjustments**

- (1) The court and every Adjustment Commission shall endeavour to promote voluntary adjustments of the liabilities of mortgagors, lessees, and guarantors, and may make such orders as it thinks fit for the purpose of giving effect to any such adjustments that in its opinion are in accordance with the provisions of this Act.
- (2) Unless it is embodied in an order of the court, no voluntary adjustment shall have any force or effect to deprive any mortgagor, lessee, or guarantor of any right, power, privilege, or other benefit provided for by this Act.

### **80 As to contracting out of benefits provided by Act**

No covenant or condition contained in any mortgage or lease or in any deed or other instrument, whether executed before or after the passing of this Act, shall have or be deemed heretofore to have had any force or effect to deprive any mortgagor, lessee, or guarantor of any right, power, privilege, or other benefit provided for by this Act.

### **81 Right of mortgagor to repay principal, if interest not reduced**

- (1) The mortgagor under any mortgage to which this Act applies may at any time not later than 31 January 1937 serve on the mortgagee a notice requiring him to reduce the rate of interest payable under the mortgage to such rate as may be specified in that behalf in the notice.
- (2) If the mortgagee does not, within 1 month after the service of the notice, duly reduce the rate of interest payable under the mortgage to the rate so specified, or to such other rate as may be agreed upon by the mortgagor and the mortga-



gee, the mortgagor shall be entitled, at any time within 3 months after the service of the notice, to repay the principal sum secured by the mortgage with interest up to the date of repayment only.

- (3) Where the rate of interest payable under a table mortgage is reduced pursuant to this section, then, subject to any other variation that may be duly made in the terms and conditions of the mortgage, the amount of each instalment of principal and interest payable after the date of the reduction shall be reduced by an amount equal to the amount by which the interest included in the instalment has been reduced.
- (4) The provisions of sections 77 and 78 shall apply with respect to agreements made under this section as if they were agreements for the adjustment of liabilities in accordance with the provisions of this Act.

**82 Restricting sale of land in respect of which adjustments have been made under this Act**

- (1) Where the amount secured on any land has been reduced by the operation of section 42, or where the rent of any land has been reduced by the operation of subsection (1) of section 44, or where any arrears of rent have been remitted in whole or in part by the operation of subsection (2) of the said section 44, it shall not be lawful, except with the leave of the court, granted upon such terms and conditions as the court thinks fit, for the owner for the time being of the land or of any part thereof, or of any interest in the land or in any part thereof, to sell or otherwise dispose of the same at any time before 1 January 1941:

provided that nothing in this subsection shall apply with respect to any interest that was not owned by the applicant at the time of the reduction or remission as aforesaid, or with respect to any sale or other disposition that is made under a power conferred by any mortgage or other security, or under a power conferred by any Act for the purpose of enforcing any charge, or with respect to any interest that at any time since the reduction or remission has been sold or otherwise disposed of under any such power.

- (2) The court shall not grant leave to make any such sale or other disposition except in exceptional circumstances, and after taking into consideration the general purposes specified in section 2.
- (3) The conditions imposed by the court upon granting leave to any owner to make any such sale or other disposition may include a condition that such portion of the price or other consideration as the court deems equitable, having regard to all the circumstances and in particular to any improvements made to the land since the adjustments were made, shall become payable into court in such manner and within such time as the court directs, and shall be applied by the court for the benefit of all or any of the creditors of the owner whose claims have been discharged in whole or in part by the operation of section 49.

**83 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the general power hereinbefore conferred, regulations may be made under this section for the purpose of providing that, notwithstanding anything to the contrary in the Land Transfer Act 1915 or in the Deeds Registration Act 1908 or in any other Act, any mortgage executed for the purposes of this Act shall upon registration have priority over any mortgage or charge previously registered.
- (3) *[Repealed]*

Section 83(3): repealed, on 19 December 1989, by section 11 of the Regulations (Disallowance) Act 1989 (1989 No 143).

*National Expenditure Adjustment Act***84 Making permanent the operation of Part 3 of National Expenditure Adjustment Act 1932 (effecting reductions in interest, rent, and other fixed charges)**

*Amendment(s) incorporated in the Act(s).*

**85 Power to transfer functions of High Court or District Court Judge to the Court of Review**

The Governor-General may from time to time, by Order in Council, transfer to the Court of Review all or any of the functions of the Supreme Court or of a Stipendiary Magistrate under Part 3 of the National Expenditure Adjustment Act 1932. Every such Order in Council shall have effect according to its tenor, and shall come into force on a date to be fixed in that behalf in the order.

*Repeals and savings***86 Repeals**

- (1) The enactments specified in the Schedule are hereby repealed.
- (2) *[Repealed]*

Section 86(2): repealed, on 1 January 1957, by section 89(1) of the Trustee Act 1956 (1956 No 61).

**87 Saving of existing orders for relief under Mortgagors and Tenants Relief Act**

- (1) Subject to revocation or variation under the next succeeding subsection, where any order in relief of a mortgagor or lessee that was made under the Mortgagors and Tenants Relief Act 1933, or under any enactment repealed by that Act, or any order in relation to stock mortgages that was made under section 11 of that Act, is subsisting or in force at the passing of this Act, that order shall, notwithstanding the repeal of that Act, continue in force as if that Act were still in

force, and all proceedings may be taken and all jurisdiction exercised with respect to that order accordingly:

provided that nothing in this subsection shall be construed to continue any such order in force—

- (a) after 31 January 1937, in any case where no application for the adjustment of the liabilities of the mortgagor or lessee is filed under this Act on or before that date; or
  - (b) after the liabilities of the mortgagor or lessee are finally adjusted under this Act, or after the mortgage or lease ceases to be subject to this Act, in any case where an application is made as aforesaid; or
  - (c) in any case, after the time (if any) specified for its expiry in the order as from time to time varied under the next succeeding subsection.
- (2) The court may from time to time, subject to such terms and conditions as it thinks fit, either revoke any such order in whole or in part or vary it (whether by way of extension or otherwise) in such manner as it deems just and equitable in the circumstances of the case.
  - (3) The powers conferred on the court by the last preceding subsection may be exercised with respect to any agreement in relation to stock mortgages that was made as mentioned in section 11 of the Mortgagors and Tenants Relief Act 1933 (whether before or after the passing of that Act), and is subsisting or in force at the passing of this Act.

**88 Provisions applicable where notice for adjustment has been given under Rural Mortgagors Final Adjustment Act 1934–35**

- (1) Subject to the provisions of this section, where a notice for the adjustment of the liabilities of a farmer mortgagor under the Rural Mortgagors Final Adjustment Act 1934–35 has heretofore been given by the mortgagor under section 18 of that Act, or by the mortgagee under section 19 of that Act, all proceedings in respect thereof that originated under the said Act and are subsisting or in force at the passing of this Act shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.
- (2) Subject to revocation or variation under the next succeeding subsection, all stay orders and other orders and decisions that were made in any such case by the court or an Adjustment Commission under the Rural Mortgagors Final Adjustment Act 1934–35 and are subsisting or in force at the passing of this Act shall, notwithstanding the repeal of that Act, continue in force as if that Act were still in force, and all proceedings may be taken and all jurisdiction exercised with respect to such orders and decisions accordingly:

provided that nothing in this subsection shall be construed to continue any such order or decision in force after the time (if any) specified for its expiry in the

order or decision as from time to time varied under the next succeeding subsection, or after the liabilities of the mortgagor are finally adjusted under this Act, or after the mortgage or all the mortgages (if more than 1) of the mortgagor cease to be subject to this Act, whichever first occurs.

- (3) The court may from time to time, subject to such terms and conditions as it thinks fit, either revoke any such order or decision in whole or in part or vary it (whether by way of extension or otherwise) in such manner as it deems just and equitable in the circumstances of the case.
- (4) Where a provisional trustee or a trustee of any mortgagor's estate is in office at the passing of this Act under section 25 or section 37 of the Rural Mortgagors Final Adjustment Act 1934–35, the provisional trustee or trustee shall, notwithstanding the repeal of that Act, continue in office as if that Act were still in force, until an order for his discharge is made by the Adjustment Commission. Every such provisional trustee or trustee shall from time to time account to the Adjustment Commission for all moneys or property received or disposed of by him on account of the mortgagor, and shall from time to time dispose of all moneys and property so received by him in accordance with the directions of the Adjustment Commission.
- (5) The foregoing provisions of this section shall not apply in any case where the mortgage or all the mortgages (if more than 1) of the mortgagor have before the passing of this Act ceased to be subject to the Rural Mortgagors Final Adjustment Act 1934–35.

## Schedule Enactments repealed

s 86(1)

### **Finance Act (No 3) 1934 (1934 No 31)**

*Amendment(s) incorporated in the Act(s).*

### **Mortgagors and Tenants Relief Act 1933 (1933 No 34)**

### **Rural Mortgagors Final Adjustment Act 1934–35 (1934–35 No 50)**

### **Rural Mortgagors Final Adjustment Amendment Act 1935 (1935 No 35)**

## **Reprints notes**

### **1 *General***

This is a reprint of the Mortgagors and Lessees Rehabilitation Act 1936 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2 *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 *Amendments incorporated in this reprint***

Statutes Repeal Act 2017 (2017 No 23): section 3(1)

Criminal Procedure Act 2011 (2011 No 81): section 413

Evidence Act 2006 (2006 No 69): section 216

Regulations (Disallowance) Act 1989 (1989 No 143): section 11

Stamp and Cheque Duties Amendment Act (No 2) 1988 (1988 No 16): section 7(2)

Trustee Act 1956 (1956 No 61): section 89(1)

Maori Purposes Act 1947 (1947 No 59): sections 2(2), 9(2)(a)

Mortgagors and Lessees Rehabilitation Amendment Act 1937 (1937 No 30): section 3(3)

Statutes Amendment Act 1936 (1936 No 58): section 56