



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 4

COMPENSATION UNDER AGRICULTURAL TENANCIES

CHAPTER 2

COMPENSATION FOR DISTURBANCE AND DIVERSIFICATION ETC.

1991 Act tenancies

50 Compensation for disturbance and for damage by game

- (1) In section 43 (compensation for disturbance) of the 1991 Act, paragraph (c) of subsection (4) is repealed.
- (2) In section 52 (compensation for damage by game) of that Act, in paragraph (b) of subsection (2) for the words from “one” to the end there is substituted “6 months of the giving of notice under paragraph (a) above”.

51 Compensation arising as a result of diversification etc.

- (1) After section 45 (compensation to landlord for deterioration etc.) of the 1991 Act there is inserted—

“45A Compensation arising as a result of diversification and cropping of trees

- (1) Subject to subsection (2) below, 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 where the landlord shows that the value of the holding has been reduced during the tenancy by the use, on or after the coming into force of this section, of the holding for a purpose which is not an agricultural purpose; and the amount of compensation payable shall be an amount equal to the reduction in the value of the holding.

Status: This is the original version (as it was originally enacted).

- (2) Where there are trees on the holding which were planted—
- (a) by the tenant on or after the coming into force of this section; and
 - (b) for future cropping,
- the landlord or tenant shall be entitled to recover from the other, on the tenant quitting the holding on the termination of the tenancy, compensation calculated in accordance with subsections (3) and (4) below.
- (3) For the purposes of subsection (2) above, at the termination of the tenancy—
- (a) the trees shall be valued on the basis of their worth to a willing purchaser for future cropping; and
 - (b) there shall be evaluated any loss of rent to the landlord which would be incurred by his retaining the trees until the likely date of cropping added to the cost to him of returning the land to agricultural use after cropping.
- (4) If the value reached under paragraph (a) of subsection (3) above is—
- (a) greater than that reached under paragraph (b) of that subsection, the tenant shall be entitled to the difference between the values as compensation;
 - (b) less than that reached under paragraph (b) of that subsection, the landlord shall be entitled to the difference between the values as compensation.
- (5) Where the value of an agricultural holding has been increased during the tenancy by such use of the land or part of the land, or such change to the land, for a purpose that is not an agricultural purpose—
- (a) as occurred on or after the coming into force of this section; and
 - (b) as had been permitted under section 40 or 41 of the Agricultural Holdings (Scotland) Act 2003 (asp 11),
- the tenant shall, subject to subsections (6) and (7) below, be entitled, on quitting the holding on termination of the tenancy, to recover from the landlord such compensation as fairly represents the value of the use, change or carrying out of the activities to an incoming tenant.
- (6) In ascertaining the amount of compensation payable under subsection (5) above—
- (a) there shall be taken into account any benefit which the landlord has agreed in writing to give the tenant in consideration of the matters referred to in that subsection; and
 - (b) where a grant has been or will be made to the tenant in respect of those matters, subject to the conditions of the grant—
 - (i) if either the landlord or tenant has not made or will not make a contribution towards the cost of the improvement, or neither of them has made or will make such a contribution, the grant shall not be taken into account;
 - (ii) in any other case, there shall be taken into account such proportion of the grant as equals the proportion of the contribution by the tenant towards the cost of the improvement as a proportion of the total of his contribution added to that of the landlord.

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- (7) No compensation is payable under subsection (5) above if, owing to—
- (a) any of the matters referred to in that subsection, the land is unsuitable for use for agriculture by an incoming tenant; or
 - (b) any use of fixed equipment in connection with any of those matters, the landlord would, at the commencement of an incoming tenant's tenancy, be unable to fulfil his obligations under the lease as to fixed equipment,
- in so far as those matters or, as the case may be, that use is attributable to those facts.
- (8) Where the tenant has remained in occupation of the holding during two or more tenancies, he shall not be deprived of his right to compensation under this section by reason only that the use of the land or change to the land did not occur during the tenancy on the termination of which he quits the holding.”.
- (2) In section 47 (provisions supplementary to sections 45 and 46) of that Act, in subsection (1), for the words “under section 45” there is substituted “by the landlord under section 45 or 45A”.

Short limited duration tenancies and limited duration tenancies

52 Compensation for disturbance

- (1) Where—
- (a) any land is resumed under section 17; or
 - (b) a short limited duration tenancy or a limited duration tenancy terminates by notice under subsection (3) of that section,
- compensation for disturbance is payable by the landlord to the tenant.
- (2) Subsections (3) to (6) of section 43 (compensation for disturbance) of the 1991 Act apply in relation to compensation payable under subsection (1) above as they do in relation to compensation payable under that section, but as if—
- (a) in those subsections, the references to the holding were references to the land;
 - (b) in subsection (6)—
 - (i) the reference to the tenant of an agricultural holding were a reference to the tenant of the short limited duration tenancy or limited duration tenancy; and
 - (ii) the reference to a notice to quit given by the landlord were a reference to the termination of the tenancy; and
 - (c) where the resumption under section 17 is of part of the land—
 - (i) the references to the land in those subsections of section 43 of that Act by virtue of paragraph (a) of this subsection were references to that part; and
 - (ii) the references to the rent in subsection (4)(a) and (b) of that section were references to the rent proportionate to the part.
- (3) Where the tenancy terminates as mentioned in subsection (1)(b) and—
- (a) the part of the land affected by the notice under subsection (2) of section 17, together with any part of the land resumed following a previous such notice is—

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- (i) less than a quarter of the original area of the land comprised in the lease constituting the tenancy; or
 - (ii) of a rental value less than a quarter of the rental value of that area of land; and
 - (b) the remainder of the land is reasonably capable of being farmed separately, compensation is payable under subsection (1) only in respect of the part of the land to which the notice relates.
- (4) In a case mentioned in subsection (2)(c), in determining the amount of compensation payable, account is to be taken of any benefit or relief allowed to the tenant under the lease in respect of the part resumed.
- (5) Where compensation is payable under subsection (1)(a), in addition to that compensation, compensation is payable by the landlord to the tenant of an amount equal to the additional benefit (if any) which would have accrued to the tenant if the land (instead of being resumed on the date of resumption) had been resumed on the expiry of the period of 12 months from the end of the year of tenancy current at the date 2 months before the date of resumption.

53 Compensation for other particular things

- (1) Section 44 (compensation for continuous adoption of special standard of farming) of the 1991 Act applies to short limited duration tenancies and limited duration tenancies as it does to 1991 Act tenancies, but as if—
- (a) the references to the holding were references to the land;
 - (b) in subsection (2) of that section, the reference to a record of fixed equipment were a reference to fixed equipment specified under section 16 of this Act; the reference to the date of the record were a reference to the date on which the equipment was so specified; and the words from “or” to the end were omitted; and
 - (c) in subsection (3) of that section, the reference to Part IV of that Act were a reference to section 45(1) of this Act.
- (2) Section 45A (compensation arising as a result of diversification etc.) of that Act, as read with subsection (1) of section 47 of that Act, applies to limited duration tenancies as it does to 1991 Act tenancies, but as if the references to the holding were references to the land.
- (3) Section 52 (compensation for damage by game) of that Act applies to short limited duration tenancies and limited duration tenancies as it does to 1991 Act tenancies.