



Agricultural Holdings (Scotland) Act 1949

1949 CHAPTER 75

*Compensation to tenant, on termination of tenancy,
for improvements begun before 1st November, 1948*

36 Application of sections 37 to 46

- (1) The provisions of the ten next following sections shall have effect with respect to the rights of the tenant of an agricultural holding with respect to compensation for an improvement specified in the Second Schedule to this Act carried out on the holding, being an improvement begun before the thirty-first day of July, nineteen hundred and thirty-one (in this Act referred to as "a 1923 Act improvement"), or for an improvement specified in the Third Schedule to this Act so carried out, being an improvement begun on or after that date and before the first day of November, nineteen hundred and forty-eight (in this Act referred to as "a 1931 Act improvement").
- (2) An improvement being a 1923 Act improvement or a 1931 Act improvement is in this Act referred to as "an old improvement".

37 Right of tenant to compensation for old improvements

- (1) The tenant shall, subject to the provisions of this Act, be entitled, at the termination of the tenancy, on quitting the holding, to obtain from the landlord compensation for an old improvement carried out by the tenant:

Provided that where the lease was entered into before the first day of January, nineteen hundred and twenty-one, the tenant shall not be entitled to compensation under this section for an improvement which he was required to carry out by the terms of his tenancy.

- (2) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement or otherwise, in lieu of any compensation provided by this section.

38 Amount of compensation for old improvements

The amount of any compensation under this Act for an old improvement shall be such sum as fairly represents the value of the improvement to an incoming tenant.

39 Compensation for certain old improvements conditional on consent of landlord

- (1) Compensation under this Act shall not be payable for a 1923 Act improvement specified in Part I of the Second Schedule to this Act or for a 1931 Act improvement specified in Part I of the Third Schedule thereto unless, before the carrying out thereof, the landlord consented in writing (whether unconditionally or upon terms as to compensation or otherwise agreed on between him and the tenant) to the carrying out thereof.
- (2) Where the consent was given upon terms as to compensation agreed on as aforesaid, the compensation payable under the agreement shall be substituted for compensation under this Act.

40 Compensation for certain old improvements conditional on notice to landlord

- (1) Compensation under this Act shall not be payable for a 1923 Act improvement specified in Part II of the Second Schedule to this Act unless the tenant, not more than three nor less than two months before he began to carry out the improvement, gave to the landlord notice in writing under section three of the Agricultural Holdings (Scotland) Act, 1923, of his intention to carry out the improvement and of the manner in which he proposed to carry it out, and either—
 - (a) the landlord and the tenant agreed on the terms as to compensation or otherwise on which the improvement was to be carried out; or
 - (b) where no such agreement was made and the tenant did not withdraw the notice, the landlord failed to exercise the right conferred on him by that section to carry out the improvement himself within a reasonable time :

Provided that this subsection shall not have effect if the landlord and the tenant agreed, by the lease or otherwise, to dispense with notice under the said section three.
- (2) Compensation under this Act shall not be payable for a 1931 Act improvement specified in Part II of the Third Schedule to this Act unless the tenant, not more than six months nor less than three months before he began to carry out the improvement, gave to the landlord notice in writing under section three of the Agricultural Holdings (Scotland) Act, 1923, of his intention to carry put the improvement and of the manner in winch he proposed to carry it out and either—
 - (a) the landlord and the tenant agreed on the terms as to compensation or otherwise on which the improvement was to be carried out; or
 - (b) where no such agreement was made and the tenant did not withdraw the notice, the landlord failed to exercise the right conferred on him by that section to carry out the improvement himself within a reasonable time ; or
 - (c) in a case where the landlord gave notice of objection and the matter was, in pursuance of subsection (2) of section twenty-eight of the Small Landholders and Agricultural Holdings (Scotland) Act, 1931, referred for determination to the appropriate authority, that authority was satisfied that the improvement ought to be carried out and the improvement was carried out in accordance

with the directions (if any) given by that authority as to the manner in which the improvement was to be carried out :

Provided that this subsection shall not have effect—

- (i) if the landlord and the tenant agreed, by the lease or otherwise, to dispense with notice under the said section three; or
 - (ii) where the improvement consists of drainage which was carried out by the tenant for the purpose of complying with directions given under Defence Regulations, but which he was not required to carry out by the terms of the tenancy.
- (3) If the landlord and the tenant agreed (whether after notice was given under the said section three or by an agreement to dispense with notice under that section) on the terms as to compensation on which the improvement was to be carried out, the compensation payable under the agreement shall be substituted for compensation under this Act.
- (4) In this section the expression " the appropriate authority " means, in relation to the period before the fourth day of September, nineteen hundred and thirty-nine, the Department of Agriculture for Scotland, and in relation to the period commencing on that day, the Secretary of State.

41 Conditions attaching to right to compensation for repairs to buildings

Compensation under this Act shall not be payable in respect of any such repairs as are specified in paragraph 29 of the Second Schedule to this Act or in paragraph 29 of the Third Schedule thereto unless, before beginning to execute any such repairs, the tenant gave to the landlord notice in writing under paragraph (29) of the First Schedule to the Agricultural Holdings (Scotland) Act, 1923, or under paragraph (30) of the First Schedule to the Small Landholders and Agricultural Holdings (Scotland) Act, 1931, of his intention to execute the repairs, together with particulars thereof, and the landlord failed to exercise the right conferred on him by the said paragraph (29) or the said paragraph (30) to execute the repairs himself within a reasonable time after receiving the notice.

42 Agreements as to compensation for old improvements specified in Part III of Second or Third Schedule

Where an agreement in writing entered into before the first day of January, nineteen hundred and twenty-one, secures to the tenant for an old improvement specified in Part III of the Second Schedule to this Act or in Part III of the Third Schedule thereto fair and reasonable compensation, having regard to the circumstances existing at the time of the making of the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act.

43 Compensation in respect of temporary pasture

The tenant shall be entitled to compensation under this Act in respect of the 1931 Act improvement specified in paragraph 28 of the Third Schedule to this Act, being the laying down of temporary pasture in accordance with that paragraph, notwithstanding that the laying down or the leaving at the termination of the tenancy of such pasture was in contravention of the terms of the lease or of any agreement made by the tenant respecting the method of cropping the arable lands; but in ascertaining the amount of

the compensation the arbiter shall take into account any injury to, or deterioration of, the holding due to the contravention except in so far as the landlord has recovered damages in respect of such injury or deterioration.

44 Reduction in amount of, or exclusion of right to, compensation for old improvements in certain cases

- (1) In the ascertainment of the amount of the compensation payable under this Act to the tenant in respect of an old improvement, there shall be taken into account—
 - (a) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant carrying out the improvement, whether expressly stated in the lease to be so given or allowed or not; and
 - (b) as respects manuring, the value of the manure required by the lease or by custom to be returned to the holding in respect of any crops grown on and sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.
- (2) In assessing the amount of any compensation payable to the tenant, whether under this Act or under custom or agreement, by reason of the improvement of the holding by the addition thereto of lime in respect of which a contribution has been made under Part I of the Agriculture Act, 1937, the contribution shall be taken into account as if it had been a benefit allowed to the tenant in consideration of his carrying out the improvement, and the compensation shall be reduced accordingly.
- (3) In assessing the amount of any compensation payable under this Act to the tenant in respect of such an improvement as is mentioned in paragraph (ii) of the proviso to subsection (2) of section forty of this Act, if it is shown to the satisfaction of the person assessing the compensation that the improvement consisted of, or was wholly or in part the result of or incidental to, operations in respect of which any grant has been or is to be made to the tenant out of moneys provided by Parliament, the grant shall be taken into account as if it had been a benefit allowed to the tenant in consideration of his carrying out the improvement, and the compensation shall be reduced to such extent as that person considers appropriate.
- (4) Notwithstanding anything in the foregoing provisions of this Act, the tenant shall not be entitled to compensation thereunder for an old improvement carried out on land which, at the time the improvement was begun, was not a holding within the meaning of the Agricultural Holdings (Scotland) Act, 1923, as originally enacted, and would not have fallen to be treated as such a holding by virtue of section thirty-three of that Act.
- (5) In this section the expression " manuring " means any of the improvements specified in paragraphs 25 to 27 of the Second Schedule to this Act or in paragraphs 25 to 27 of the Third Schedule thereto.

45 Provision as to change of tenancy

Where the tenant has remained in the holding during two or more tenancies, he shall not be deprived of his right to compensation under this Act for old improvements by reason only that the improvements were not carried out during the tenancy on the termination of which he quits the holding.

46 Right to compensation for old improvements of tenant who has paid compensation therefor to outgoing tenant

Where, on entering into occupation of the holding, the tenant, with the consent in writing of the landlord and in pursuance of an agreement made before the first day of November, nineteen hundred and forty-eight, paid to an outgoing tenant any compensation payable under or in pursuance of this Act or the Agricultural Holdings (Scotland) Acts, 1923 to 1948, in respect of the whole or part of an old improvement, or, with the like consent and in pursuance of an agreement in writing made after that day, paid to an outgoing tenant any compensation payable as aforesaid in respect of the whole or part of an old improvement of the kind specified in Part III of the First Schedule to this Act, he shall be entitled, on quitting the holding, to claim compensation for the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if the outgoing tenant had remained tenant of the holding and quitted it at the time at which the tenant quits it.