



# Agricultural Holdings (Scotland) Act 1949

## 1949 CHAPTER 75

*Miscellaneous provisions affecting the relationship of landlord and tenant*

### **11 Certain agreements by incoming tenant to pay compensation due to outgoing tenant to be void**

- (1) Subject to the provisions of this section, any agreement made after the first day of November, nineteen hundred and forty-eight, by the incoming tenant of an agricultural holding with his landlord whereby the incoming tenant undertakes to pay to an outgoing tenant any compensation payable by the landlord under or in pursuance of this Act or the Agricultural Holdings (Scotland) Acts, 1923 to 1948, in respect of improvements or to refund to the landlord any compensation payable as aforesaid which has been paid by the landlord to an outgoing tenant, shall be null and void.
- (2) This section shall not apply to an agreement in writing entered into by the incoming tenant of a holding with his landlord whereby the incoming tenant undertakes to pay to an outgoing tenant, up to such maximum amount as may be specified in the agreement, any compensation payable by the landlord under or in pursuance of this Act or the Agricultural Holdings (Scotland) Acts, 1923 to 1948, in respect of the whole or part of any improvement of the kind specified in Part III of the First Schedule to this Act, or to refund to the landlord, up to such maximum amount as aforesaid, any compensation so payable which has been paid by the landlord to an outgoing tenant.

### **12 Freedom of cropping and disposal of produce**

- (1) Subject to the provisions of this section, the tenant of an agricultural holding shall, notwithstanding any custom of the country or the provisions of any lease or of any agreement respecting the disposal of crops or the method of cropping of arable lands, have full right, without incurring any penalty, forfeiture or liability.—
  - (a) to dispose of the produce of the holding, other than manure produced thereon;
  - (b) to practise any system of cropping of the arable land on the holding:

Provided that this subsection shall not have effect unless, before exercising his rights thereunder or as soon as may be after exercising them, the tenant makes suitable and adequate provision, in the case of an exercise of the right to dispose of produce, to

return to the holding the full equivalent manorial value to the holding of all crops sold off or removed from the holding in contravention of the custom, contract or agreement, and, in the case of an exercise of the right to practise any system of cropping, to protect the holding from injury or deterioration.

- (2) If the tenant of an agricultural holding exercises his rights under the foregoing subsection in such a manner as to injure or deteriorate, or to be likely to injure or deteriorate, the holding, the landlord shall have the following remedies, but no other, that is to say.—
- (a) should the case so require, he shall be entitled to obtain an interdict restraining the exercise of the tenant's rights under that subsection in that manner ;
  - (b) in any case, on the tenant quitting the holding on the termination of the tenancy the landlord shall be entitled to recover damages for any injury to or deterioration of the holding attributable to the exercise by the tenant of his rights under that subsection.
- (3) For the purposes of any proceedings for an interdict brought under the last foregoing subsection, the question whether a tenant is exercising, or has exercised, his rights under subsection (1) of this section in such a manner as to injure or deteriorate his holding, or to be likely to injure or deteriorate his holding, shall be determined by the Secretary of State after affording to the landlord and to the tenant an opportunity to make representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State; and a certificate of the Secretary of State as to his determination of any such question as aforesaid shall, for the purposes of any proceedings (including an arbitration) brought under this section, be conclusive proof of the facts stated in the certificate.
- (4) Subsection (1) of this section shall not apply—
- (a) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding ; or
  - (b) in any other case, as respects the year before the expiration of the lease.
- (5) In this section the expression " arable land " does not include land in grass which, by the terms of a lease, is to be retained in the same condition throughout the tenancy.

In this subsection any reference to the terms of a lease shall, in a case where the Secretary of State has directed under section twelve of the Agriculture (Scotland) Act, 1948, or under section nine of this Act that the lease shall have effect subject to modifications, be construed as a reference to the terms of the lease as so modified.

### **13 Prohibition of removal of manure, etc., after notice to terminate the tenancy**

Where notice to terminate the tenancy of an agricultural holding is given, either by the tenant or by the landlord, the tenant shall not, subject to any agreement to the contrary, at any time after the date of the notice, sell or remove from the holding any manure or compost, or any hay or straw or roots grown in the last year of the tenancy, unless and until he has given the landlord or the incoming tenant a reasonable opportunity of agreeing to purchase on the termination of the tenancy at their fair market value, or at such other value as is provided by the lease, the said manure, compost, hay, straw or roots.

## **14 Tenant's right to remove fixtures and buildings**

- (1) Subject, to the provisions of this section—
- (a) any engine, machinery, fencing or other fixture affixed to an agricultural holding by the tenant thereof; and
  - (b) any building (other than one in respect of which the tenant is entitled to compensation under this Act or otherwise) erected by him on the holding;
- not being a fixture affixed or, as the case may be, a building erected, in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, as the case may be, shall be removable by the tenant at any time during the continuance of the tenancy or before the expiration of six months, or such longer period as may be agreed, from the termination of the tenancy and shall remain his property so long as he may remove it by virtue of this subsection.
- (2) The right conferred by the foregoing subsection shall not be exercisable in relation to a fixture or building unless the tenant—
- (a) has paid all rent owing by him and has performed or satisfied all his other obligations to the landlord in respect of the holding ; and
  - (b) has, at least one month before both the exercise of the right and the termination of the tenancy, given to the landlord notice in writing of his intention to remove the fixture or building.
- (3) If, before the expiration of the notice aforesaid, the landlord gives to the tenant a counter-notice in writing electing to purchase a fixture or building comprised in the notice, subsection (1) of this section shall cease to apply to that fixture or building, but the landlord shall be liable to pay to the tenant the fair value thereof to an incoming tenant of the holding.
- (4) In the removal of a fixture or building by virtue of subsection (1) of this section, the tenant shall not do to any other building or other part of the holding any avoidable damage, and immediately after the removal shall make good all damage so done that is occasioned by the removal.

## **15 Compensation for damage by game**

- (1) Subject to the provisions of this section, 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 one shilling per acre of the area over which it extends:

Provided that compensation shall not be recoverable under this section unless—

- (a) notice in writing is given to the landlord as soon as may be 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 ; and
  - (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 expiration of the calendar year, or

such other period of twelve months as by agreement between the landlord and the tenant may be substituted. therefor, in respect of which the claim is made.

- (2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration.
- (3) 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 the foregoing provisions of this subsection shall be determined by arbitration.
- (4) In this section the expression " game" means deer, pheasants, partridges, grouse and black game.

## **16 Restriction of landlord's right to penal rent or liquidated damages**

Notwithstanding any provision in a lease of an agricultural holding making the tenant thereof liable to pay a higher rent or other liquidated damages in the event of a breach or non-fulfilment of any of the terms or conditions in the lease, the landlord shall not be entitled to recover any sum in consequence of any breach or non-fulfilment in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment.

## **17 Making of record of condition, etc., of holding**

- (1) The landlord or the tenant of an agricultural holding may, at any time during the tenancy, require the making of a record of the condition of the fixed equipment on, and of the cultivation of, the holding; and the tenant may, at any time during the tenancy, require the making of a record of—
  - (a) existing improvements carried out by him or in respect of the carrying out of which he has, with the consent in writing of his landlord, paid compensation to an outgoing tenant; and
  - (b) any fixtures or buildings which, under section fourteen of this Act, he is entitled to remove.
- (2) Any record under this section shall be made by a person to be appointed by the Secretary of State, and shall be in such form as may be prescribed.
- (3) The cost of making a record under this section shall, in default of agreement between the landlord and the tenant, be borne by them in equal shares.
- (4) Any record made under this section shall show any consideration or allowances which have been made by the landlord to the tenant or by the tenant to the landlord.
- (5) Subject to the provisions of section five of this Act, a record may, if the landlord or the tenant so requires, be made under this section relating to a part only of the holding or to the fixed equipment only.
- (6) Any question or difference between the landlord and the tenant arising out of the making of a record under this section shall, on the application of the landlord or the tenant, as the case may be, be referred to the Land Court, and the Land Court shall determine such question or difference accordingly.
- (7) The remuneration of the person appointed by the Secretary of State to make a record under this section shall be such amount as the Secretary of State may fix, and any other

expenses of and incidental to the making of the record shall be subject to taxation by the auditor of the sheriff court, but that taxation shall be subject to review by the sheriff.

- (8) The remuneration of the person appointed by the Secretary of State to make a record under this section shall be recoverable by that person from either the landlord or the tenant, but any amount paid by either of those parties in respect of that remuneration, or of any other expenses of and incidental to the making of the record, in excess of the share payable by him as aforesaid of the cost of making the record shall be recoverable by him from the other party.

## **18 Power of landlord to enter on holding**

The landlord of an agricultural holding or any person authorised by him may at all reasonable times enter on the holding for any of the following purposes, that is to say—

- (a) viewing the state of the holding ;
- (b) fulfilling the landlord's responsibilities to manage the holding in accordance with the rules of good estate management;
- (c) providing, improving, replacing or renewing fixed equipment on the holding otherwise than in fulfilment of his said responsibilities.

## **19 Removal of tenant for non-payment of rent**

- (1) When six months' rent of an agricultural holding is due and unpaid, the landlord shall be entitled to raise an action of removing in the sheriff court against the tenant, concluding for his removal from the holding at the term of Whitsunday or Martinmas next ensuing after the action is raised, and the sheriff may, unless the arrears of rent then due are paid or caution is found to his satisfaction for them, and for one year's rent further, decern the tenant to remove, and may eject him at the said term in like manner as if the lease were determined and the tenant had been legally warned to remove.
- (2) A tenant of a holding removed under the foregoing subsection shall have the rights of an outgoing tenant to which he would have been entitled if his tenancy had terminated naturally at the term of Whitsunday or Martinmas aforesaid.
- (3) The provisions of section five of chapter XV of Book L of the Codifying Act of Sederunt of the fourteenth day of June, nineteen hundred and thirteen, anent removings shall not apply in any case where the procedure under this section is competent.

## **20 Bequest of lease**

- (1) Subject to the provisions of this section, the tenant of an agricultural holding may, by will or other testamentary writing, bequeath his lease of the holding to any person.
- (2) A person to whom the lease of a holding is bequeathed as aforesaid (in this section referred to as " the legatee ") shall, if he accepts the bequest, give notice of the bequest to the landlord of the holding within twenty-one days after the death of the tenant, or, if he is prevented by some unavoidable cause from giving such notice within that period, as soon as possible thereafter.

The giving of such notice shall import acceptance of the lease and, unless the landlord gives a counter-notice under the next following subsection, the lease shall be binding on the landlord and on the legatee, as landlord and tenant respectively, as from the date of the death of the deceased tenant.

- (3) Where notice as aforesaid has been given to the landlord he may within one month after the giving of the notice give to the legatee a counter-notice intimating that he objects to receive him as tenant under the lease.
- (4) If the landlord gives a counter-notice under the last foregoing subsection, the legatee may make application to the Land Court for an order declaring him to be tenant under the lease as from the date of the death of the deceased tenant.
- (5) If, on the hearing of such application, any reasonable ground of objection stated by the landlord is established to the satisfaction of the Land Court, they shall declare the bequest to be null and void, but in any other case they shall make an order in terms of the application.
- (6) Pending any proceedings under this section, the legatee shall, unless the Land Court on cause shown otherwise direct, have possession of the holding.
- (7) If the legatee does not accept the bequest, or if the bequest is declared null and void as aforesaid, the right to the lease shall devolve upon the heir-at-law of the tenant as if the bequest had not been made.

## **21 Right of landlord to object to heir-at-law of tenant succeeding to holding**

- (1) Within three months after the right to the lease of an agricultural holding devolves upon the heir-at-law of the tenant the landlord, if he objects to receive the heir-at-law as tenant under the lease, may make application to the Land Court for an order terminating the interest of the heir-at-law in the holding.
- (2) If on the hearing of such application any reasonable ground of objection is established to the satisfaction of the Land Court, they shall make an order terminating the interest of the heir-at-law in, and requiring him to give up his occupation of, the holding.
- (3) The termination of the interest of the heir-at-law under this section shall be treated, for the purposes of the provisions of this Act with respect to compensation, as the termination of his tenancy of the holding; but nothing in this section shall be construed as entitling him to any compensation for disturbance.
- (4) The Land Court may, on cause shown, direct that while proceedings are pending under this section the heir-at-law shall not have possession of the holding.

## **22 Provisions as to payment for implements, etc., sold on quitting holding**

- (1) Where a tenant of an agricultural holding has entered into an agreement, or it is a term of the lease of the holding, that the tenant will, on quitting the holding, sell to the landlord or to the incoming tenant any implements of husbandry, fixtures, farm produce or farm stock on, or used in connection with, the holding, it shall be deemed, notwithstanding anything in the agreement or in the lease to the contrary, to be a condition of the agreement or of the lease, as the case may be, that the property in the goods shall not pass to the buyer until the price is paid and that payment of the price shall be made within one month after the tenant has quitted the holding or, if the price of the goods is to be ascertained by a valuation, within one month after the delivery of the award in the valuation.
- (2) Where payment of the price is not made within one month as aforesaid the outgoing tenant shall be entitled to sell or remove the goods and to receive from the landlord or

the incoming tenant, as the case may be, by whom the price was payable, compensation of an amount equal to any loss or expense unavoidably incurred by the outgoing tenant, upon or in connection with such sale or removal, together with any expenses reasonably incurred by him in the preparation of his claim for compensation.

- (3) Any question arising as to the amount of compensation payable under the last foregoing subsection shall be determined by arbitration.

### **23 Application of sums recovered under fire insurance policy**

Where the tenant of an agricultural holding is liable in payment of the whole or any part of the premium due under a fire insurance policy in the name of the landlord over any buildings or other subjects included in the lease of the holding and the landlord recovers any sum under such policy in respect of the destruction of, or damage to, the buildings or other subjects by fire, he shall be bound, unless the tenant otherwise agrees, to expend such sum on the rebuilding, repair, or restoration of the buildings or subjects so destroyed or damaged in such manner as may be agreed or as may be determined, failing agreement, by the Secretary of State.