



# Agricultural Holdings (Scotland) Act 1991

## 1991 CHAPTER 55

### PART V

#### OTHER PROVISIONS REGARDING COMPENSATION

##### *Market gardens*

#### **40 Market gardens**

- (1) This section applies to any agricultural holding which, by virtue of an agreement in writing made on or after 1st January 1898, is let or is to be treated as a market garden.
- (2) This section also applies where—
  - (a) a holding was, on 1st January 1898 under a lease then current, in use or cultivation as a market garden with the knowledge of the landlord; and
  - (b) an improvement of a kind specified in Schedule 6 to this Act (other than such an alteration of a building as did not constitute an enlargement thereof) has been carried out on the holding; and
  - (c) the landlord did not, before the improvement was carried out, serve on the tenant a written notice dissenting from the carrying out of the improvement;in relation to improvements whether carried out before or after 1st January 1898.
- (3) In the application of Part IV of this Act to an agricultural holding to which this section applies, subject to subsections (5) and (7) below, the improvements specified in Schedule 6 to this Act shall be included in the improvements specified in Part III of each of Schedules 3, 4 and 5 to this Act.
- (4) In the case of an agricultural holding to which this section applies—
  - (a) section 18 of this Act shall apply to every fixture or building affixed or erected by the tenant to or upon the holding or acquired by him since 31st December 1900 for the purposes of his trade or business as a market gardener;
  - (b) it shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out, but if the tenant does not

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remove such fruit trees and fruit bushes before the termination of his tenancy they shall remain the property of the landlord and the tenant shall not be entitled to any compensation in respect thereof; and

- (c) the right of an incoming tenant to claim compensation in respect of the whole or part of an improvement which he has purchased may be exercised although the landlord has not consented in writing to the purchase.
- (5) Where a tenancy of a kind described in subsection (2) above was a tenancy from year to year, the compensation payable in respect of an improvement of a kind referred to in that subsection shall be such (if any) as could have been claimed if the 1949 Act had not been passed.
- (6) Where the land to which this section applies consists of part only of an agricultural holding this section shall apply as if that part were a separate holding.
- (7) Nothing in this section shall confer a right to compensation for the alteration of a building (not being an alteration constituting an enlargement of the building) where the alteration was begun before 1st November 1948.

#### **41 Direction by Land Court that holding be treated as market garden**

- (1) Where—
- (a) the tenant of an agricultural holding intimates to the landlord in writing his desire to carry out on the holding or any part thereof an improvement specified in Schedule 6 to this Act;
  - (b) the landlord refuses, or within a reasonable time fails, to agree in writing that the holding, or that part thereof, shall be treated as a market garden;
  - (c) the tenant applies to the Land Court for a direction under this subsection; and
  - (d) the Land Court is satisfied that the holding or that part thereof is suitable for the purposes of market gardening;
- the Land Court may direct that section 40 of this Act shall apply to the holding or, as the case may be, part of a holding, either—
- (i) in respect of all the improvements specified in Schedule 6 to this Act, or
  - (ii) in respect of some only of those improvements,
- and that section shall apply accordingly as respects any improvement carried out after the date on which the direction is given.
- (2) A direction under subsection (1) above may be given subject to such conditions, if any, for the protection of the landlord as the Land Court may think fit and, in particular, where the direction relates to part only of the holding, the direction may, on the application of the landlord, be given subject to the condition that the tenant shall consent to the division of the holding into two parts (one such part being the part to which the direction relates) to be held at rents agreed by the landlord and tenant or in default of agreement determined by arbitration, but otherwise on the same terms and conditions (so far as applicable) as those on which the holding is held.
- (3) Where a direction is given under subsection (1) above, if the tenancy is terminated—
- (a) by notice of intention to quit given by the tenant, or
  - (b) by reason of the tenant's apparent insolvency being constituted under section 7 of the Bankruptcy (Scotland) Act 1985,

the tenant shall not be entitled to compensation in respect of improvements specified in the direction unless he produces an offer which complies with subsection (4) below and the landlord fails to accept the offer within 3 months after the production thereof.

- (4) An offer complies with this subsection if—
- (a) it is in writing;
  - (b) it is made by a substantial and otherwise suitable person;
  - (c) it is produced by the tenant to the landlord not later than one month after the date of the notice of intention to quit or constitution of apparent insolvency as the case may be, or at such later date as may be agreed;
  - (d) it is an offer to accept a tenancy of the holding from the termination of the existing tenancy on the terms and conditions of the existing tenancy so far as applicable;
  - (e) it includes an offer, subject to subsection (5) below, to pay to the outgoing tenant all compensation payable under this Act or under the lease;
  - (f) it is open for acceptance for a period of 3 months from the date on which it is produced.
- (5) If the landlord accepts an offer which complies with subsection (4) above the incoming tenant shall pay to the landlord on demand all sums payable to him by the outgoing tenant on the termination of the tenancy in respect of rent or breach of contract or otherwise in respect of the holding.
- (6) Any amount paid by the incoming tenant under subsection (5) above may, subject to any agreement between the outgoing tenant and incoming tenant, be deducted by the incoming tenant from any compensation payable by him to the outgoing tenant.
- (7) A tenancy created by the acceptance of an offer which complies with subsection (4) above shall be deemed for the purposes of section 13 of this Act not to be a new tenancy.

#### **42 Agreements as to compensation relating to market gardens**

- (1) Where under an agreement in writing a tenant of an agricultural holding is entitled to compensation which is fair and reasonable having regard to the circumstances existing at the time of making the agreement, for an improvement for which compensation is payable by virtue of section 40 of this Act, such compensation shall, as respects that improvement, be substituted for compensation under this Act.
- (2) The landlord and the tenant of an agricultural holding who have agreed that the holding shall be let or treated as a market garden may by agreement in writing substitute, for the provisions as to compensation which would otherwise be applicable to the holding, the provisions as to compensation in section 41(3) to (6) of this Act.

#### *Miscellaneous*

#### **43 Compensation for disturbance**

- (1) Where the tenancy of an agricultural holding terminates by reason of—
- (a) a notice to quit given by the landlord; or
  - (b) a counter-notice given by the tenant under section 30 of this Act,

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and in consequence the tenant quits the holding, subject to subsections (2) to (8) below, compensation for the disturbance shall be payable by the landlord to the tenant.

- (2) Compensation shall not be payable under this section where the application of section 22(1) of this Act to the notice to quit is excluded by any of paragraphs (a) or (c) to (f) of subsection (2) of that section.
- (3) Subject to subsection (4) below, the amount of the compensation payable under this section shall be the amount of the loss or expense directly attributable to the quitting of the holding which is unavoidably incurred by the tenant upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (not being expenses of an arbitration to determine any question arising under this section).
- (4) Where compensation is payable under this section—
  - (a) the compensation shall be an amount equal to one year's rent of the holding at the rate at which rent was payable immediately before the termination of the tenancy without proof by the tenant of any such loss or expense as aforesaid;
  - (b) the tenant shall not be entitled to claim any greater amount than one year's rent of the holding unless he has given to the landlord not less than one month's notice of the sale of any such goods, implements, fixtures, produce or stock as aforesaid and has afforded him a reasonable opportunity of making a valuation thereof;
  - (c) the tenant shall not in any case be entitled to compensation in excess of 2 years' rent of the holding.
- (5) In subsection (4) above "rent" means the rent after deduction of such an amount as, failing agreement, the arbiter finds to be the amount payable by the landlord in respect of the holding for the year in which the tenancy was terminated by way of any public rates, taxes or assessments or other public burdens, the charging of which on the landlord would entitle him to relief in respect of tax under Part II of the Income and Corporation Taxes Act 1988.
- (6) Where the tenant of an agricultural holding has lawfully sub-let the whole or part of the holding, and in consequence of a notice to quit given by his landlord becomes liable to pay compensation under this section to the sub-tenant, the tenant shall not be debarred from recovering compensation under this section by reason only that, owing to not being in occupation of the holding or part of the holding, on the termination of his tenancy he does not quit the holding or that part.
- (7) Where the tenancy of an agricultural holding terminates by virtue of a counter-notice given by the tenant under section 30 of this Act and—
  - (a) the part of the holding affected by the notice to quit given by the landlord, together with any part of the holding affected by any previous notice to quit given by the landlord which is rendered valid by section 29 of this Act, is either less than a quarter of the area of the original holding or of a rental value less than one quarter of the rental value of the original holding, and
  - (b) the holding as proposed to be diminished is reasonably capable of being farmed as a separate holding,

compensation shall not be payable under this section except in respect of the part of the holding to which the notice to quit relates.

- (8) Compensation under this section shall be in addition to any compensation to which the tenant may be entitled apart from this section.

#### **44 Compensation for continuous adoption of special standard of farming**

- (1) Where the tenant of an agricultural holding proves that the value of the holding to an incoming tenant has been increased during the tenancy by the continuous adoption of a standard of farming or a system of farming which has been more beneficial to the holding than—

- (a) the standard or system required by the lease, or
- (b) in so far as no system of farming is so required, the system of farming normally practised on comparable holdings in the district,

the tenant shall be entitled, on quitting the holding, to obtain from the landlord such compensation as represents the value to an incoming tenant of the adoption of that more beneficial standard or system.

- (2) Compensation shall not be recoverable under subsection (1) above unless—

- (a) the tenant has, not later than one month before the termination of the tenancy, given to the landlord notice in writing of his intention to claim such compensation; and
- (b) a record of the condition of the fixed equipment on, and the cultivation of, the holding has been made under section 8 of this Act;

and shall not be so recoverable in respect of any matter arising before the date of the record so made or, where more than one such record has been made during the tenancy, before the date of the first such record.

- (3) In assessing the compensation to be paid under subsection (1) above, due allowance shall be made for any compensation agreed or awarded to be paid to the tenant under Part IV of this Act for any improvement which has caused or contributed to the benefit.
- (4) Nothing in this section shall entitle a tenant to recover, in respect of any improvement, any compensation which he would not be entitled to recover apart from this section.

#### **45 Compensation to landlord for deterioration etc. of holding**

- (1) The landlord of an agricultural holding shall be entitled to recover from the tenant, on his quitting the holding on termination of the tenancy, compensation—

- (a) where the landlord shows that the value of the holding has been reduced by dilapidation, deterioration or damage caused by;
- (b) where dilapidation, deterioration or damage has been caused to any part of the holding or to anything in or on the holding by;

non-fulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry.

- (2) The amount of compensation payable under subsection (1) above shall be—

- (a) where paragraph (a) of that subsection applies, (insofar as the landlord is not compensated for the dilapidation, deterioration or damage under paragraph (b) thereof) an amount equal to the reduction in the value of the holding;
- (b) when paragraph (b) of that subsection applies, the cost, as at the date of the tenant's quitting the holding, of making good the dilapidation, deterioration or damage.

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- (3) Notwithstanding anything in this Act, the landlord may, in lieu of claiming compensation under subsection (1)(b) above, claim compensation in respect of matters specified therein, under and in accordance with a lease in writing, so however that—
- (a) compensation shall be so claimed only on the tenant's quitting the holding on the termination of the tenancy;
  - (b) subject to section 46(4) of this Act compensation shall not be claimed in respect of any one holding both under such a lease and under subsection (1) above;
- and compensation under this subsection shall be treated, for the purposes of subsection (2)(a) above and of section 46 (2) of this Act as compensation under subsection (1)(b) above.

#### **46 Compensation for failure to repair or maintain fixed equipment**

- (1) This section applies where, by virtue of section 4 of this Act, the liability for the maintenance or repair of an item of fixed equipment is transferred from the tenant to the landlord.
- (2) Where this section applies, the landlord may within the period of one month beginning with the date on which the transfer takes effect require that there shall be determined by arbitration, and paid by the tenant, the amount of any compensation which would have been payable under section 45(1)(b) of this Act in respect of any previous failure by the tenant to discharge the said liability, if the tenant had quitted the holding on the termination of his tenancy at the date on which the transfer takes effect.
- (3) Where this section applies, any claim by the tenant in respect of any previous failure by the landlord to discharge the said liability shall, if the tenant within the period of one month referred to in subsection (2) above so requires, be determined by arbitration, and any amount directed by the award to be paid by the landlord shall be paid by him to the tenant.
- (4) For the purposes of section 45(3)(b) of this Act any compensation under this section shall be disregarded.

#### **47 Provisions supplementary to ss. 45 and 46**

- (1) Compensation shall not be recoverable under section 45 of this Act, unless the landlord has, not later than 3 months before the termination of the tenancy, given notice in writing to the tenant of his intention to claim compensation thereunder.
- (2) Subsection (3) below shall apply to compensation—
- (a) under section 45 of this Act, where the lease was entered into after 31st July 1931; or
  - (b) where the lease was entered into on or after 1st November 1948.
- (3) When this subsection applies, no compensation shall be recoverable—
- (a) unless during the occupancy of the tenant a record of the condition of the fixed equipment on, and cultivation of, the holding has been made under section 8 of this Act;
  - (b) in respect of any matter arising before the date of the record referred to in paragraph (a) above; or

- (c) where more than one such record has been made during the tenant's occupancy, in respect of any matter arising before the date of the first such record.
- (4) If the landlord and the tenant so agree in writing a record of the condition of the holding shall, notwithstanding that it was made during the occupancy of a previous tenant, be deemed, for the purposes of subsection (3) above, to have been made during the occupancy of the tenant and on such date as may be specified in the agreement and shall have effect subject to such modifications (if any) as may be so specified.
- (5) Where the tenant has remained in his holding during 2 or more tenancies, his landlord shall not be deprived of his right to compensation under section 45 of this Act in respect of any dilapidation, deterioration or damage by reason only that the tenancy during which the relevant act or omission occurred was a tenancy other than the tenancy at the termination of which the tenant quit the holding.

#### **48 Landlord not to have right to penal rent or liquidated damages**

Notwithstanding any provision to the contrary in a lease of an agricultural holding, the landlord shall not be entitled to recover any sum, by way of higher rent, liquidated damages or otherwise, in consequence of any breach or non-fulfilment of a term or condition of the lease, which is in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment.

#### **49 Compensation provisions to apply to parts of holdings in certain cases**

- (1) Where—
  - (a) the tenancy of part of an agricultural holding terminates by reason of a notice to quit which is rendered valid by section 29 of this Act; or
  - (b) the landlord of an agricultural holding resumes possession of part of the holding in pursuance of a provision in that behalf contained in the lease;the provisions of this Act with respect to compensation shall apply as if that part of the holding were a separate holding which the tenant had quitted in consequence of a notice to quit.
- (2) In a case falling within subsection (1)(b) above, the arbiter, in assessing the amount of compensation payable to the tenant, shall take into account any benefit or relief allowed to the tenant under the lease in respect of the land possession of which is resumed by the landlord.
- (3) Where any land comprised in a lease is not an agricultural holding within the meaning of this Act by reason only that the land so comprised includes land to which subsection (4) below applies, the provisions of this Act with respect to compensation for improvements and for disturbance shall, unless it is otherwise agreed in writing, apply to the part of the land exclusive of the land to which subsection (4) below applies as if that part were a separate agricultural holding.
- (4) This subsection applies to land which, owing to the nature of the building thereon or the use to which it is put, would not, if it had been separately let, be an agricultural holding.

## **50 Determination of claims for compensation where holding is divided**

Where the interest of the landlord in an agricultural holding has become vested in several parts in more than one person and the rent payable by the tenant of the holding has not been apportioned with his consent or under any statute, the tenant shall be entitled to require that any compensation payable to him under this Act shall be determined as if the holding had not been divided; and the arbiter shall, where necessary, apportion the amount awarded between the persons who for the purposes of this Act together constitute the landlord of the holding, and any additional expenses of the award caused by the apportionment shall be directed by the arbiter to be paid by those persons in such proportions as he shall determine.

## **51 Compensation not to be payable for things done in compliance with this Act**

- (1) Notwithstanding anything in the foregoing provisions of this Act or any custom or agreement—
  - (a) no compensation shall be payable to the tenant of an agricultural holding in respect of anything done in pursuance of a direction under section 9(2) of this Act;
  - (b) in assessing compensation to an outgoing tenant of an agricultural holding where land has been ploughed up in pursuance of a direction under section 9(2) of this Act, the value per hectare of any tenant's pasture comprised in the holding shall be taken not to exceed the average value per hectare of the whole of the tenant's pasture comprised in the holding on the termination of the tenancy.
- (2) In subsection (1)(b) above "tenant's pasture" means pasture laid down at the expense of the tenant or paid for by the tenant on entering the holding.
- (3) The tenant of an agricultural holding shall not be entitled to compensation for an improvement specified in Part III of any of Schedules 3 to 5 to this Act, being an improvement carried out for the purposes of—
  - (a) the proviso to section 35(1) of the Agricultural Holdings (Scotland) Act 1923;
  - (b) the proviso to section 12(1) of the 1949 Act; or
  - (c) section 9 of this Act.

## **52 Compensation for damage by game**

- (1) Subject to subsection (2) below, where the tenant of an agricultural holding has sustained damage to his crops from game, the right to kill and take which is vested neither in him nor in anyone claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall be entitled to compensation from his landlord for the damage if it exceeds in amount the sum of 12 pence per hectare of the area over which it extends.
- (2) Compensation shall not be recoverable under subsection (1) above, unless—
  - (a) notice in writing is given to the landlord as soon as is practicable after the damage was first observed by the tenant, and a reasonable opportunity is given to the landlord to inspect the damage—
    - (i) in the case of damage to a growing crop, before the crop is begun to be reaped, raised or consumed;



- (ii) in the case of damage to a crop reaped or raised, before the crop is begun to be removed from the land; and
  - (b) notice in writing of the claim, together with the particulars thereof, is given to the landlord within one month after the expiry of the calendar year, or such other period of 12 months as by agreement between the landlord and the tenant may be substituted therefor, in respect of which the claim is made.
- (3) The amount of compensation payable under subsection (1) above shall, in default of agreement made after the damage has been suffered, be determined by arbitration.
- (4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by that other person against all claims for compensation under this section; and any question arising under this subsection shall be determined by arbitration.
- (5) In this section “game” means deer, pheasants, partridges, grouse and black game.

### **53 Extent to which compensation recoverable under agreements**

- (1) Unless this Act makes express provision to the contrary, where provision is made in this Act for compensation to be paid to a landlord or tenant—
  - (a) he shall be so entitled notwithstanding any agreement, and
  - (b) he shall not be entitled to compensation except under that provision.
- (2) Where the landlord and the tenant of an agricultural holding enter into an agreement in writing for such a variation of the terms of the lease as could be made by direction under section 9 of this Act, the agreement may provide for the exclusion of compensation in the same manner as under section 51(1) of this Act.
- (3) A claim for compensation by a landlord or tenant of an agricultural holding in a case for which this Act does not provide for compensation shall not be enforceable except under an agreement in writing.