

# **AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 4: Compensation under Agricultural Tenancies**

##### ***Section 52: Compensation for disturbance***

164. Subsection (1) of this section provides that a tenant under an SLDT or LDT is entitled to compensation for disturbance where any land comprised in a lease constituting an SLDT or LDT is resumed by the landlord under section 17 of the 2003 Act or where, having been given notice of the landlord's intention to resume any land comprised in the lease, the tenant terminates the lease by giving notice under section 17(3) of the 2003 Act. In the former case, the tenant will also be entitled to compensation under subsection (5).
165. Subsection (2) of this section applies, with modifications, subsections (3) to (6) of section 43 of the 1991 Act to compensation for disturbance payable under section 52(1) of the 2003 Act.
166. Section 43(4)(a) of the 1991 Act, as modified, provides that the minimum compensation payable to the tenant under section 52(1) of the 2003 Act is an amount equal to one year's rent of the land at the rate at which rental was payable immediately before termination of the tenancy. The meaning of rent is given in section 43(5) of the 1991 Act and, failing agreement, can be determined by the Land Court (see paragraph 28 of the Schedule).
167. Where compensation is payable under section 52(1)(a) and the resumption is in respect only of part of the land, then compensation is payable only in respect of the land being resumed and is calculated on the basis of the yearly rent proportionate to that part (see section 52(2)(c)). In such a case, account is to be taken of any benefit or relief allowed to the tenant by the lease in respect of the part resumed (see section 52(4)).
168. Subsection (3) applies where compensation is payable under section 52(1)(b) and the part of the land affected by the landlord's notice of intention to resume along with any land resumed following any previous such notice together amount to less than a quarter of either the area or rental value of the original land comprised in the lease constituting the tenancy. In these cases then, provided that the remainder of the land is reasonably capable of being farmed separately, then the compensation is payable only in respect of that part of the land to which the landlord's current notice of intention to resume relates.
169. The minimum level of compensation fixed by section 43(4)(a) of the 1991 Act is payable without the tenant requiring to provide proof of any loss or expense incurred. Previously, section 43(4)(c) fixed a maximum amount of compensation payable for disturbance, but that provision is repealed by section 50(1) of the 2003 Act. If the tenant wishes to claim a greater amount of compensation than the minimum level provided for then the tenant, by virtue of section 43(4)(b) of the 1991 Act, must give to the landlord

*These notes relate to the Agricultural Holdings (Scotland) Act  
2003 (asp 11) which received Royal Assent on 17 April 2003*

not less than one month's notice of the sale of such goods, implements, fixtures, produce or stock as referred to in section 43(3) of the 1991 Act.

170. Section 43(3) of the 1991 Act, as modified by section 52(2) of the 2003 Act and paragraph 28 of the Schedule, sets out how the amount of compensation payable under section 52(1) of the 2003 Act is to be calculated. It is to be the amount of the loss or expense directly attributable to the quitting of the land which is unavoidably incurred by the tenant upon or in connection with the sale or removal of the tenant's household goods, implements of husbandry, fixtures, farm produce on or used in connection with the land, including any expense reasonably incurred by the tenant in preparation of the claim for compensation, but excluding the expenses arising from the determination any question arising under these provisions. (see paragraph 28 of the Schedule).
171. Section 43(6) of the 1991 Act, as modified, provides that, notwithstanding that the tenant of the land comprised in the lease constituting an SLDT or LDT has lawfully sublet the whole or part of the land, that tenant is not debarred from recovering compensation under this section by reason only of not being in occupation of that land and so not actually quitting it.