



## **EXPLANATORY NOTES**

---

### **Agricultural Holdings (Scotland) Act 2003 (asp 11)**

£7.50

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

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”). They do not form part of the 2003 Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the 2003 Act. They are not, and are not meant to be, a comprehensive description of the 2003 Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **PART 1: AGRICULTURAL TENANCIES**

#### **Section 1: Application of the 1991 Act to agricultural holdings**

3. Subsections (1) and (2) provide that parties will in future continue to be able to enter into leases that are subject to the provisions of the Agricultural Holdings (Scotland) Act 1991 (c.55) (“the 1991 Act”), rather than the provisions in sections 4 and 5 of the 2003 Act which introduce new forms of tenancy, the short limited duration tenancy (“SLDT”) and limited duration tenancy (“LDT”) respectively.

4. However, as subsection (2) provides, the 1991 Act provisions will only apply to those tenancies entered into where a written lease is agreed before the tenancy commences which expressly states that these provisions should apply to the tenancy. Subsection (4) provides that such a lease or a lease subject to the 1991 Act entered into before the 2003 Act applied (that is not a lease for less than year to year) is described as a “1991 Act tenancy” for the purposes of the 2003 Act. The description “1991 Act tenancy” is also used in these Notes.

5. Subsection (3) repeals section 2 of the 1991 Act. The effects are that no lease shall in future convert to a lease from year to year under the 1991 Act and there is no future requirement for the power previously available to Scottish Ministers to approve that a let of less than one year’s term should not take effect as if it were a 1991 Act tenancy. Section 3 of the 2003 Act provides for a lease of less than one year for grazing or mowing (see paragraphs 10 and 11 below).

#### **Section 2: Conversion from 1991 Act tenancy to limited duration tenancy**

6. This section allows for the conversion of an existing or new 1991 Act tenancy to an LDT.

7. Subsection (2) requires that the minimum length of a converted lease is 25 years (i.e. 10 years longer than the minimum length of an LDT) from the date of conversion. A 1991 Act tenancy can only be converted by the agreement of landlord and tenant. That subsection also provides that the new LDT need not necessarily comprise only the same land as the original 1991 Act tenancy. This will allow the parties to agree that additional

land is incorporated into the lease in return for conversion of the existing secure tenancy to an LDT. Both the land under the original lease and the additional land can be included within a single LDT with a minimum term of 25 years.

8. Subsection (1) provides for a 30 day cooling off period for tenants and landowners after entering into an agreement to convert to an LDT. Within this period, subsection (3) allows either party to revoke the agreement to convert without penalty.

9. By virtue of subsection (4), compensation from landlord to tenant in respect of any improvements the tenant has made to the land (which can also include compensation for non-agricultural activities) will be payable on conversion, as if the tenancy had terminated (termination of an agricultural tenancy is also known as “waygo”). Subsection (5) acts to disapply the notice to quit provisions under section 21 of the 1991 Act where the parties choose to convert their 1991 Act tenancy by virtue of this section. Section 16 will apply to the new lease (see paragraphs 54 - 58).

### **Section 3: Leases for grazing or mowing**

10. This section enables parties to agree leases for grazing or mowing, for periods of up to 364 days. Such leases are not subject to the same statutory requirements as other statutory leases. Sections 1(3) and 4(1) and (2) of the 2003 Act are also relevant to this type of lease.

11. Subsection (2) provides that a period of at least one day is required between successive grazing and mowing lets involving the same parties. A grazing or mowing lease will be deemed to be an SLDT if its duration exceeds 364 days (see paragraph 13).

### **Section 4: Short limited duration tenancies**

12. Subsection (1) stipulates that, where agricultural land is let to a tenant for a period of not more than 5 years and the lease is neither a 1991 Act tenancy nor a grazing or mowing let, that tenancy is to be an SLDT.

13. Subsection (2) converts grazing or mowing lets to SLDTs, where the tenant continues to occupy the land after expiry of the term of the let with the consent of the landlord.

14. Subsection (3) provides that, where parties agree an SLDT of less than 5 years, they may subsequently agree to extend the overall term of the SLDT to any period up to a maximum of 5 years. Where such agreement is not made and the tenant continues to occupy the land after the expiry of the term with the landlord's consent, the term of the SLDT is deemed to be extended to 5 years.

15. Subsections (4) and (5) treat any new SLDT that is entered into less than one year after an SLDT involving the same parties and the same land expires to be an extension of that earlier SLDT. The effect of this is that if the two SLDT periods combined exceed 5 years, then an LDT is deemed to have been constituted by virtue of section 5(3).

### **Section 5: Limited duration tenancies**

16. Subsection (1) defines an LDT as an agricultural tenancy (other than a 1991 Act tenancy) of at least 15 years duration. Any such lease of more than 5 years becomes an LDT, with a minimum length of 15 years - see subsection (4).

17. Subsection (2) converts SLDTs to LDTs where the tenant continues to occupy the land after expiry of the term of the let with the consent of the landlord. Consent may for

these purposes be formal or implied (e.g. the landlord continues to accept rent from the tenant).

18. Subsection (3) works with section 4(5) of the 2003 Act, so that an SLDT purporting to be of a duration exceeding 5 years is deemed to be an LDT of 15 years.

### **Section 6: Assignment, subletting and termination of short limited duration tenancies**

19. Subsection (1) prevents the tenant of land subject to an SLDT from either assigning the lease or sub-letting the land. However, as subsection (2) provides, landlord and tenant can agree to terminate an SLDT prematurely. Sections 7 and 8 set out the corresponding provisions to apply to LDTs, the effects of which are quite different. The 2003 Act does not require a notice to quit procedure for SLDTs.

### **Section 7: Assignment and subletting of limited duration tenancies**

20. This section sets out a procedure which enables a tenant to assign an LDT. The tenant may assign the interest back to the landlord rather than terminate under section 8.

21. Subsection (1) provides that the tenant requires the consent of the landlord to an assignment, while subsection (2) sets out the process by which the tenant should seek this consent. Subsection (4) provides that the landlord is deemed to have consented unless the landlord intimates withholding that consent within 30 days of the tenant seeking consent by notice. Subsection (3) provides non-exhaustive grounds for withholding consent. Subsection (6) clarifies how “good husbandry” in subsection (3)(b) is to be defined.

22. Subsection (5) allows the landlord to override a proposed assignment of the tenant's interest to a third party by acquiring the tenancy on terms no less reasonable than those offered by the assignee.

23. Subsection (7) stipulates that a tenant under an LDT may sub-let the land let, but only if and insofar as this is provided for in the lease.

### **Section 8: Continuation and termination of limited duration tenancies**

24. The section sets out the notice to quit procedures that are to apply to LDTs. Tenancies will continue to have effect where these procedures are not complied with.

25. Subsection (1) enables a landlord and tenant to terminate an LDT early by written agreement reached after the lease has commenced. Such an agreement must make provision for compensation due between the parties.

26. Subsections (2) to (5) and (11) act together to require the landlord to serve two notices on the tenant. The first is a notice of intention to terminate the tenancy (subsection (5) refers), to be served no more than 3 years nor less than 2 years before the term of the tenancy is due to expire. The landlord must then serve final notice to quit no more than 2 years nor less than one year before the term of the tenancy is due to expire (see subsections (3) and (4)). At least 90 days must separate the two notices.

27. Subsection (6) sets out that, where these requirements are not complied with, the tenancy will extend for a first short continuation period of 3 years. If, in this period, the same notice to quit requirements are not complied with, then the tenancy will extend again for a second short continuation period of 3 years (subsections (6) and (7) refer).

28. A different notice to quit procedure applies during the second short continuation period, as subsections (8) to (10) set out. Failure to comply with it will result in a long

continuation of the lease (as defined by subsection (6)) for a further 15 years. In this instance, the service of preliminary notice to quit is not required and final notice to quit can be served at any time during the second short continuation period. As subsection (10) states, where notice to quit is served, the termination date is the final day of the second short continuation period or the date two years after notice to quit is given.

29. Where leases extend into a long continuation period, subsection (11) stipulates that the notice to quit requirements are the same as if it were a new LDT. So the service of both preliminary and final notice to quit is required before the lease can be terminated after a 15 year extension.

30. Subsections (13) and (14) set out the notice to be given by a tenant who wishes to terminate an LDT. The tenant must serve written notice at least 1 year and not more than 2 years before the expiry of the term or continuation of the tenancy (i.e. this is the same notice of intention to quit requirement as for tenants under 1991 Act tenancies (by virtue of section 21(3) of the 1991 Act)).

31. A landlord and tenant will be able to extend the term of an LDT by agreement at any time before its termination for any duration. The length of this extension may be as long or as short as the parties wish. This is provided for at subsection (15).

### **Section 9: Review of rent under limited duration tenancies**

32. This section provides an implied lease term covering rent review arrangements for LDTs where the lease contains no such provision. Subsection (1) does not prevent rent review provisions within an LDT lease which override the statutory provisions.

33. By virtue of subsection (2), these review arrangements provide for a possible rent review after at least 3 years has elapsed since either the last rent review or commencement date of the tenancy. This is a similar process to that provided for 1991 Act tenancies by section 13 of the 1991 Act. However, the arrangements are only activated if either landlord or tenant serves written notice seeking the review not less than 1 year nor more than 2 years in advance of the review date (subsection (2)(a) refers).

34. The remainder of the section explains how new rental values should be calculated. Much of this parallels the provisions in section 13 of the 1991 Act (as now amended by section 63 of the 2003 Act) which apply to 1991 Act tenancies.

35. The basic principle, by virtue of subsection (3), is that the rent should be calculated at open market value. Subsections (3) to (5) then set out factors to be disregarded and factors to be taken into account in establishing an appropriate rental value. As with the amendments to section 13 of the 1991 Act, one effect of subsection (3) is to require that the current economic conditions in the relevant sector of agriculture is taken into account in determining the rent. The changes also allow a wide range of comparable evidence.

36. Subsection (4) provides that, in calculating rent, account is to be taken of increases in the rental value of the land arising from its use for non-agricultural purposes. However, as subsections (5) and (6) stipulate, no account is to be taken of increases in the rental value of the land arising from improvements paid for by the tenant (unless they are required by the lease), or improvements paid for by the landlord but supported by grant or the development of a superior system of farming. These provisions are similar to section 13(5) and (6) of the 1991 Act.

37. Subsection (7) sets out that rent should not be reduced to take account of any deterioration to the land or fixed equipment (as section 13(7) of the 1991 Act provides) or

any reduction in the rental value of the land resulting from its use for non-agricultural or conservation purposes.

38. Subsection (8) provides that any change in rent takes effect from the review date.

39. Sections 10 and 11 of the 2003 Act also provide for the variation of rent in defined instances.

#### **Section 10: Increase in rent: landlord's improvements**

40. This section provides for the increase of rent for an LDT at any time (notwithstanding the standard rent review procedures set out in the previous section) following from certain improvements made to the land by the landlord, provided the landlord serves notice of increase in rent within 6 months of the completion of the improvement. This provision for LDTs is similar to section 15 of the 1991 Act which applies to 1991 Act tenancies. By virtue of subsection (3), the increase in rent must be reduced proportionately where the improvement has attracted grant support to the landlord.

#### **Section 11: Variation of rent by the Land Court**

41. This section provides a power for the Scottish Land Court (“the Land Court”) to vary rent for an LDT in disputes arising in relation to the establishment of a written lease (section 13) or in relation to fixed equipment (section 16). This section is similar to section 14 of the 1991 Act, which applies to 1991 Act tenancies.

#### **Section 12: Right of tenant to withhold rent**

42. Section 12 gives the Land Court a new power in instances where a landlord has failed to comply timeously with an order from the Land Court for specific implement or an order *ad factum praestandum* (ie. any court decree to enforce the performance of an act) in relation to the landlord’s obligations in respect of fixed equipment. Its effect is to allow the tenant to carry out any work which may be required or to withhold rent until such time as the Court terminates the order. Its effect is the same as section 15A of the 1991 Act (as inserted by section 64 of this Act) in relation to 1991 Act tenancies.

43. Subsection (1) limits this provision to these types of Land Court order. In such instances, and where the landlord has failed in a material way to comply with the order by the date specified in that order, subsection (2) permits the tenant to apply to the Land Court for an order under subsection (3). Such an order may authorise the tenant to carry out the necessary work in place of the landlord and/or to consign rent to the Court rather than paying it to the landlord.

44. Subsection (4) states that the Land Court can release funds from the consigned rent to the tenant, on the application of the tenant, to cover reasonable costs the tenant incurs in conducting this work.

45. Such an order continues until the landlord applies to the Land Court under subsection (5) and the Court considers that it is no longer appropriate for the order to remain in force. At this time, the Court will decide how the remaining rental income consigned to it should be allocated between tenant and landlord (subsection (6) refers).

46. Improvements to fixed equipment carried out by the tenant under such an order are to be treated as a landlord’s expense to the extent to which the Land Court releases funds to the tenant for the costs reasonably incurred in carrying out these works ( subsection (7) refers).

47. Subsections (8) and (9) respectively clarify that a landlord cannot irritate the lease for non-payment of rent if it is as a result of an order made under this section and that this section overrides any contractual term to the contrary.

### **Section 13: Written leases and the revision of certain leases**

48. The 2003 Act does not require that SLDTs or LDTs be entered into in writing. The general law on the constitution of leases and specific statutory provisions, for instance section 1 of the Registration of Leases (Scotland) Act 1857 (c. 26) as amended, which requires that long leases for terms exceeding 20 years are required for certain purposes to be entered into in writing and registered in the property registers, continue to apply.

49. This section provides for SLDTs and LDTs provision similar to section 4 of the 1991 Act in relation to 1991 Act tenancies. Subsection (1) provides landlords and tenants with the scope to produce a lease in writing, or to supplement a written lease which is incomplete in relation to certain matters. Subsection (2) sets these out: those matters specified in Schedule 1 to the 1991 Act, and fixed equipment (Section 16 – see paragraphs 54-58).

50. By virtue of subsection (3), if the lease is not concluded within 6 months of the service of notice to request that a lease in writing be entered into, the Land Court may determine the terms of the lease. Such terms as may be set include the existing terms of the tenancy, reasonable terms as to the matters which require to be specified, and additional terms as agreed and not inconsistent with the 2003 Act under subsections (4) and (5). Section 11 of the 2003 Act also empowers the Land Court to vary the rent payable under an SLDT or LDT when determining any matter under subsection (3).

51. Subsection (6) provides the Land Court with discretion to apply its determination from a later date if to do so would allow either landlord or tenant to remedy a situation that would otherwise have left them in breach of a term of their tenancy.

### **Section 14: Freedom of cropping and disposal of produce**

52. This section acts to extend the scope of section 7 of the 1991 Act to include SLDTs and LDTs. The principal effect of this is to provide that the tenant has the right to dispose of any produce of the land (other than manure) and practice any system of cropping any arable land as they see fit. This right applies regardless of any provision in the lease to the contrary. As with section 7 of the 1991 Act, it is subject to certain restrictions to protect the holding from deterioration and does not apply in the year before the expiry of the lease.

### **Section 15: Permanent pasture**

53. This section extends the scope of section 9 of the 1991 Act to apply to SLDTs and LDTs as well as 1991 Act tenancies. That section allows either landlord or tenant to serve a notice on the other, to demand a reference to arbitration on the question of whether land required to be maintained as permanent pasture by the lease need in fact be maintained in this way. Disputes on this matter are to be within the exclusive jurisdiction of the Land Court (see paragraph 14 of the Schedule to the 2003 Act).

### **Section 16: Fixed equipment**

54. The effect of this section is to provide for the respective rights and responsibilities of landlord and tenant in relation to the maintenance, replacement and in certain cases provision of fixed equipment on land comprised in SLDTs and LDTs. Section 5 of the

1991 Act (as amended by section 60 of the 2003 Act) makes similar provision for 1991 Act tenancies.

55. The definition of fixed equipment is set out in section 93 of the 2003 Act, while the definition of “produce” is set out in section 16(4) of the 2003 Act. Both definitions follow those used in section 85 of the 1991 Act (section 85 of that Act refers).

56. Subsections (1) and (2) provide that any fixed equipment on the land is to be specified in the lease, and that landlord and tenant may adjust that specification in writing at any time during the term of the lease.

57. Subsection (3) sets out for LDTs and SLDTs the landlord’s liability for providing and maintaining fixed equipment both at the start of and during the term of the tenancy, while subsection (5) restricts the liability of the tenant for maintaining fixed equipment. These provisions have similar effect to section 5(2) of the 1991 Act, which applies to 1991 Act tenancies.

58. Subsection (6) prevents landlord and tenant from entering into an agreement under which the tenant would bear the cost of meeting the landlord’s responsibilities under this section. Section 5(4D) of the 1991 Act (as introduced by section 60 of the 2003 Act) makes similar provision for 1991 Act tenancies. Subsection (7) stipulates that any term in an SLDT or LDT lease that requires the tenant to pay part or all of a premium due under a fire insurance policy for fixed equipment on the land is of no effect.

#### **Section 17: Resumption of land by landlord**

59. This section acts to restrict the circumstances in which a landlord may resume from an SLDT or LDT the land let under that tenancy before the end of the term of the lease.

60. Subsection (1) provides that resumption is permissible only where both the landlord requires to obtain planning permission and this planning permission has been obtained for a non-agricultural purpose, and the lease does not expressly prohibit resumption. A landlord cannot use planning permission obtained by an LDT tenant which allows the tenant to diversify as a trigger to resume the land, unlike in the case of an SLDT. The landlord must give written notice of any intention to resume land, one year in advance of the intended resumption date, by virtue of subsection (2).

61. Where the landlord intends to resume part of the land, subsection (3) gives the tenant the power to terminate the tenancy over the whole land. Where the tenant chooses not to terminate the tenancy in this way, subsection (4) provides that the tenant is entitled to a reduction in rent commensurate with the proportion of the land resumed.

62. Subsection (5) and (6) provide for the restoration of resumed land to the tenant in certain circumstances, where part of the land is resumed in connection with mineral extraction. These circumstances are that the tenancy remains in effect between the same landlord and tenant and any compensation payable to the tenant on resumption was made on the basis that resumed land would be restored to the tenancy (see also paragraphs 226-228).

#### **Section 18: Irritancy of lease and good husbandry**

63. Subsection (1) allows the landlord and tenant of an SLDT or LDT to agree and specify within the lease the grounds that will allow for irritancy of the lease (i.e. termination of the lease by the landlord due to breach of contract by the tenant). However, the remainder of this section also places restrictions on irritancy.

64. Subsection (2) prevents a landlord from being able to irritate a lease and evict the tenant only on grounds of the tenant's failure to reside on the land.

65. Subsection (3) and (4) define "good husbandry" for leases where failure to use the land in accordance with the rules of good husbandry is used as a basis for irritancy. That definition is by reference to the Sixth Schedule to the Agriculture (Scotland) Act 1948 (c. 45). However, it is also extended to include the carrying out of conservation activities. These activities qualify under this section if they are carried out under a management agreement that has a statutory footing, or in accordance with the conditions of a public grant paid from the Scottish Consolidated Fund or from other sources as specified by the Scottish Ministers by order.

66. Where the tenant of an LDT enters into non-agricultural activities by virtue of the statutory provisions in sections 40 and 41 of the 2003 Act, subsection (5) provides that these activities are to be treated as being in accordance with the rules of good husbandry. Subsections (4) and (5) make similar provision to section 69 of the 2003 Act, which amends the definition of "good husbandry" in section 85 of the 1991 Act for 1991 Act tenancies.

67. Subsections (6) and (7) set out the process by which a landlord may irritate the lease. This requires the landlord to serve notice of at least 2 months of their intention to irritate the lease and remove the tenant.

#### **Section 19: Resumption and irritancy: supplementary**

68. This provision provides that specified rights for landlords override the termination arrangements for SLDTs and LDTs, as set out in sections 6 and 8 of the 2003 Act respectively. These are the right for landlords to resume land under section 17 of the 2003 Act, any right of the landlord to remove a tenant whose estate has been sequestrated and any irritancy which has been incurred .

#### **Section 20: Section 16 of the Succession (Scotland) Act 1964**

69. This section amends those provisions of the Succession (Scotland) Act 1964 (c. 41) ("the 1964 Act") which apply to agricultural leases to set out how they are to apply to LDTs and SLDTs.

70. New section 16(4A) and (4B) ensures that, notwithstanding any provision in a lease prohibiting assignation, the executor can assign the deceased tenant's interest in the tenancy to a member of their family or to any other person.

71. New section 16(4C) provides executors with a new power to terminate the tenant's interest in a lease where a tenant dies intestate or a bequest fails, if they are satisfied that the tenant's interest cannot otherwise be disposed of according to the law of succession. This will enable the executor to realise the value of the tenancy and distribute any sum realised among the beneficiaries of the tenant's estate more quickly in circumstances where beneficiaries are clearly not interested in assuming the tenancy. It also allows the executor to terminate the lease if a successor has not been found within the period defined in new subsection (4D).

72. Subsection (4E) requires the executor to exercise these powers in the best interests of the deceased's estate.

### **Section 21: Bequest of lease**

73. This section provides that tenants under LDTs and SLDTs may bequeath their interest in the tenancy to a member of their family, including sons-in-law or daughters-in-law or to any other person. This provision is similar to section 11 of the 1991 Act for 1991 Act tenancies. The interest in the tenancy is to be treated as intestate estate if that person does not accept the bequest or if the Land Court declares the bequest to be null and void, unless section 16 of the 1964 Act, as amended by section 20 of the 2003 Act has effect (subsection (3) refers).

### **Section 22: Right of landlord to object to acquirer of tenancy**

74. This section extends the provisions of section 12 of the 1991 Act to SLDTs and LDTs. Its effect is to oblige the person assuming the deceased tenant's interest in the lease to notify the landlord within 21 days of the transfer taking place, or if that is not possible, as soon as it is practicable - subsection (1).

75. Subsection (2) applies the provisions of section 12(2) to (4) of the 1991 Act to SLDTs and LDTs. Its effects are to enable the landlord to serve a counter-notice to the new tenant and apply to the Land Court for an order terminating the tenancy. The succeeding tenant retains possession of the land unless and until the Land Court agrees to a landlord's application to terminate the tenancy.

76. Subsection (3) allows the landlord to acquire a deceased tenant's interest in a tenancy when the executor intends to assign the interest outwith the family (this right does not extend to transfers to members of the family who, by virtue of new section 16(4B)(a) of the 1964 Act, are entitled to succeed to the deceased's intestate rights or claim legal rights or the prior rights of the surviving spouse). To do so, the landlord must give notice in writing and within 30 days of receiving notice under subsection (1). The landlord must also match or exceed any reasonable terms upon which the lease was transferred to the person outwith the family.

### **Section 23: Effect of termination of tenancy where tenant deceased**

77. This section stipulates that, if a lease is terminated following the death of a tenant, compensation at waygo is payable as it would be if the lease had been terminated on expiry of the terms of the lease.

## **PART 2: TENANT'S RIGHT TO BUY LAND**

### **Section 24: The Keeper and the Register**

78. Under Part 2 of the Land Reform (Scotland) Act 2003 ("the Land Reform Act"), the Keeper of the Registers of Scotland is to set up and keep a Register of Community Interests in Land, to record registrations of community interest to acquire land under the Community Right to Buy provided for in that Act. Section 24 of the 2003 Act requires that the Keeper is to keep that register so that it contains a part for registering tenants' interests in acquiring land in accordance with section 25 of the 2003 Act.

### **Section 25: Registration of tenant's interest**

79. Section 25 sets out the process for registering an interest in acquiring the land comprised in the lease and explains the duties of the tenant, the landowner and the Keeper. There is nothing in the 2003 Act that will prevent a landlord from selling tenanted land to that tenant voluntarily. However, the statutory right to buy procedure protects the position

of those tenants who have registered an interest in acquiring the land comprised in the lease.

80. Subsections (1) and (4) require tenants who wish to register an interest in acquiring the land comprised in the lease to send a notice of interest to the Keeper, to copy that notice to the owner of the land and to notify the Keeper that a copy of the notice has been sent to the owner. Subsection (1) provides that the right to register an interest in acquiring the land comprised in the lease applies to tenants under a 1991 Act tenancy (cf. section 72(2), which allows general partners within a limited partnership, where the partnership is the tenant in a 1991 Act tenancy, to exercise the rights of a tenant). The effect of subsection (2) is that where there are two or more tenants under a lease then those tenants may together apply to register an interest (where both or all tenants so agree), while a sub-tenant under a lease may not apply to do so. Subsection (3) sets out the information to be specified in the notice. Scottish Ministers specify the form of the notice in regulations.

81. Subsection (5) sets out the information that the Keeper must register and requires the Keeper to send an extract of the registration to each of the tenant and the owner of the land. The Keeper may charge a reasonable fee for registering a tenant's interest and for providing an extract or copy extract of registration by virtue of subsection (7). If there is a standard security over the land in question, the owner must tell the tenant about that security and send a copy of the extract to the creditor in the standard security (subsection (6) refers).

82. Subsection (8) confers on the owner of the land the right to challenge the registration of the tenant's interest where any matter contained in the extract registration is inaccurate by giving notice in writing to the Keeper. On receipt of a notice under subsection (8) the Keeper is to make such enquiry as the Keeper thinks fit. If there is an inaccuracy the Keeper must rescind the registration of the tenant's interest if the inaccuracy is material, or amend the registration of the tenant's interest if the accuracy is not material (see subsection (9)). Where the registration of the tenant's interest is rescinded subsection (10) requires the Keeper to intimate that fact to each of the tenant and the owner of the land. Where the registration of the tenant's interest is amended, subsection (10) requires the Keeper to send an extract of the amended registration to both the tenant and the owner of the land. Subsection (11) confers upon both the tenant and the owner of the land the right to appeal to the Land Court any decision of the Keeper made following notice to the Keeper under subsection (8).

83. Subsection (12) limits the effect of registration of a tenant's interest in acquiring land so that it has effect only in relation to land that remains comprised in the tenancy. It also provides that registration of a tenant's interest ceases to have effect upon a registration being rescinded, the tenancy being terminated or the expiry of five years from the date of registration, whichever is the sooner. Responsibility for informing the Keeper where the tenancy is terminated or there is a reduction in the land comprised in the tenancy within that five year period rests with the landlord (see subsection (13)). Subsection (14) permits a tenant to renew registration of the interest in acquiring the land comprised in the lease. Subsection (15) requires the Keeper to remove from the register any registration of interest which no longer has effect.

## **Section 26: Notice of proposal to transfer land**

84. Where a tenant's interest in acquiring the land comprised in the lease is registered under section 25 of the 2003 Act and the owner of that land (or the creditor in a standard security with a right to sell, where appropriate) proposes to transfer that land or any part of

it to another person then subsection (1) of this section requires (unless the transfer is a transfer falling within section 27 and, therefore, not requiring notice to be given) the owner (or creditor, as the case may be) to give written notice of that fact to the tenant and to send a copy of that notice to the Keeper. Ministers will be able to prescribe the form and nature of that notice, by virtue of subsection (2).

### **Section 27: Transfers not requiring notice**

85. This section lists types of transfer that do not require notice to be given to the tenant under section 26. The right to buy is activated under section 28 by either the giving of notice under section 26, or the taking of action with a view to transfer of the land where such notice should have been, but was not, given. Accordingly, the types of transfer listed in this section, being transfers that do not require notice to be given, are transfers of land that will not activate the right to buy. The list is similar to that contained in section 40(4) of the Land Reform Act which lists types of transfer that are not prohibited where a community interest is registered and which, therefore, may proceed notwithstanding a registered community interest in the land being registered. Such a transfer would not activate a right to buy under Part 2 of the Land Reform Act.

86. Subsection (2) aims to prevent the triggering of the right to buy being avoided by the simple device of introducing an intermediate transfer that does not require notice (e.g. by transferring the land to a person otherwise than for value) before then making a transfer that does require notice (e.g. a transfer for value). Subsection (2) provides that any transfer of a type mentioned in subparagraph (2)(a), (e) or (h) of subsection (1) (which, by themselves are transfers not requiring notice) is deemed to be a transfer requiring notice where it is, or is part of, a scheme, arrangement or series of transfers, a main purpose or effect of which is to avoid the requirements of Part 2 of the 2003 Act.

87. Subsection (5) allows Ministers to modify subsections (1) to (4) by order.

### **Section 28: Right to buy**

88. Subsection (1)(a) applies where a tenant's interest in acquiring the land comprised in the lease is for the time being registered under section 25 (i.e. the interest has been registered, has not ceased to have effect by virtue of section 25(12)(b) of the 2003 Act, and only in so far as that registered interest continues to have effect by virtue of section 25(12)(a) of the 2003 Act). In such cases, the giving of notice to that tenant under section 26 confers upon that tenant the right to buy the land to which the transfer relates (i.e. if only part of the land in respect of which the tenant has registered an interest in acquiring is to be transferred then the right to buy can apply to that portion of the land, but not to land that is not to be transferred). Subsection (1)(b) provides that where such notice should have, but has not, been given under section 26, the taking of certain actions with a view to transferring that land or any part of it by the owner or creditor in a standard security also confers upon that tenant the right to buy the land to which the transfer relates. The particular actions that will trigger these consequences are set out in subsections (3) and (4), which the Scottish Ministers may modify by Order using the power conferred by subsection (5). Where the right to buy is conferred upon a tenant by virtue of subsection (1) but the transfer of the land to a person other than that tenant proceeds nonetheless, then, in that event, the tenant has the right to buy that land from the person to whom that land is transferred or from any person to whom it is subsequently transferred (see subsection (2)).

### **Section 29: Exercise of right to buy**

89. Where a tenant's right to buy is conferred by section 28(1) and the land is to be bought from the owner, or creditor, as appropriate, the tenant must, within 28 days of receiving the notice under section 26, give to the owner or creditor, as appropriate, notice of intention to buy the land (see subsection (2)).

90. Where a tenant's right to buy is conferred by section 28(2) (i.e. the tenant has the right to buy but the land is sold to a third party nonetheless) and the land is to be bought from the person to whom the land has been transferred, or subsequently transferred, subsections (3) and (4) apply. Accordingly, the tenant must, within 3 years from the transfer of the land to the person from whom the land is to be bought, give to that person notice of intention to buy the land. For notice to be given to this person the tenancy must be in force on the date when the notice is given.

91. Whether notice is given under subsection (2) or (4), the procedure for buying is set out in section 32 of the 2003 Act. Where the tenant does not intend to proceed to buy then the tenant is to give notice of that fact to the person from whom the land would otherwise have been bought (see subsection (5)).

92. If the tenant fails to give notice in accordance with either subsection (2) or (4), as appropriate, or if the tenant gives notice in accordance with subsection (5), the right to buy is extinguished (see subsection (6)).

93. Subsection (7) provides that the tenant must send a copy of any notice given under this section to the Keeper. .

### **Section 30: Meaning of "creditor in a standard security with a right to sell land"**

94. This section defines the term "creditor in a standard security with a right to sell land" for the purposes of Part 2. The first definition is a creditor in a standard security where a calling-up notice in respect of the security has been served upon the debtor and has not been complied with. In this case the debtor is in default within the meaning of standard condition 9(1)(a) (the standard conditions are set out in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 ("the 1970 Act")). Such a creditor has a right to sell the security subjects by virtue of section 20(2) of the 1970 Act.

95. The second definition is a creditor in a standard security where the debtor is in default within the meaning of standard condition 9(1)(b) and a notice of default has been served under section 21 of the 1970 Act to which the debtor has not objected under section 22(1) of the 1970 Act. The definition also covers situations where the court has upheld or varied the notice of default under section 22(2) of the 1970 Act, in cases where the debtor has objected to the notice, and where the debtor fails to comply with any requirement of the notice, or varied notice. Such a creditor has the right to sell the security subjects, or any part of the security subjects, by virtue of standard condition 10(2).

96. The third definition is a creditor in a standard security where the debtor is in default within the meaning of standard condition 9(1)(c) and the creditor has obtained a warrant to exercise any of the remedies which the creditor is entitled to exercise on default within the meaning of standard condition 9(1)(a), which includes the right to sell the security subjects.

### **Section 31: Effect of extinguishing of right to buy**

97. Where a tenant's right to buy has been extinguished by virtue of either of section 29(6) (tenant fails to give notice of intent to buy/tenant gives notice that does not intend to

proceed to buy) or 32(8) (tenant fails to comply with an order of the Land Court under section 32(7) or has not otherwise concluded missives within a reasonable period) the tenant may acquire a subsequent right to buy the same land, or any part of the same land, under section 28(1). This right can be acquired in one of two ways. First, if the period of 12 months from the extinguishing of the right to buy has expired the tenant will acquire a right to buy if section 28(1) is satisfied. Second, if during that 12 month period the land is transferred to another person and that person requires to give notice under section 26 the tenant will acquire a right to buy if section 28(1) is satisfied.

### **Section 32: Procedure for buying**

98. Subsection (1) provides that it is for the tenant to make the offer to buy in exercise of the tenant's right to buy under section 28

99. Subsection (2) provides that the offer to buy is to be at a price agreed between the tenant and the person from whom the land is being bought, or where there is no agreement, the value assessed under section 34(8) or determined by the Lands Tribunal on appeal against the valuation carried out under section 34. The offer must specify the date of entry and of payment of the price.

100. Subsection (3) makes provision as to how the date of entry and of payment are to be determined. A time limit of 6 months from the date when the tenant gave notice under section 29(2) or (4) of the tenant's intention to buy is set for the date of entry and of payment of the price, unless some later date is agreed between the parties. Where the price payable is subject to an appeal which has not, within 4 months after the date when the tenant gave notice of intention to buy, been determined or abandoned the date of entry and payment is to be not later than 2 months after the determination or abandonment of the appeal, unless some later date is agreed between the parties. Under subsection (4), the offer may include other reasonable conditions. Where the tenant has not, within the period fixed or agreed under subsection (3), either concluded missives, or taken all reasonable steps towards concluding missives, for the sale of the land to the tenant then the seller may, under subsection (5), apply to the Land Court for an order directing the tenant either to conclude missives within a period specified in the order or to take such remedial action as is specified in the order for the purpose of concluding missives, or to direct the tenant and seller to incorporate into the missives any term or condition as is specified in the order in respect of the sale of the land. If the tenant fails to comply with such an order from the Land Court or, where the seller has not sought such an order, if the tenant otherwise has not concluded missives for the sale of the land to the tenant within a reasonable period from acquiring the right to buy, the right to buy is extinguished (see subsection (8)).

### **Section 33: Appointment of valuer**

101. This section covers the appointment of a valuer (or 2 valuers with an oversman (see subsection (5)) where the the seller and the tenant do not agree the offer price..

102. Unless subsection (2) applies, subsection (1) provides that the valuer should be appointed by agreement between the seller and the tenant or by a person nominated by them.

103. Subsections (2) and (3) apply where the land in respect of which the tenant is exercising the right to buy forms part of an estate comprising other land in respect of which any other tenant has given notice of intention to buy under section 29(2) or (4). Where subsections (2) and (3) apply the land that is the subject of the tenants' right to buy

is to be valued by a valuer appointed by agreement between the seller and at least half of the tenants who have given notice of intention to buy under section 29(2) or (4).

104. If there is no agreement as to the appointment of a valuer under either subsection (1) or (3) then, under subsection (4), the valuer is to be appointed by the Land Court or by a person nominated by the Land Court.

### **Section 34: Valuation of the land**

105. This section makes provision in respect of the valuation of the land by the valuer appointed under section 33. Subsection (1) provides that the valuer is to assess the value of the land in respect of which the right to buy is being exercised as at the date of notice of the seller's proposal to sell the land under section 26.

106. Subsection (2) requires the valuer, in assessing the value of the land, to have regard to the value that would likely be agreed between a reasonable seller and buyer of such land on the assumption that the seller and buyer are willing parties to the transaction and where the buyer is a sitting tenant. It also specifies certain matters that the valuer is to take into account, and certain matters that the valuer is to take no account of, in assessing the value of the land. Unless subsection (4) applies, the price payable to the seller by the tenant is to be the value assessed under subsection (2) (see subsection (8)).

107. In some circumstances, the land in respect of which the right to buy is being exercised, and the value of which is to be assessed by the valuer, will form part of a larger area of land, an estate, being offered for sale by the seller (see subsection (7)). In such a situation subsection (4) requires the valuer not only to assess the value of the land under subsection (2), but to assess the value representing the difference between the value of the whole estate were it being sold by the seller to a person other than the tenant, and the value of the estate were it being sold by the seller to that person, but minus the land in respect of which the tenant is exercising the right to buy.

108. Where more than one tenant is exercising the right to buy in respect of an estate, the valuation process is complicated by the fact that the overall value of the estate if sold as one lot is not necessarily equal to the sum of the values of the individual parts within it if sold individually. In particular, the values of the individual farms being sold to sitting tenants through the statutory right to buy might not fully compensate the selling owner for the reduction in the overall value of the estate being sold, if sold as one lot, that arises from the estate being sold in parts due to different tenants exercising the right to buy. As a result, subsection (5) allows the valuer to apportion (or to re-apportion if sale of a part does not proceed for any reason) equitably among each of those parts in respect of which the right to buy is being exercised the reduction in the value of the estate as a result of it being sold in parts. Where the land subject to the right to buy forms part of an estate, the price payable to the seller by the tenant is to be the greater of the values assessed under subsection (2) and subsection (4). This valuation mechanism ensures that the selling owner receives the full market value for the land being sold notwithstanding the exercise of the statutory right to buy. It also ensures that, where a valuer does apportion the reduction in value to a landlord's estate in this way, that the valuer can fairly apportion this reduction among each purchasing tenant.

109. Subsection (6) enables Scottish Ministers to issue guidance, both general and in respect of a particular class of case, for the purposes of valuation under this section.

**Section 35: Special provision where buyer is a general partner in a limited partnership**

110. This section makes special provision for the valuation of land under section 34(2) where the right to buy is exercised by a general partner in a limited partnership that is the tenant under a lease constituting a 1991 Act tenancy entered into before the coming into force of section 72 (rights of certain persons where tenant is a limited partnership). Such a general partner is able, in certain circumstances in accordance with section 72, to exercise the right to buy under section 28 as if that general partner were the tenant. In such a case, the valuer, in assessing the value of the land under section 34(2), is to have regard to the fact that the buyer is not a sitting tenant in their own right under a 1991 Act tenancy, but is a general partner of a limited partnership. The valuer also is to have regard to any provision of the partnership agreement entitling a limited partner to dissolve the partnership. Section 34(2)(a)(ii) is to have no effect in respect of such a valuation, and so the valuer is not to carry out the assessment of the value on the basis that the buyer is a sitting tenant.

**Section 36: Valuation etc.: further provision**

111. This section sets out additional requirements regarding the valuation process.

112. Subsection (1) requires the valuer to invite and to have regard to any written representations on specified matters from the seller, tenant and, where the land forms part of an estate, any other person whom the valuer considers to have an interest in the estate. The specified matters are the valuation of the land and, where the land forms part of an estate, any valuation of the estate, and any apportionment of a reduction in the value of the estate to be made by the valuer under section 34(5) (see subsection (2)). Subsection (3) allows the valuer to enter onto land and to make any reasonable request of the seller and tenant for the purposes of assessing the value of the land.

113. Subsection (4) requires the valuer, within 6 weeks of being appointed, to send to the tenant and the landowner written notification of the price payable by the tenant for the land under section 34(8) and setting out how the price payable was calculated.

114. Subsections (5) and (6) concern liability to the valuer for the valuer's expenses in carrying out a valuation of the land under section 34. In all cases, responsibility for meeting the valuer's expenses falls to the tenant or, where the land forms part of an estate in respect of which more than one tenant has given notice of an intention to buy, those tenants, equally among them. If, however, the seller has sought and the Land Court has made an order against the tenant under section 32(7), the tenant has complied with that order and the seller does not proceed with the sale of the land to the tenant, then the seller is liable to the tenant for the valuer's expenses.

115. Subsection (7) enables the Scottish Ministers to make further provision in respect of this section and sections 33 (appointment of valuer) and 34 (valuation of land) of the 2003 Act by regulations.

**Section 37: Appeal to the Lands Tribunal against valuation**

116. This section provides both the seller and the tenant with a right of appeal to the Lands Tribunal for Scotland against the valuation of the land reached by the valuer under section 34. Such an appeal must state the grounds on which it is being made and must be lodged within 21 days of notification of the valuation given by the valuer (see subsection (2)).

117. Subsection (3) allows the Lands Tribunal to reassess the value of the land, and any factor affecting its value, or the value of an estate and how any reduction of the value of an estate is to be apportioned under section 34(5) and to determine the price payable by the tenant under section 34(8). Subsection (4) permits the valuer whose valuation is being appealed against to be a witness in the appeal proceedings. Subsection (5) sets out the people who, in addition to the seller and tenant, are entitled to be heard in the appeal proceedings.

118. Subsection (6) requires the Lands Tribunal to give reasons for its decision on an appeal and to issue those reasons in writing. Subsection (7) provides that the decision of the Lands Tribunal in an appeal under this section is final.

### **Section 38: Referral of certain matters by Lands Tribunal to Land Court**

119. This section provides that where, in an appeal against valuation under section 37, an issue of law arises that can competently be determined by the Land Court by virtue of its jurisdiction under either the 2003 Act or the Agricultural Holdings (Scotland) Act 1991 the Lands Tribunal should refer that issue to the Land Court for determination unless the Tribunal considers that it is not appropriate to do so. This enables the Tribunal to refer appropriate legal issues falling within the jurisdiction of the Land Court which may arise in the course of an appeal against valuation to that Court for determination.

## **PART 3: USE OF AGRICULTURAL LAND: DIVERSIFICATION**

### **Section 39: Use of land for non-agricultural purposes**

120. This section provides the basis for tenants under a 1991 Act tenancy or LDT to use the land for non-agricultural purposes, provided (as subsection (4) makes clear) that the notice procedure in section 40 is adhered to. The meaning of "non-agricultural" can be found in section 93 (interpretation).

121. Subsection (1) provides that, once such an agricultural tenancy has been entered into, the use of the land for a non-agricultural purpose shall not of itself cause the tenancy to cease to be a tenancy of agricultural land subject to the 1991 or 2003 Acts. Subsection 2 provides that this provision over-rides any term within a lease constituting a 1991 Act tenancy or LDT that purports to prohibit diversification.

122. Subsection (3) allows land to be sublet for a purpose ancillary to the tenant's diversification (e.g. a bed and breakfast or serviced holiday home business, where the tenant is providing a service and not simply subletting land or buildings) notwithstanding any provision in the lease to the contrary. Subsection (5) stipulates that the diversification provisions can apply to all or part of the land.

### **Section 40: Notice of and objection to diversification**

123. This section sets out the procedures for the giving of notice of diversification to the landlord by the tenant of a 1991 Act tenancy or an LDT and for the landlord to object to such notice of diversification.

124. Subsection (4) allows a tenant under a 1991 Act tenancy or LDT to use land subject to that tenancy for a non-agricultural purpose from the appointed date (defined in subsection (5)) if the landlord does not object. Subsections (1) and (2) require that the tenant must first give notice of diversification in writing to the landlord not less than 70 days before the date on which the tenant proposes using the land for a non-agricultural purpose. The notice must specify those matters set out at (a) to (d) of subsection (2) and

must address the heads under which a landlord may object to such a notice set out in subsection (9). Subsection (3) provides that where the tenant proposes to make changes to the land or intends to use the land in furtherance of a business then the notice must also specify how the changes are, or the business is (so far as relating to the land), to be financed and managed.

125. The information which the tenant should provide by virtue of subsections (2) and (3) should allow the landlord to determine whether or not to object to the proposed diversification, on the basis of one or more of the grounds set out in subsection (9). If the landlord requires more information from the tenant to make such a determination then, under subsection (6)(a), the landlord may, within 30 days of the giving by the tenant of notice of diversification, request the tenant to provide relevant information. Subsection (7) identifies what information is relevant for the purposes of subsection (6). If, having received that relevant information, the landlord requires more information from the tenant then, under subsection (6)(b), the landlord may, within 30 days of the tenant having provided any relevant information, request the tenant to provide further relevant information. Subsection (8) provides that any information reasonably requested under subsection (6) is to be provided by the tenant within 30 days of the date on which it was requested.

126. Where the landlord does not object to the notice of diversification the landlord may, under subsection (10), impose upon the tenant any reasonable conditions in respect of the use of the land for the non-agricultural purpose, including in relation to any proposed changes to the land itself. Such conditions must be notified to the tenant in writing under subsection (11)(b) within the time limit set out in subsection (12). The time limit set out in subsection (12) is 60 days from either the giving of the notice of diversification or, where the landlord has requested relevant information from the tenant under subsection (6), from the making of that request, or from the making of the most recent request, if more than one request for relevant information has been made by the landlord under subsection (6), whichever is the later. If the conditions to be imposed are not notified in accordance with subsections (11) and (12) the landlord is, except where the non-agricultural purpose is the planting and cropping of trees, deemed not to have imposed any conditions by virtue of subsection (13). Where the tenant believes that such a condition is unreasonable, the tenant may apply to the Land Court which has power, under section 41(3) to remove such a condition.

127. Where the landlord does object to the notice of diversification under subsection (9) then any objection, along with grounds for the objection, must be notified to the tenant in writing under subsection (11)(a) within the time limit set out in subsection (12). The time limit set out in subsection (12) is 60 days from either the giving of the notice of diversification or, where the landlord has requested relevant information from the tenant under subsection (6), from the making of that request, or from the making of the most recent request, if more than one request for relevant information has been made by the landlord under subsection (6), whichever is the later.

128. Where no notification of objection to the diversification is given by the landlord in accordance with subsections (11) and (12) the landlord is deemed, except where the non-agricultural purpose of the diversification is the planting and cropping of trees, not to have objected to the notice of diversification and the diversification can begin from the appointed date. Subsection (5) provides that the appointed date is the date specified in the tenant's notice of diversification unless either the landlord requests additional information or the landlord and tenant agree an earlier date. Where the landlord requests relevant

information from the tenant under subsection (6), the appointed date is to be 70 days from the making of that request or from the making of the most recent request, if more than one request for relevant information has been made by the landlord under subsection (6), whichever is the later.

129. Where a proposed diversification relates to the planting and cropping of trees, subsection (13) provides that the landlord will not be deemed not to have objected or not to have imposed conditions just because the provisions in respect of notifying the tenant of objections or conditions (set out in subsections (11) and (12)) have not been complied with. This is because the trees will mature over a long period, typically substantially longer than the term of an LDT, and their presence will restrict the utility of the land for agricultural purposes and, consequently, its rental value. For those reasons the positive consent and agreement of the landlord to the planting and cropping of trees is required.

#### **Section 41: Imposition of conditions by Land Court**

130. This section applies where a landlord objects to a tenant's notice of diversification, on the basis of one or more of the grounds under section 40(9), and has notified the tenant in accordance with section 40(11) and (12). Subsection (1) provides that where the Land Court determines such an objection to be unreasonable, then the objection is of no effect and the land may be used as specified in the notice of diversification (see (a), (b) and (c) of section 40(2)) from such date as the Court may fix, subject to any conditions imposed by the Court under subsection (2).

131. Subsection (3) provides that where the Land Court determines a condition imposed on a tenant by a landlord and notified to the tenant in accordance with section 40(11) and (12) to be unreasonable, then the Court may remove the condition. The Court may, in place of a condition which it removes, impose on the tenant any such reasonable conditions as it considers appropriate.

#### **Section 42: Tenant's right to timber**

132. This section provides that, unless an agricultural lease or agreement between the parties expressly makes provision to the contrary and includes provision for a reduction in rent or payment of compensation to the tenant in respect of any loss incurred by that tenant as a result of that provision, the tenant under a 1991 Act tenancy or LDT has the right to cut timber from any trees planted by that tenant on or after the coming into force of this section. Such cut timber is owned by the tenant.

### **PART 4: COMPENSATION UNDER AGRICULTURAL TENANCIES**

#### **Section 43: Agreements as to compensation for improvements**

133. This section amends provisions in the 1991 Act that relate to compensation that is payable to a tenant on quitting the land at the termination of the tenancy (known as "waygo") for improvements the tenant has made to fixed equipment during the term of the lease. Subsection (1) inserts new section 33A into the 1991 Act, which applies to improvements made prior to the coming into force of this Act where the tenancy is a 1991 Act tenancy. Subsections (2) and (3) make provision in respect of improvements made on or after the coming into force of this section where the tenancy is a 1991 Act tenancy.

134. Schedule 5 to the 1991 Act lists improvements which, if carried out on an agricultural holding and begun after 1<sup>st</sup> November 1948, entitle the tenant, on quitting the holding at the termination of the tenancy, to compensation under Part IV of the 1991 Act. Those improvements listed under Part II of Schedule 5 to the 1991 Act are improvements

in respect of which compensation is payable only where the tenant gave at least three months written notice to the landlord in accordance with section 38 of the 1991 Act. Those improvements listed under Part III of Schedule 5 to the 1991 Act are improvements in respect of which compensation is payable irrespective of whether the landlord's consent was obtained or notice was given to the landlord.

135. Section 5(2)(a) of the 1991 Act places upon the landlord an obligation at the point that the lease was entered into, albeit an obligation that could subsequently be contracted out of by virtue of section 5(3) of the 1991 Act, to carry out certain works in respect of fixed equipment and buildings. New section 33A provides that where a tenant carries out an improvement listed in either Part II or III of Schedule 5 to the 1991 Act by executing work which the landlord would have been under an obligation to carry out at the time the lease was entered into by virtue of section 5(2)(a) of the 1991 Act, then that tenant is entitled to compensation under Part IV of the 1991 Act on quitting the holding at termination of the lease. This compensation is payable even where the parties have contracted under section 5(3) to vary the landlord's obligations at the time the lease was entered into and to make the tenant responsible to carry out those obligations instead. In this event, the restoration of the tenant to entitlement to compensation under Part IV of the 1991 Act is achieved by disapplying any term of the lease or agreement between the landlord and tenant restricting or excluding compensation in relation to such part or proportion of the improvement carried out by the tenant as the landlord would have been under an obligation to carry out at the point the lease was entered into by virtue of section 5(2)(a) of the 1991 Act. Such a term of the lease or agreement, however, remains in effect in respect of such part or proportion of the improvement carried out by the tenant which the landlord was not under an obligation to carry out, by virtue of section 5(2)(a) of the 1991 Act, at the point the lease was entered into.

136. Subsection (2) of this section repeals provisions of the 1991 Act that enable a landlord and tenant to contract out of the provisions in respect of compensation payable to the tenant under Part IV of the 1991 Act. This does not affect existing agreements that provide for the payment of compensation, except insofar as new section 33A, inserted into the 1991 Act by subsection (1) of this section, applies.

137. New subsection (2A) of section 38 of the 1991 Act (inserted by section 43(3) of the 2003 Act) disapplies the requirement for the tenant to give notice to the landlord of the tenant's intention to carry out an improvement listed under Part II of Schedule 5 to the 1991 Act where the improvement carried out by the tenant was one which the landlord was under an obligation to carry out at the point the lease was entered into by virtue of section 5(2)(a) of the 1991 Act. The effect is that any failure by the tenant to give notice in respect of such an improvement will not prevent the tenant from being entitled to compensation under Part IV of the 1991 Act.

#### **Section 44: Amount of compensation where grant made to tenant**

138. This section substitutes new text for part of section 36(3) of the 1991 Act. Previously, when calculating the compensation payable under Part IV of the 1991 Act to a tenant for a new improvement, section 36(3)(b) provided for the whole amount of any grant which had been or would be paid to the tenant in respect of the improvement to be taken into account (the effect of which was to reduce the amount of compensation payable by the landlord to the tenant).

139. The effect of section 36(3)(b) as now amended is that, subject to any conditions of the grant scheme itself, the assessment of value of an improvement which is attributable

to a public grant will depend on the extent to which the landlord and tenant respectively contributed to the cost of the improvement. Where any grant has been or will be paid to the tenant then, in calculating the compensation payable to the tenant, the grant is only to be taken into account where both landlord and tenant have contributed towards the cost of the improvement. In such cases, only that proportion of the grant equal to the tenant's contribution to the cost of the improvement expressed as a proportion of the total of the tenant's contribution and the landlord's contribution combined shall be taken account of. For example, where an improvement costing £12,000 is financed by a contribution of £6,000 from the tenant, £3,000 from the landlord and £3,000 by way of grant then the portion of the grant to be taken account of in assessing the compensation payable to the tenant under section 36(1) of the 1991 Act is £2,000 (i.e. the £3,000 public grant award is apportioned between tenant and landlord in the same ratio as their own contributions to the improvement: in this case a ratio of 2 : 1).

#### **Section 45: Right to compensation for improvements**

140. Subsections (1) and (2) provide that tenants of both SLDTs and LDTs are entitled on quitting the land on termination of the tenancy to compensation from the landlord in respect of improvements specified in Schedule 5 to the 1991 Act (as section 34(1) of the 1991 Act provides in respect of 1991 Act tenancies). Section 47 sets out how the compensation payable is to be calculated.

141. Subsection (3) provides that compensation is payable in respect of the laying down of temporary pasture (an improvement listed at paragraph 32 of Schedule 5 to the 1991 Act) even if laying down or leaving temporary pasture at the termination of the tenancy contravenes a term of the lease or an agreement between the landlord and the tenant as to the method of cropping the arable lands (as section 34(6) of the 1991 Act provides in respect of 1991 Act tenancies).

142. Subsection (4) provides that a tenant's right to compensation for improvements is not limited to improvements carried out during the currency of the tenancy on the termination of which the tenant quits the land. The right to such compensation is also exercisable in respect of improvements carried out during any previous tenancy, so long as the tenant has remained in occupation of the land.

#### **Section 46: Payment of compensation by incoming tenant**

143. This section applies, with necessary modifications, subsections (2) to (5) of section 35 of the 1991 Act (as read with Schedule 5 to that Act) to compensation which is payable, or which has been paid, by the landlord under section 45(1) of the 2003 Act to an outgoing tenant of an SLDT or an LDT.

144. The effect of subsection (2) of section 35 of the 1991 Act, as modified, is that any agreement between an incoming tenant under an SLDT or an LDT and the landlord under which the tenant is to pay to the outgoing tenant or to refund to the landlord any compensation payable under section 45(1) of the 2003 Act shall be null and void, subject to the exception specified in subsection (3) of section 35 of the 1991 Act, as modified.

145. Subsection (3) of section 35 of the 1991 Act, as modified, provides that subsection (2) of section 35 of the 1991 Act, as modified, is not applicable where the improvement is of a kind listed under Part III of Schedule 5 to the 1991 Act, the agreement between tenant and landlord is in writing and it states a maximum amount payable by the incoming tenant.

146. Subsection (4) of section 35 of the 1991 Act, as modified, provides that where an incoming tenant under an SLDT or LDT, on entering into occupation of the land subject to the tenancy, with the written consent of the landlord pays to the outgoing tenant compensation payable under section 45(1) of the 2003 Act under the provisions set out in subsection (3) of section 35 of the 1991 Act, then that tenant, on quitting the land is entitled to claim compensation from the landlord for the improvement, or part of it, under section 45(1) of the 1991 Act in the same way as the outgoing tenant would have been entitled to do if that tenant had remained tenant and quitted the land at the time the tenant claiming compensation by virtue of this subsection quits it.

147. Subsection (5) of section 35 of the 1991 Act, as modified, provides that where, in a case not falling under either of subsections (2) or (3) of section 35 of the 1991 Act, as modified, a tenant under an SLDT or LDT on entering into occupation of the land pays to the landlord any amount in respect of the whole or part of a new improvement then that tenant, subject to the terms of any written agreement between the landlord and the tenant, on quitting the land can claim compensation for the improvement, or part of it, under section 45(1) of the 2003 Act as that tenant would have been entitled to claim if that tenant had carried out the improvement, or part thereof, and had been the tenant at the time the improvement was in fact carried out.

#### **Section 47: Amount of compensation**

148. Subsection (1) provides that the amount of compensation payable to a tenant under an SLDT or LDT is to be such sum as fairly represents the value of the improvement to an incoming tenant (as section 36(1) of the 1991 Act provides in respect of 1991 Act tenancies).

149. The effect of subsection (2) is that in ascertaining the amount of compensation payable to a tenant of an SLDT or LDT under section 45(1) of the 2003 Act the same matters are to be taken into account as are to be taken into account in ascertaining the amount of compensation payable to a tenant of a 1991 Act tenancy. Subsection (2) is in almost identical terms to section 36(3) of the 1991 Act as amended by section 44. Subsection (2)(a) provides that account is to be taken of any benefit which the landlord has agreed in writing to give the tenant for carrying out the improvement. Subsection 2(b) provides that, subject to any conditions of the grant scheme itself, where any grant has been or will be paid to the tenant then, in calculating the compensation payable to the tenant, the grant is only to be taken into account where both landlord and tenant have contributed towards the cost of the improvement. In such cases only that proportion of the grant equal to the tenant's contribution to the cost of the improvement expressed as a proportion of the total of the tenant's contribution and the landlord's contribution combined shall be taken into account.

150. Any injury to or deterioration of the land in contravention of a term of the lease or of any agreement as to the method of cropping the arable lands is to be taken into account in ascertaining the compensation payable under section 45(3) of the 2003 Act, except insofar as the landlord has recovered damages in respect of that injury or deterioration.

#### **Section 48: Consent required for compensation in certain cases**

151. This section provides that no compensation shall be payable to a tenant of an SLDT or LDT under section 45(1) of the 2003 Act in respect of an improvement listed under Part I of Schedule 5 to the 1991 Act unless the written consent of the landlord, (which may include conditions) , is obtained before the improvement was carried out (as

section 37(1)(c) of the 1991 Act provides in respect of compensation payable to tenants of 1991 Act tenancies for such improvements).

#### **Section 49: Notice required for certain improvements**

152. This section provides that no compensation shall be payable to a tenant of an SLDT or LDT under section 45(1) of the 2003 Act in respect of an improvement listed under Part II of Schedule 5 to the 1991 Act unless written notice was given by the tenant to the landlord specifying the tenant's intention to carry it out and the manner in which it is proposed to carry it out. This reflects what section 38(1)(c) of the 1991 Act provides in respect of compensation payable to tenants of 1991 Act tenancies for such improvements, the only exception to the requirement for notice under the 1991 Act being that under subsection (2A) of section 38 of the 1991 Act, which is inserted by section 43 of the 2003 Act.

153. Subsection (2) applies, with necessary modifications, subsections (1) to (4) of section 39 of the 1991 Act (as read with Schedule 5 to that Act) to compensation to tenants of SLDTs and LDTs under section 45(1) of the 2003 Act. The effect of section 39(1) of the 1991 Act, as modified, is that compensation is not payable under section 45(1) in respect of an improvement listed under Part II of Schedule 5 to the 1991 Act if, within 60 days of receiving notice from the tenant under section 49(1), the landlord gives written notification to the tenant of objection to the improvement or to the manner in which the tenant proposes to carry the improvement out.

154. Section 39(2) of the 1991 Act provides that where the landlord gives notification of objection under section 39(1), as modified, of the 1991 Act then the tenant may apply to the Land Court for approval of carrying out the improvement. On such application the Land Court may approve the carrying out of the improvement, unconditionally or upon such terms as appear to the Court to be just, or it may withhold approval.

155. Section 39(3) of the 1991 Act provides that within one month of receiving notice of the Land Court's approval of the carrying out of the improvement the landlord may serve written notice on the tenant containing an undertaking that the landlord shall carry out the improvement. Section 39(4) of the 1991 Act provides that if the landlord does not serve such a notice undertaking to carry out the improvement that has been approved by the Land Court then the tenant may carry out the improvement and shall be entitled to compensation under section 45(1) on quitting the land on termination of the tenancy. If the landlord does serve such a notice but fails to carry out the improvement the tenant may apply to the Land Court for an order that the landlord has failed to carry out the improvement in a reasonable time. On obtaining such an order the tenant may then proceed to carry out the improvement and shall be entitled to compensation under section 45(1) on quitting the land on termination of the tenancy.

#### **Section 50: Compensation for disturbance and damage by game**

156. Subsection (1) repeals section 43(4)(c) of the 1991 Act. The effect of this repeal is to remove the limit on the level of compensation for disturbance (previously 2 years' rent of the holding) to which a tenant of a 1991 Act tenancy is entitled under section 43 of the 1991 Act.

157. Subsection (2) amends section 52 of the 1991 Act which previously provided that a tenant of a 1991 Act tenancy may have anything from one month up to 13 months in which to submit a claim for damage to the tenant's crops by game, depending on when within an agreed 12-month period the damage occurs. The effect of this amendment is to

require the tenant of a 1991 Act tenancy to submit such a claim for compensation within 6 months of the date on which the tenant notified the landlord of the damage under section 52(2)(a) of the 1991 Act.

**Section 51: Compensation arising as a result of diversification, etc**

158. Subsection (1) inserts new section 45A into the 1991 Act. It makes provision for the recovery of compensation arising as a result of the tenant's use of the land for a purpose which is not agricultural. A purpose which is not an agricultural purpose may be determined by reference to the definition of agriculture in section 93 of the 2003 Act. The compensation is recoverable when the tenant of a 1991 Act tenancy quits the holding on termination of the tenancy. The compensation may be recoverable either by the landlord from the tenant or vice versa. Subsection (2) amends section 47 (provisions supplementary to sections 45 and 46) so that those provisions which apply to section 45 will also apply to new section 45A.

159. New section 45A(1) provides for the landlord to recover compensation from the tenant where the landlord can show that the value of the holding has been reduced during the tenancy by the use of the holding, on or after this section comes into force, for a non-agricultural purpose, whether or not authorised under sections 40 or 41. The compensation is to be an amount equal to the reduction in value of the holding. New section 45A(2) provides for the recovery of compensation by either landlord or tenant from the other in respect of trees planted on the holding by the tenant, after new section 45A(2) has come into force, for future cropping (as distinct from trees planted for other purposes, such as establishing shelter belts). The level of any compensation that may be recoverable by the landlord from the tenant, or vice versa, depends on the difference between (a) the value of the trees to a hypothetical purchaser for future cropping and (b) the evaluated loss of rent to the landlord arising from retaining the trees until the likely date of cropping added to the cost to the landlord of thereafter returning the land to agricultural use. Where (a) is greater than (b) then the tenant is entitled to recover the difference between the two figures. Where (b) is greater than (a) then the landlord is entitled to recover the difference between the two figures (see subsection (4)).

160. New section 45A(5) provides for the tenant to recover compensation from the landlord where the value of the holding has been increased during the tenancy by such use of the land or part of the land, or such change to the land as has been permitted under sections 40 (Notice of and objection to diversification) or 41 (Imposition of conditions by Land Court). The use must have occurred on or after the coming into force of this section. The compensation is to fairly represent the value of the use, change or carrying out of the activities to an incoming tenant (following the test for assessing compensation for an improvement under section 36(1) of the 1993 Act). The "value to a hypothetical incoming tenant" test reflects that used in relation to compensation payable when a tenant quits the land on termination of the lease for agricultural improvements made by a tenant.

161. New section 45A(6)(a) provides that, in ascertaining the amount of compensation recoverable by the tenant from the landlord under section 45A(5) of the 1991 Act, that account shall be taken of any benefit which the landlord has agreed in writing to give to the tenant in consideration of the tenant undertaking the non-agricultural purpose permitted under section 40 or 41 of the 2003 Act. New section 45A(6)(b) provides that, subject to any conditions of the grant scheme itself, where any grant has been or will be paid to the tenant then, in calculating the compensation payable to the tenant, the grant is only to be taken into account where both landlord and tenant have contributed towards the

cost of the improvement. In such cases only that proportion of the grant equal to the tenant's contribution to the cost of the improvement expressed as a proportion of the total of the tenant's contribution and the landlord's contribution combined shall be taken into account (similar to the effects of sections 44 and 47(2) of the 2003 Act in relation to compensation payable where public grant has contributed towards the cost of an agricultural improvement).

162. New section 45A(7) provides that no compensation is payable under new section 45A(5) if, due to the non-agricultural use authorised under section 40 or 41 of the 2003 Act, the land is unsuitable for use for agriculture by an incoming tenant or if, due to any use of the fixed equipment in connection with any of those authorised non-agricultural purposes, the landlord would not, at the commencement of an incoming tenant's tenancy, be able to fulfil his obligations as to fixed equipment under the lease imposed by virtue of section 5(2)(a) of the 1991 Act. Again, the "value to a hypothetical incoming tenant" test reflects that use in relation to compensation payable at waygo for agricultural improvements made by a tenant.

163. New section 45A(8) provides that a tenant's right to compensation under section 45A is not exercisable only in respect of such use or change of land during the currency of the tenancy on the termination of which the tenant quits the land. The right to compensation under section 45A is also exercisable in respect of such use or change of land carried out during any previous tenancy, so long as the tenant has remained in occupation of the land. Subsection (2) of this section amends section 47 (provisions supplementary to sections 45 and 46) of the 1991 Act so that it applies to new section 45A of the 1991 Act. Section 47 of the 1991 Act, as applied to section 45A, provides that compensation is not recoverable by a landlord under section 45A unless that landlord has given written notice to the tenant not later than 3 months before the termination of the tenancy, of the landlord's intention to claim compensation under section 45A.

## **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 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.

### **Section 53: Compensation for other particular things**

172. Subsection (1) applies, with modifications, section 44 (compensation for continuous adoption of special standard of farming) of the 1991 Act to SLDTs and LDTs as it does to 1991 Act tenancies. Section 44 of the 1991 Act, as modified, entitles tenants of SLDTs and LDTs, where the value of the land to an incoming tenant has been increased during the tenancy by the adoption of a more beneficial standard or system of farming than that required by the lease or normally practised on comparable land, to compensation representing the value of adoption of that standard or system to an incoming tenant. The entitlement to such compensation arises when the tenant quits the land.

173. Subsection (2) applies, with modifications, section 45A (compensation arising as a result of diversification etc.) (inserted into the 1991 Act by section 51 of the 2003 Act) as read with section 47(1) of the 1991 Act to LDTs as it applies to 1991 Act tenancies. Section 45A is inserted into the 1991 Act by section 51 of the 2003 Act.

174. Subsection (3) applies, with modifications, section 52 (compensation for damage by game) of the 1991 Act to SLDTs and LDTs as it does to 1991 Act tenancies. Section 52 of the 1991 Act is amended by section 50(2) of the 2003 Act.

#### **Section 54: Compensation where compulsory acquisition of land**

175. Subject to two exceptions (see subsection (4)), this section applies where any acquiring authority acquires the interest of a tenant under, or takes possession of the land or any part of the land comprised in a lease constituting, an SLDT or LDT (thus making similar provision for such tenants as section 56 of the 1991 Act makes in respect of tenants of 1991 Act tenancies).

176. The first exception is where the land, or any part of it, is acquired for the purposes of agricultural research or experiment or of demonstrating agricultural methods (this exception does not apply where the power to acquire or take possession of the land is exercised by virtue of section 189 of the Town and Country Planning (Scotland) Act 1997 or section 7 of the New Towns (Scotland) Act 1968: see subsection (5)). The second exception is where the land or any part of it is acquired by the Scottish Ministers under sections 57(1)(c) or 64 of the Agriculture (Scotland) Act 1948.

177. Where subsection (1) applies, subsection (2) provides that the acquiring authority is to pay to the tenant compensation of a sum equal to four times the annual rental of the land or, where only part of the land is being compulsorily acquired or possessed, four times the annual rent proportionate to that part. The tenant will not be entitled to compensation where, immediately before the acquiring of the interest or taking of possession, that tenant was not in, nor entitled to take, possession of any of the land.

178. Subsection (6) applies, with modifications, Schedule 8 of the 1991 Act to payments made under subsection (2) as it does to payments made under section 56 of the 1991 Act. The two principal effects of this are that, first, any dispute as to the sum payable under subsection (2) is to be determined by the Lands Tribunal (see paragraph 1 of Schedule 8 to the 1991 Act); and, second, where the rent payable by the tenant (being the basis on which compensation is calculated) has not been independently determined under section 9 or 10 or by the Land Court then the acquiring authority, where it considers the rent to be “unduly high”, may make application for the rent to be considered by the Lands Tribunal for Scotland. The Tribunal must first determine the “appropriate rent” if determined under section 9 or 10. If the actual rent is not substantially higher than the “appropriate rent” then the application must be dismissed. If it is substantially higher than the “appropriate rent” but was not fixed by landlord and tenant with a view to increasing the compensation payable then the application must be dismissed. If the application is not to be dismissed then the compensation payable is to be ascertained on the basis of the “appropriate rent”.

#### **Section 55: Right to compensation for yielding vacant possession**

179. This section applies to 1991 Act tenancies and to former such tenancies which, by virtue of section 2 of the 2003 Act, have been converted to LDTs. Its effect is to provide for compensation arrangements that a landlord and tenant may enter into by agreement where either the landlord wishes to sell the tenanted land with vacant possession or the tenant wishes to quit the land.

180. Subsections (2) and (3) apply where the landlord wishes to sell the tenanted land. In such cases, the landlord and tenant may enter into an agreement whereby the tenant quits the land in return for compensation calculated according to the formula set out in subsection (3). These provisions set out arrangements which affect landlord and tenant

only if entered into voluntarily by both parties. They do not affect the security of tenure to which the tenant is entitled. The landlord cannot compel the tenant to quit the land under any of the provisions of this section. Nor can either party compel the other to enter into an agreement under any of the provisions of this section.

181. Subsections (4) and (5) apply where the tenant wishes to quit the land. In such cases, the landlord and tenant may enter into an agreement whereby the tenant quits the land and the landlord pays to that tenant compensation calculated according to the formula set out in subsection (5). These provisions set out arrangements which affect landlord and tenant only if entered into voluntarily by both parties. The landlord is not obliged, unless voluntarily entering into such an agreement, to pay such (or indeed, any) compensation under these provisions. Nor may a landlord oblige a tenant to quit the land by offering to pay compensation to the tenant on the basis of this formula. These provisions do not affect a landlord's obligation to pay compensation under any other provision of the 1991 Act.

182. Subsection (6) stipulates arrangements for the appointment of the valuer, while subsections (7) and (8) set out factors to be taken into account as part of the valuation of land and compensation payable.

**Section 56: No right to penal rent, etc.**

183. This section makes similar provision in respect of SLDTs and LDTs as does section 48 of the 1991 Act in respect of 1991 Act tenancies. It prevents the landlord from imposing a financial penalty, in excess of the damage actually suffered by the landlord, on the tenant for a breach or non-fulfilment of a term or condition of the lease, and overrides any purported condition in the lease to the contrary.

**Section 57: Provision as to parts of land and divided land**

184. This section makes similar provision in respect of SLDTs and LDTs as do sections 49(3) and (4) and 50 of the 1991 Act in respect of 1991 Act tenancies.

185. The effect of subsections (1) and (2) is to remove non-agricultural land held under an SLDT or LDT from consideration when calculating compensation payable under this Part of the 2003 Act. The meaning of what constitutes non-agricultural land in subsection (2) differs from the corresponding meaning in section 49(4) of the 1991 Act in respect of 1991 Act tenancies, in that subsection (2) requires consideration to be given to whether the land would have been capable of being let as an agricultural tenancy at the point when the tenancy commenced (rather than at the point when compensation is due to be paid). The effect of this distinction is that land used by the tenant of an SLDT or LDT for a diversified non-agricultural purpose is not caught by subsection (2), and so remains eligible to be taken into account in assessing compensation under Part 4 of the 2003 Act.

186. Subsection (3) provides that, where the landlord's interest in the land is divided between two or more interests and the rent payable under the lease has not been apportioned with the tenant's consent or under any statutory provision, then the tenant may require that any compensation payable to the tenant under Part 4 of the 2003 Act be paid as if the land had not been divided. Subsection (4) empowers the Land Court to determine how compensation payable to a tenant is to be apportioned between those persons who, together, constitute the landlord. The Court may also determine how any additional expenses of the apportionment application are to be apportioned between those people.

**Section 58: Compensation not payable where direction as to permanent pasture**

187. This section makes similar provision in respect of SLDTs and LDTs as does section 51 of the 1991 Act in respect of 1991 Act tenancies. It provides that no compensation is payable to the tenant in respect of anything done by the tenant in pursuance of any direction as to permanent pasture given by virtue of section 15 (see subsection (1)(a)), nor for any improvement of the type specified in Part III of Schedule 5 to the 1991 Act carried out for the purposes of any requirement in relation to permanent pasture provided for by virtue of section 15 (see subsection (2)). It also restricts the compensation that can be paid to an outgoing tenant where land is ploughed up in pursuance of a direction as to permanent pasture given by virtue of section 15 (see subsection (1)(b)).

**Section 59: Extent to which compensation recoverable under agreements**

188. This section makes similar provision in respect of SLDTs and LDTs as does section 53 of the 1991 Act in respect of 1991 Act tenancies.

189. Subsection (1) provides that, unless there is any express provision to the contrary in Part 4, where a landlord or tenant of an SLDT or LDT is entitled to compensation under any provision of Part 4 they are entitled to such compensation by virtue of that provision alone and notwithstanding any term of any agreement between them (whether to increase, reduce or not pay the compensation).

190. Subsection (2) provides that where the landlord and tenant agree in writing a variation of the terms of the lease as may be made by a direction by virtue of section 15 (permanent pasture) then they may also, in that written agreement, provide for the exclusion of compensation on the same basis as it is excluded under section 58(1).

191. By virtue of subsection (3), in a case where Part 4 makes no provision for compensation then any claim by a landlord or tenant of an SLDT or LDT is not enforceable unless it is made under a written agreement. This includes compensation payable to a landlord for any dilapidations caused to the land by the tenant.

**PART 5: MISCELLANEOUS AMENDMENTS TO THE 1991 ACT**

**Section 60: Agreements as to fixed equipment**

192. This section amends section 5 of the 1991 Act, which sets out the respective responsibilities of landlord and tenant under a 1991 Act tenancy relating to the provision, maintenance and renewal of fixed equipment, including buildings.

193. Section 5(3) of the 1991 Act is repealed. Consequently, a landlord and tenant can no longer enter into an agreement altering their respective responsibilities in relation to fixed equipment.

194. New subsections (4A) to (4C) inserted into section 5 of the 1991 Act apply to agreements already made by virtue of section 5(3). Subsections (4A) and (4C) set out the general principle, that such agreements continue to be of effect but can be nullified if subsection (4B) is complied with. Subsection (4B) is complied with if, following a review of the rent under section 13 of the 1991 Act the tenant gives notice to the landlord that the agreement is to be nullified from a date specified by the tenant and, on the date on which the agreement is to be nullified, the buildings and other fixed equipment are either in a reasonable state of repair or (if they were in an unreasonable state of repair when the

agreement was entered into) are not in a worse state of repair than they were when the agreement was entered into.

195. Subsection (4D) provides that any new agreement made between landlord and tenant which purports to provide for the tenant to bear any expense arising from work for which the landlord is responsible under the lease is of no effect.

### **Section 61: Making of records**

196. Section 8(1) of the 1991 Act provides for either the landlord or the tenant under a 1991 Act tenancy, to be able to require the making of a record of the condition of the fixed equipment on the holding or a record of the cultivation of the holding. This can be done at any time during the tenancy. .

197. Subsection (1) inserts a new subsection (3) into section 8 of the 1991 Act. Recorders no longer require to be appointed by the Scottish Ministers. The parties may appoint their own choice of recorder by joint agreement. If they fail to agree, either party may apply to the Scottish Ministers to appoint the recorder. The Scottish Ministers may charge a reasonable fee for doing so, by virtue of new subsection (3A).

198. The record need no longer be in prescribed form. The parties are free to determine the form of the record by joint agreement. In the absence of agreement, the form of the record is a matter for the recorder (see new subsection (3B)) (eg. a record could take the form of a video recording). Disputes arising out of the making of a record are to be referred to the Land Court. Sections 8(8) and (9) are now restricted in application to recorders appointed by the Scottish Ministers. The remuneration of recorders appointed by the parties is a matter for private negotiation.

199. Subsection (2) makes special provision for the operation of section 8 of the 1991 Act where the Scottish Ministers are a party to the lease. Section 80 of the 1991 Act provides that where the Scottish Ministers are a party to a lease of an agricultural holding then where any provision of the 1991 Act provides that any matter concerning the holding falls to be decided by the Scottish Ministers it should, instead, fall to be decided by the Land Court. This subsection, however, makes special provision in respect of the operation of section 8, instead providing that where the Scottish Ministers are a party to the lease and those parties cannot agree on the appointment of a recorder under section 8(3) of the 1991 Act then the recorder is to be appointed by the sheriff, on the application of either party. It is not appropriate for the Land Court to exercise that power as that Court has jurisdiction over appeals against the recorder's findings by virtue of section 8(6).

### **Section 62: Interdict in certain cases**

200. This section amends section 7 of the 1991 Act, which confers upon the tenant, subject to the obligations under section 7(3) and the restrictions set out in section 7(5) of the 1991 Act, the right to dispose of the produce of the holding (other than manure) and to practise any system of cropping of the arable land on the holding notwithstanding any custom, or any provision of the lease or of any other agreement. Section 7(3) provides that the landlord's only remedies in respect of injury or damage which has occurred, or is likely to occur, to the holding are interdict or damages payable by the tenant when the tenant quits the holding on the termination of the tenancy. These remain the only remedies by virtue of the wording of newly inserted subsection (3A). New subsection (3A) also provides that those remedies may now be obtained only in the Land Court.

201. The question as to whether the tenant, in exercising the rights under section 7(1) of the 1991 Act, has or is likely to injure or cause deterioration to the holding may be determined either by the Land Court or, where both parties agree, by an arbiter (by virtue of new sections 60 and 61(1) of the 1991 Act (substituted by sections 75 and 76 of the 2003 Act respectively)). Where the question is determined by an arbiter then, in any interdict proceedings brought under section 7(3)(a) of the 1991 Act, then new subsection (4) provides that a certificate of the arbiter as to the decision in the arbitration is conclusive proof of the facts set out in the certificate.

### **Section 63: Variation of rent**

202. This section makes amendments to section 13 of the 1991 Act in respect of its provisions with regard to the variation of rent to apply to 1991 Act tenancies. It should be noted, however, that section 13 of the 1991 Act is also amended by paragraph 15 of the Schedule to the 2003 Act.

203. Section 13(1) of the 1991 Act, as amended by paragraph 15 of the Schedule, now provides that either landlord or tenant of a 1991 Act tenancy may have the rent payable in respect of the holding determined by the Land Court. The Land Court will determine the rent payable as from the day after the date on which the tenancy could have been terminated by notice to quit, or of intention to quit, and in doing so is obliged, by section 13(2) of the 1991 Act, to carry out that determination in accordance with the provisions of subsections (3) to (7A) of section 13 of the 1991 Act.

204. Section 13(3) of the 1991 Act, as amended by subsection (b), provides that in assessing the rent properly payable by a willing tenant to a willing landlord in respect of the holding, the terms of the tenancy (except those relating to rent) must be taken into account. However, the effect of the tenant's occupation of the tenancy and any distortion in rent arising from a scarcity of lets must be disregarded.

205. Section 13(4) of the 1991 Act, as amended by subsection (c), provides that in determining the rent payable the Land Court shall have regard to information about the rents of other agricultural holdings, including when those rents were fixed, and any factor affecting any or all of those rents, except any distortion arising from the scarcity of lets. It should also have regard to the current economic conditions in the relevant sector of agriculture. This amendment, by removing the provisions of old subsection (4), also allows a wider range of evidence to be considered in respect of rents of comparable holdings (as, until now, old subsection (4) only allowed such evidence to be used where the evidence available was, in the arbiter's opinion, insufficient to enable the rent properly payable to be determined).

206. Section 7(5) and (6) of the 1991 Act remain broadly unchanged by the 2003 Act, other than a modest amendment to section 7(5) by paragraph 15 of the Schedule. Section 7(5) continues to set out the circumstances in which an improvement to the holding which increases its rental value is not to be taken account of by the Land Court. Section 7(6) of the 1991 Act applies where a tenant continuously adopts a standard or system of farming more beneficial to the holding than that required by the lease or, where the lease is silent, than that normally practised locally on comparable holdings. In such cases, the provision continues to provide that this is to be deemed, for the purposes of section 7(5), an improvement carried out at the tenant's own expense and hence left out of account by the Land Court in assessing the rent payable.

207. Section 13(7) of the 1991 Act previously provided that a lower rent shall not be fixed as a consequence of any dilapidation or deterioration of, or damage to, fixed equipment or land caused by the tenant. As amended by subsection (d) and by paragraph 15 of the Schedule, section 13(7) still makes such provision. However, it now also provides that the Land Court shall not fix a lower rent as a consequence of a reduction in the rental value of the holding resulting from the use of or changes to the land or part of the land for a non-agricultural purpose or from the carrying out of conservation activities on the land. This ensures that landlords do not suffer loss of rental from the use of the land they own as a result of any diversification by their tenants, or the carrying out of conservation activities by their tenants. Any increase in the rental value of the holdings arising from a non-agricultural use shall, however, be taken into account in determining the rent payable, by virtue of new subsection (7A).

#### **Section 64: Tenant's right to withhold rent**

208. This section inserts new section 15A into the 1991 Act in relation to 1991 Act tenancies. It enables a tenant, in certain circumstances, to apply for the Land Court to authorise the tenant to consign to the Court rent otherwise payable to the landlord and, where the tenant is authorised by the Court to carry out work to fixed equipment which the landlord should have carried out, to apply for reimbursement of the costs from that consigned rent.

209. Subsection (3) applies where the conditions of subsections (1) and (2) are complied with.

210. Subsection (1) is complied with where the tenant has obtained from the Scottish Land Court, under section 84(1)(b), an order requiring the landlord either (a) to do or perform some act, other than payment of money (known as an order *ad factum praestandum*) or (b) to fulfil a contractual obligation (known as an order for specific implement) in relation to an obligation in respect of fixed equipment owed by the landlord to the tenant which the landlord has failed to fulfil. In both cases, the granting by the Land Court of an interim order is sufficient for the purposes of compliance with subsection (1).

211. Subsection (2) is complied with where such an order of the Land Court as is mentioned in subsection (1) has not been complied with by the landlord in a material regard by the date specified in that order or such later date as the Court may have fixed in accordance with section 84(2)(b).

212. Where subsections (1) and (2) are complied with, subsection (3) confers upon the tenant the right to apply to the Land Court for either or both of the orders specified in paragraphs (a) and (b). The first of these, under paragraph (a), is an order authorising the tenant to carry out the work that the landlord would have required to have carried out to comply with the order referred to in subsection (1).

213. The second, under paragraph (b) of subsection (3), is an order authorising the tenant to withhold payment of rent due to the landlord in respect of the holding. The right to withhold rent under paragraph (b) can only be granted subject to the condition that the tenant must consign (i.e. pay) to the Land Court the rent that would otherwise have been payable to the landlord. Any right of the landlord to irritate the lease for non-payment of rent or to take action under sections 20 (removal, of tenant for non-payment of rent) or 22 (restrictions on notices to quit) of the 1991 Act is unenforceable if the non-payment is in consequence of an order of the Court under subsection (3)(b) (see subsection (8)).

214. Under subsection (4) a tenant who carries out work authorised by an order of the Land Court under subsection (3)(a) may apply to the Land Court, asking that it release to the tenant funds from the rent payments held by the Court. These funds may be used towards, or in satisfaction of, the costs incurred by that tenant in connection with the carrying out of work authorised by the Court under subsection (3)(a).

215. An order under subsection (3)(b) continues in force until such time as the Land Court, on the application of the landlord, considers that it would not be appropriate for the order to continue and so terminates it. In considering terminating such an order the Court must have regard to any work that the the tenant was authorised to carry out under subsection (3)(a) and any costs referred to in subsection (4) (see subsection (5)) The Court shall then, by virtue of subsection (6), divide the consigned funds, or any remaining amount of the consigned funds, between landlord and tenant as it considers to be equitable.

216. To the extent that the tenant is compensated from consigned funds for the costs arising from the work they have been authorised to undertake, that work is to be treated as an improvement carried out at the landlord's expense for the purposes of compensation payable on the tenant quitting the land on termination of the tenancy (see subsection (7)). Subsection (9) prohibits the parties from contracting out of these provisions.

#### **Section 65: Termination of Tenancy**

217. This section inserts new section 16A into the 1991 Act and applies to those 1991 Act tenancies which have leases that contain terms which purport to require the tenant to reside on the holding. There is no right under common law for a landlord to irritate a lease as a result of a tenant's failure to reside on the holding.

218. Section 16A(1) prohibits a landlord from terminating an agricultural lease and evicting the tenant on the basis that the tenant has not been resident on the land. Section 16A(2) replaces such a lease term with an undertaking by the tenant, where that tenant does not reside on the holding, to ensure that a person with suitable skills and experience resides on the holding instead.

#### **Section 66: Assignment and subletting of tenancy**

219. This section inserts new section 10A into the 1991 Act. Section 10A(1) enables a tenant under a 1991 Act tenancy to assign, with the landlord's consent, their interest in the tenancy to a person who would be entitled to succeed to that tenant's estate on intestacy under the Succession (Scotland) Act 1964, notwithstanding any term of the lease to the contrary (see section 10A(5)). Section 10A(2) provides that the tenant must give to the landlord written notice of the intention to assign, specifying details of the proposed assignee, the terms of the proposed assignment, including the date from which it is to take effect.

220. Section 10A(3) confers upon the landlord the right to withhold consent on reasonable grounds and sets out a non-exhaustive list of grounds on which consent could reasonably be withheld.

221. Section 10A(4) provides that where the landlord withholds consent that fact, along with a note of the grounds on which consent is withheld, must be intimated to the tenant within 30 days of the giving of notice by the tenant under section 10A(2). If no such intimation is made then the landlord is deemed to consent to the assignment. In the event that the landlord does withhold consent and the tenant does not accept the grounds for

such withholding of consent, then it is open to the tenant to apply to refer the matter to the Land Court for resolution under new section 60 of the 1991 Act (inserted by section 75).

### **Section 67: Notices to quit**

222. Where a landlord under a 1991 Act tenancy serves notice to quit upon the tenant under section 21 of the 1991 Act the tenant may, under section 22(1) of the 1991 Act, serve a counter-notice on the landlord within one month of the giving of the notice to quit (or, where section 23(3) applies, within the extended period mentioned in that section). The effect of such a counter-notice is to prevent the notice to quit having effect unless the Land Court, after scrutiny, consents (in accordance with section 24 of the 1991 Act) to its operation. However, a tenant is unable to serve a counter notice (and so has no opportunity to prevent a notice to quit from having effect) where any of the provisions of section 22(2) are complied with and are given in the notice to quit as the ground for termination.

223. Prior to amendment, a landlord was able to comply with section 22(2)(b) of the 1991 Act (and thus avoid the notice to quit being scrutinised by the Land Court) even in situations where planning consent was not required and where, consequently, there had been no scrutiny of the proposed development by the planning authorities (e.g. where the proposed non-agricultural use did not involve a change from the existing use, in which case planning permission was not required for a reason independent of the town and country planning enactments).

224. As amended by section 67(1) of the 2003 Act, however, section 22(2)(b) of the 1991 Act is only complied with where the land is required for use, other than agriculture, for which permission both requires to be, and has been, obtained under the Town and Country Planning Acts. In short, it is only complied with where the proposed development has been scrutinised, and permission has been granted, by the planning authorities. Consequently, neither outline planning permission nor permitted developments, which do not require full planning permission, comply with section 22(2)(b) as amended. In these situations, the tenant will always be able to serve a counter notice and thus require the notice to quit to be scrutinised by the Land Court.

225. Section 24(1) of the 1991 Act sets out the matters in respect of one or more of which the Land Court must be satisfied before giving consent, under section 22 of the 1991 Act, to the operation of a notice to quit. Section 24(2) of the 1991 Act sets out the circumstances in which the Court must withhold consent to the operation of a notice to quit, even where it is satisfied under section 24(1) of the 1991 Act. Previously, the only ground on which the Court required to withhold its consent was if, in all the circumstances, it appeared to the Court that a fair and reasonable landlord would not insist on recovering possession. As amended by subsection (2), section 22(4) of the 1991 Act still makes such provision. However, it now also provides that, where the notice is to quit the whole holding, the Land Court shall withhold its consent where, in all the circumstances, the landlord's proposed use of the land would not create both greater economic and social benefits to the community than would otherwise be the case if the tenancy continued in existence. Subsections (5) and (6) provide definitions for the purposes of this new provision. Subsection (7) provides that the Land Court is to have regard to such representations as it considers may assist it in its consideration of the matters set out in the new provision.

**Section 68: Restoration of agricultural holding following mineral exploitation**

226. This section inserts section 29A into the 1991 Act. New section 29A(1) provides subsection (2) is to apply where there exists a continuing 1991 Act tenancy and where part of that tenancy had been terminated by virtue of section 29(1) of the 1991 Act for a purpose set out in section 29(2)(f) of that Act (including the mining or extraction of minerals and other materials or the construction or works or buildings connected with such purposes).

227. Subsection (2) provides that where the land in respect of which the tenancy was terminated has been made suitable, and is available, for agricultural use then, if both of the conditions set out in subsection (3) are satisfied, that land shall be restored to the holding.

228. The conditions set out in subsection (3) are satisfied where the tenancy of the holding continues in force with the same tenant and landlord under the lease and any compensation paid to the tenant because of the termination took into account in the calculation of that compensation that the land would be restored to the holding under this section.

**Section 69: Good husbandry and conservation activities**

229. This section amends section 85 of the 1991 Act to prevent tenants under a 1991 Act tenancy from being determined as having failed in their obligations to fulfil their responsibilities to farm in accordance with the rules of good husbandry by reason only that they are undertaking conservation activities or a non-agricultural use of the land in accordance with section 40 or 41 of the 2003 Act.

230. Subsection (2) inserts new subsections (2A) and (2B) into section 85 of the 1991 Act. These new subsections require conservation activities and non-agricultural uses under section 40 or 41 to be treated as being in accordance with the rules of good husbandry if any of the criteria set out in subsection (2A) are met.

**PART 6: RIGHTS OF CERTAIN PERSONS WHERE TENANT IS A PARTNERSHIP**

**Section 70: Rights of certain persons where tenant is a partnership**

231. This section applies where the conditions of subsections (1) and (2) are complied with.

232. Subsection (1) is complied with where a partnership is tenant of an SLDT, an LDT or a 1991 Act tenancy where the lease constituting that tenancy was entered into on or after this section came into force, namely 27<sup>th</sup> November 2003.

233. Subsection (2) is complied with where the partnership comprises at least one partner of a type representing the landlord's interests (see subsection (2)(a)) and at least one other partner who does not (see subsection (2)(b)).

234. Partners who represent the landlord's interests are defined in subsection (2)(a) as being the landlord, an associate of the landlord (subsection (8), read with section 71, identifies when a person is an associate of the landlord for the purposes of this section and section 72), or a partnership or company in which the landlord has a relevant interest (subsection (7) identifies when a landlord has a relevant interest in a partnership or company for the purposes of this section and section 72)).

235. Where both subsections (1) and (2) are complied with, then section 70 confers the following rights upon partners who do not represent the landlord's interests (i.e. the type specified in subsection (2)(b)). First, subsection (3) confers upon them the right to exercise or enforce, as if tenant in their own right, any right of a tenant under the 2003 Act and the 1991 Act.

236. Second, subsection (6) confers upon them the right to become tenant under the tenancy in their own right in circumstances where subsection (5) applies. This occurs where the tenancy is purportedly terminated as a consequence of dissolution of the partnership in accordance with the partnership agreement or due to the actings of, or renunciation or breach of the tenancy by, a partner of the type specified in subsection (2)(a).

237. Subsection (9) provides the means for the scope of subsections (7) and (8) to be modified as necessary by statutory instrument. Any such instrument would be by affirmative resolution.

#### **Section 71: Meaning of "family"**

238. Subsections (1) to (3) of this section define the meaning of "family", as used in assessing the relationship of partners within a limited partnership to the landlord (section 70(8)(d) refers). Ministers may modify these subsections by order, by virtue of subsection (4). Any such instrument would be by affirmative resolution.

#### **Section 72: Rights of certain persons where tenant is a limited partnership**

239. This section (except for subsections (2) and (10)) and, for those purposes, section 70(7) and (8), was brought into force on 22<sup>nd</sup> May 2003 by the Agricultural Holdings (Scotland) Act 2003 (Commencement No. 1) Order 2003 (S.S.I. 2003/248). Subsection (10) and, for those purposes, section 70(7) and (8) and section 73, was brought into force on 1<sup>st</sup> July 2003 by the Agricultural Holdings (Scotland) Act 2003 (Commencement No. 2) Order 2003 (S.S.I. 2003/305). The Agricultural Holdings (Relevant Date and Relevant Period) (Scotland) Order 2003 (S.S.I. 2003/294) provided that, for the purposes of section 72(7) and (10), the relevant date is 1<sup>st</sup> July 2003 and, for the purposes of section 72(7), the relevant period ends on 29<sup>th</sup> July 2003 or the date 28 days after notice has been given under section 72(6), whichever is the later.

240. This section applies where the conditions of paragraphs (a) and (b) of subsection (1) are complied with.

241. Paragraph (a) is complied with where a limited partnership is the tenant of a 1991 Act tenancy where the lease constituting the tenancy was entered into before this section came into force (i.e. on 22<sup>nd</sup> May 2003).

242. Paragraph (b) is complied with where the limited partnership comprises at least one limited partner of a type representing the landlord's interests. A partner who represents the landlord's interests is defined as being the landlord, an associate of the landlord (section 70(8), read with section 71, identifies when a person is an associate of the landlord for the purposes of this section and section 70), or a partnership or company in which the landlord has a relevant interest (section 70(7) identifies when a landlord has a relevant interest in a partnership or company for the purposes of this section and section 70).

243. Where paragraphs (a) and (b) of subsection (1) are complied with this section confers the following rights on any general partner of the limited partnership (see

subsection (12) for the meaning of “general partner”). First, it confers on any such general partner the right to exercise or enforce, as if tenant in their own right, any right of a tenant under Part 2 (tenant’s right to buy land) of the 2003 Act (see subsection (2)). The right to buy under Part 2 can only be exercised where the owner is proposing to transfer land (unless the transfer is of a type that does not require notice under section 27, in which case the right to buy does not apply). Where land is valued for the purposes of a person exercising a right to buy under section 72, section 35 must be taken into account as well as section 34.

244. Second, this section makes provision for general partners to become tenant of the tenancy in their own right in certain cases where a limited partner representing the landlord’s interests (i.e. of the type specified in subsection (1)(b)) purports to terminate the tenancy by dissolving the partnership by serving a notice, or by renouncing or breaching the tenancy (see subsection (3)). Where any of those steps are taken on or after 16<sup>th</sup> September 2002 but before the relevant date, 1<sup>st</sup> July 2003, general partners can become tenant of the tenancy in their own right by serving notice in accordance with subsection (6), subject to two safeguards for landlords in such circumstances.

245. The first safeguard is that, in any case where a general partner gives notice under subsection (6) the landlord may, in accordance with subsection (7), apply to the Land Court before 29<sup>th</sup> July 2003 or the date 28 days after notice given by the general partner under subsection (6), whichever is the later, for an order that subsection (6) does not apply. The effect is that the tenancy is terminated and the general partner cannot become tenant in their own right. The Court may only make such an order where satisfied that the step specified in subsection (3) was taken other than for the purposes of depriving any general partner of a right deriving from this section.

246. The second safeguard is that, where the step taken was service of notice of dissolution of the partnership then subsection (6) is disapplied where the notice was served before 4<sup>th</sup> February 2003 by a limited partner of the type specified in subsection (1)(b), the partnership was dissolved in accordance with that notice and the land comprised in the lease has been transferred or let, or is to be transferred or let under, respectively, missives concluded, or a lease entered into, before 7<sup>th</sup> March 2003 (see subsection (5)).

247. Where a tenancy continues to have effect by virtue of notice given under subsection (6) and any of the steps specified in subsection (3) are taken after the relevant date, 1<sup>st</sup> July 2003, then section 73 applies (see subsection (10)).

### **Section 73: Termination of tenancy continued under section 72**

248. Section 73 applies where any of the steps specified in section 72(3) are taken after the relevant date, 1<sup>st</sup> July 2003 (see the Agricultural Holdings (Relevant Date and Relevant Period) (Scotland) Order 2003 (S.S.I. 2003/294), and the tenancy continues to have effect by virtue of a general partner having given notice under section 72(6) (see section 72(10)). Its effect is to ensure that a general partner obtains in most circumstances a guaranteed notice period before they are required to quit the land.

249. Such a tenancy can only be terminated by the landlord first intimating the intention to terminate the tenancy (under subsection (5)) and then serving a notice to quit (under subsection (4)). Subsections (5) and (4) regulate the periods of, respectively, intimation and notice required, although the minimum period in each case can be reduced by the Land Court on application of the landlord (see subsections (6) and (7)). The Land Court may only make such an order if satisfied that the step specified in section 72(3) was taken

other than for the purposes of depriving any general partner of a right deriving from section 72 and that it is reasonable to make the order.

250. Subsections (4) and (5) require that the landlord must serve upon the tenant a notice to quit as if the tenancy were an LDT. The provisions therefore closely mirror section 8(4) and (5) of the 2003 Act. Intimation of intention to terminate the tenancy must be given in writing by the landlord to the tenant not less than 2 years nor more than 3 years before expiry of the stipulated endurance of the tenancy or expiry of the period of continuation of the tenancy, where the tenancy is continuing by tacit relocation. The notice to quit cannot be given until a minimum of 90 days have elapsed after intimation is given under subsection (4). Notice to quit must be given in writing and state that the tenant must quit the land on the expiry of the stipulated endurance of the lease or expiry of the period of continuation of the lease, where the lease is continuing by tacit relocation. The notice to quit must be given not less than 1 year nor more than 2 years before the expiry of the stipulated endurance of the lease or expiry of the period of continuation of the lease, where the lease is continuing on tacit relocation.

#### **Section 74: Application of right to buy provisions**

251. Section 74 enables the Scottish Ministers to modify the application of Part 2 (tenant's right to buy land) of the 2003 Act insofar as it applies to partnerships who are tenants and to general partners and to make such further provisions in relation to such partnerships and general partners as they consider expedient. Such modifications may be made by regulations subject to affirmative resolution procedure.

### **PART 7: JURISDICTION OF THE LAND COURT AND THE RESOLUTION OF DISPUTES**

#### **Section 75: Jurisdiction of the Land Court**

252. This section abolishes the present compulsory arbitration jurisdiction over questions between the landlord and tenant of an agricultural holding. A new section 60 of the 1991 Act is substituted to confer jurisdiction on the Land Court to determine such matters as are described in new section 60(2) and (3). This means that the Land Court will become the primary forum for the resolution of agricultural holdings disputes.

253. A wide jurisdiction is conferred on the Court, including any question as to whether a landlord and tenant relationship exists or whether the subject of that relationship is an agricultural holding – see section 60(2)(a) of the 1991 Act. In addition, an application can be made to the Land Court for its opinion on questions of law or fact relating to any type of agricultural tenancy or agriculture- see section 60(2)(d). Certain specific exceptions to the Land Court's jurisdiction are listed in section 60(4). Jurisdiction over such matters remains with the sheriff court and the Court of Session.

254. Section 60(6) sets out who can apply to the Land Court for such a determination. In contrast to the present position under the 1991 Act, either party to a tenancy of an agricultural holding may refer a relevant matter to the Land Court for determination without the consent of the other party. Subsections (7) and (8) clarify the definition of "landlord" and "tenant" in matters of jurisdiction. The existing specific jurisdictions of the Land Court are preserved by virtue of section 60(9).

255. Section 60 of the 1991 Act requires to be read in conjunction with the parties' rights to refer matters to arbitration or any other means of determination they elect under new section 61(1) of the 1991 Act, substituted by section 76 of the 2003 Act .

**Section 76: Arbitrations etc.**

256. This section replaces the present procedure for the resolution of agricultural holdings disputes under the 1991 Act by compulsory arbitration. New sections 61, 61A and 61B are substituted for section 61 of the 1991 Act.

257. The Land Court has a very broad jurisdiction in agricultural disputes under the 1991 Act. Where jurisdiction to make a determination is not reserved to the Land Court under section 61(2), at or after the time when a dispute arises, a landlord and tenant may agree to refer a matter that could be determined by the Land Court under the 1991 Act to arbitration – see section 61(1). Alternatively, in such cases the parties can agree to select any other competent method of determination under section 61(3). Arbitration or alternative methods of dispute resolution are only permitted by way of a joint reference. Neither party can be required to submit to any procedure.

258. Schedule 7 to the 1991 Act (which sets out arbitration procedure) is repealed – see paragraph 40 of the Schedule. In its place section 61A makes general provision for the procedure to be followed at an arbitration under section 61(1). The parties are given a wide discretion to determine the procedure by which the arbitration is to be conducted, through section 61A(4). In the absence of any direction by the parties, the arbiter may determine the procedure. That discretion is however limited to matters of procedure. Neither the parties nor the arbiter may disapply any substantive provisions of the legislation which specify how an award is to be made – see section 61A(5).

259. Once the parties have agreed to refer a matter to arbitration, they lose their right to have the matter determined by the Land Court (at first instance) or by any other means – see section 61A(2). The parties may choose to submit their dispute to a single arbiter or to two arbiters (with or without an oversman) – section 61A(3) refers. The Arbitration (Scotland) Act 1894 will apply to arbitrations under section 61(1). Under sections 2 and 3 of the 1894 Act, the sheriff or the Court of Session may appoint an arbiter in the event of a failure of the parties to agree the nomination of a single arbiter, or in the case of a reference to two arbiters, of one party to nominate an arbiter. Section 4 of the 1894 Act provides that in a reference to more than one arbiter, unless the submission otherwise provides, the arbiters may appoint an oversman to determine the reference in the event of their failure to agree. The sheriff or the Court of Session may appoint such an oversman in the event of a dispute.

260. The existing rights of appeal against an arbiter's determination under the 1991 Act (to the Land Court under section 61(2) and by stated case to the sheriff under paragraph 20 of Schedule 7) are repealed. The right of appeal to the Court of Session under section 3 of the Administration of Justice (Scotland) Act 1972 is displaced by section 61A(6) which provides a right of appeal to the Land Court against an arbiter's determination on questions of law only. Such an appeal must be lodged within 28 days. Section 61A(6) also sets out the powers available to the Land Court in determining such an appeal. The decision of the Land Court is final – see section 72(2) of the 2003 Act.

261. In order to prevent the parties from circumventing the Land Court's jurisdiction by contractual provision in their lease or ancillary agreements, an anti-avoidance measure is contained in section 61B. Any contractual provision, whether in a lease or other agreement, which restricts a landlord's or tenant's right to apply to the Land Court for a reference to arbitration or other determination is null and void. This does not prejudice the right of the parties to choose that a dispute is determined by arbitration, on or after the time when the matter arises, within the scope of section 61(1).

**Section 77: Resolution of disputes by Land Court**

262. This section confers jurisdiction on the Land Court to hear and determine disputes in relation to SLDTs, LDTs and leases for grazing and mowing under section 3 of the 2003 Act. The extent of the Land Court's jurisdiction is set out in subsections (1), (2), (4) and (6). Certain specific exceptions to the Land Court's jurisdiction are listed in subsection (3). Jurisdiction over such matters remains with the sheriff court and the Court of Session. Either the landlord or the tenant may apply unilaterally to the Land Court or they may apply jointly – see subsection (5). Any specific Land Court jurisdictions in relation to such leases are preserved by subsection (7).

**Section 78: Agreement to refer matters to arbitration**

263. Except where the jurisdiction of the Land Court is reserved under subsection (2), at or after the time when a dispute arises, a landlord and tenant may agree to refer a matter that could be determined by the Land Court under the 2003 Act to arbitration or any alternative method of determination under subsection (1). An anti-avoidance measure is contained in section 81.

**Section 79: Arbitration: procedure etc.**

264. This section provides for the procedure to be followed in an arbitration under section 78(1)(a). The provisions are identical to those applied to an arbitration under section 61(1) of the 1991 Act by section 76 of the 2003 Act and section 61A. Section 79(4) clarifies for the avoidance of doubt that only the Land Court's powers of consideration and determination extend to an arbiter.

**Section 80: Other provisions as to the resolution of disputes**

265. This section applies certain provisions of the 1991 Act to the resolution of disputes relating to SLDTs, LDTs and grazing or mowing lets under section 3 of the 2003 Act.

266. Subsection (1) applies section 62 of the 1991 Act to any claim arising on the termination of a SLDT, LDT or lease for grazing or mowing under section 77(2)(c) of the 2003 Act. Section 62 of that Act sets out time limits within which claims must be intimated and an application to the Land Court made under section 77(4) or a reference to arbitration or other determination made under section 78(1) of the 2003 Act.

267. Subsection (2) applies section 65 of the 1991 Act to an award or agreement made under the 2003 Act. Section 65 of that Act makes provision for the recording of such an award for execution in the Books of Council and Session (a public register for deeds and documents) or sheriff court books for the purposes of enforcing the award or agreement.

268. Subsection (3) applies the Land Court's power under section 66 of the 1991 Act to modify the terms of a demand by a landlord that the tenant remedy a breach of the terms of the lease, to a determination of the Court under the 2003 Act.

**Section 81: Clauses in leases as to resolution of disputes**

269. This section is an anti-avoidance measure. It prevents the parties to an SLDT, LDT or lease for grazing or mowing from restricting their right to refer relevant disputes to the Land Court for determination. Any contractual provision that attempts to do so, except a valid reference to arbitration or other determination under section 78(1) of the 2003 Act, is of no effect.

## **Section 82: Amendment of the Scottish Land Court Act 1993**

270. This section amends the Scottish Land Court Act 1993. The general jurisdiction of the Court is set out in section 1(6) of that Act and includes jurisdiction over matters arising under the 1991 or 2003 Acts. Paragraph (a) repeals the reference to the Court's jurisdiction over 1991 Act matters in section 1(6) of the 1993 Act. The Court's extended jurisdiction set out in section 60 of the 1991 Act now applies in its place - see section 75 of the 2003 Act.

271. Paragraph (b) inserts a new section 1(7A) in the 1993 Act which disapplies the existing procedure for appeals from the Land Court to the Inner House of the Court of Session by way of special case in relation to the Court's jurisdiction over matters under the 1991 Act. (Section 88 of the 2003 Act makes separate provision for a right of appeal against determinations by the Land Court, save where the Land Court is acting as a court of appeal.)

272. Paragraph (c) amends the requirement for a review by the full Court of a matter determined by a single member or two members of the Court under the Land Court's power of delegation in paragraph 6(2) of Schedule 1 to the 1993 Act. A new subparagraph 6(3) is added to the Schedule, which permits the Court to direct that there will be no such review in matters relating to its jurisdiction under the 1991 and 2003 Acts.

## **Section 83: Power to amend Land Court's jurisdiction**

273. This section gives the Scottish Ministers a power to modify the matters which may be determined by the Land Court or excluded from a joint reference to arbitration or other means of determination in relation to matters arising under the 1991 and 2003 Acts

## **Section 84: Power of the Land Court to grant remedies etc.**

274. This section sets out the Land Court's powers to grant remedies in relation to cases concerning its jurisdiction under the 1991 and 2003 Acts.

275. Subsection (1) gives the Court a very broad general power to make orders and grant such remedies as it considers appropriate to give effect to the rights of the parties. The remedies listed are not exhaustive, but include the power to grant interdict, interim interdict, final and interim orders *ad factum praestandum* or orders of specific implement (both of which are orders to the parties to take specific action), orders of restitution (restoring property), reduction or rectification (the striking down or amendment of deeds).

276. Subsection (2) provides further details in relation to orders *ad factum praestandum* or orders of specific implement that relate to the landlord's obligations to the tenant in respect of fixed equipment. It obliges the Court to specify the date by which the landlord is to comply with the order and permits the Court to extend this time limit on the application of the tenant in certain circumstances. Failure by the landlord to comply with the order within this timescale enables the tenant to apply to the Land Court for an order under section 15A(3) of the 1991 Act (inserted by section 64 of this Act).

277. The Court may also grant the remedy of removal but only on the final determination of the case. It may not remove parties from the subjects of the tenancy in the interim. Instead, under subsection (3) the Court may order the parties to give financial or other guarantees before proceeding to hear the case.

**Section 85: Remit from Land Court to the sheriff or Court of Session**

278. The jurisdiction of the Land Court overlaps that of the Court of Session and the sheriff court. This section and section 70 make provision for the transfer of cases between the courts with a view to the matter being determined by the most suitable forum. Disputes between landlords and tenants of agricultural tenancies which concern non-agricultural matters or which affect third parties may be better dealt with by the ordinary courts.

279. Subsection (1) makes provision for the transfer of applicable cases (i.e. where the relevant court has concurrent jurisdiction) from the Land Court to the sheriff court or the Court of Session. Under subsection (2) the parties to any Land Court action or any interested third party may request that the Land Court remit the matter to the Court of Session, or that the Court of Session requires the Land Court to do so. The courts are given a wide discretion as to whether cases should be remitted - see subsections (1) and (3). The parties are not entitled to require that their case be remitted. Remits are at the discretion of the courts, the primary jurisdiction to remit lying with the Court of Session.

**Section 86: Remit to the Land Court by the sheriff or Court of Session**

280. Subsection (1) inserts a new subsection (2D) in section 37 of the Sheriff Courts (Scotland) Act 1971 which makes provision for the transfer to the Land Court of sheriff court cases which fall within the Land Court's jurisdiction under the 1991 or 2003 Acts. Such cases may be remitted either on the sheriff's own motion or on the motion of any party to the action where the sheriff considers it appropriate.

281. Subsection (2) empowers the Court of Session to transfer any case before it falling within the Land Court's jurisdiction to the Land Court. The Court may do so at its own instance or on the application of any party to the action if it considers it appropriate.

**Section 87: Transmission of case where contingency**

282. This section makes provision for the transfer of cases under the 1991 or 2003 Acts where the same subject matter is being litigated simultaneously in two jurisdictions (a contingency).

283. Subsection (1) applies to contingencies between the sheriff court and the Land Court and enables the Land Court to require that the sheriff court case be transmitted to the Land Court. Subsection (2) applies to contingencies between the Court of Session and the Land Court. It inserts a new subsection (3) in section 33 of the Court of Session Act 1988 which empowers the Court of Session to require that the Land Court case be transmitted to it in the event of such a contingency.

**Section 88: Appeal from Land Court to Court of Session**

284. This section makes provision for a right of appeal from the Land Court in relation to cases concerning matters within its jurisdiction under the 1991 or 2003 Acts. It replaces section 1(7) of the Land Court Act 1993 in relation to 1991 Act cases - see section 66 of the 2003 Act.

285. Subsection (1) provides that such appeals can only be made on questions of law and must be lodged within 28 days of the Land Court's decision. It also specifies the powers available to the Court of Session in disposing of such appeals. Subsection (2) provides that there is no right of appeal to the Court of Session where the Land Court was acting as a court of appeal. Subsection (3) provides that there is no further appeal from the decision of the Court of Session.

### **Section 89: Expenses in sheriff court and Court of Session**

286. Section 73 makes express provision for the award of expenses in the sheriff court and Court of Session in cases which could have been determined by the Land Court under the 1991 or 2003 Acts. In addition to any other rules that apply, that fact must be taken into account in determining the award of expenses.

### **Section 90: Conduct of arbiter and setting aside of arbiter's award**

287. This section transfers the existing jurisdiction of the sheriff to remove an arbiter or set aside the arbiter's award in relation to arbitrations under the 1991 or 2003 Acts to the Land Court. The Court of Session's common law jurisdiction over such matters is unaffected. Under subsection (1) any interested party may apply to the Land Court where an arbiter has misconducted himself or herself or the arbitration has been improperly procured. In either case, under subsection (2) the Court can set aside the award. Where the arbiter has misconducted himself or herself, the Court may remove them.

## **PART 8: GENERAL PROVISIONS**

### **Section 91: Orders and regulations**

288. This section regulates the making of orders and regulations under the 2003 Act.

### **Section 92: Ancillary provision**

289. This section confirms that the Scottish Ministers may make orders as they consider necessary or expedient for the purposes of or in consequence of the 1991 or 2003 Acts.

### **Section 93: Interpretation**

290. This section provides definitions of key terms used throughout the 2003 Act.

### **Section 94: Amendments to enactments**

291. This section deals with consequential amendments and repeals. The details are set out in the Schedule.

### **Section 95: Short title, Crown application and commencement**

292. Subsection (1) clarifies that the short title of this Act is the Agricultural Holdings (Scotland) Act 2003. Subsection (2) confirms the effect of the 2003 Act upon the Crown (including Government Departments).

293. Subsections (3) and (4) provide powers for Ministers to determine on which day the provisions of the Act are to come into force (or days, if Ministers choose to commence different provisions on different dates).

## **SCHEDULE**

### **AMENDMENTS TO ENACTMENTS**

#### **Sheriff Courts (Scotland) Act 1907 (c.51)**

##### *Paragraph 1*

294. Section 37 of the Sheriff Courts (Scotland) Act provides for standard notice to quit periods that are to apply to leases. This provision disapplies section 37 to SLDTs and LDTs. No notice to quit will be required in relation to SLDTs, while section 8 of the 2003 Act sets out the notice to quit procedure that is to apply to LDTs.

**Succession (Scotland) Act 1964 (c.41)**

*Paragraph 2*

295. Sections 20 to 23 of the 2003 Act set out how succession to SLDTs and LDTs is to operate. This paragraph contains amendments consequent to those provisions.

**Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)**

*Paragraph 3*

296. Paragraph 5 of Schedule 1 to the 1970 Act excludes an obligation created or imposed in relation to a 1991 Act tenancy from the types of land obligation which may be subject to variation or discharge by the Lands Tribunal for Scotland under section 1 of that Act. This amendment extends that exclusion to SLDTs and LDTs.

**Land Tenure Reform (Scotland) Act 1974 (c.38)**

*Paragraph 4*

297. Section 8(5) of the 1974 Act excludes 1991 Act tenancies from the application of Part II of that Act, whereby long leases are not to be used as a private dwellinghouse. This exclusion is also to apply to LDTs and SLDTs.

**Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)**

*Paragraph 5*

298. Section 13 of the 1981 Act provides that a non-entitled spouse may not apply for an order transferring a 1991 Act tenancy to them. This provision extends this exclusion to SLDTs and LDTs.

**Rent (Scotland) Act 1984 (c.58)**

*Paragraph 6*

299. Section 25 of the 1984 Act includes a definition of “statutorily protected tenancy”, which excludes 1991 Act tenancies from the application of Part II of that Act on protection for the tenant against harassment and eviction without due process of law. This exclusion is extended to LDTs. Agricultural holdings law allows the landlord to apply conventional irritancy to the lease and, in so doing, evict the tenant. Section 18 of the 2003 Act allows a landlord and tenant to provide within the lease grounds that would allow an LDT or SLDT lease to be irritated and the tenant evicted. The Scottish Law Commission has recently consulted on the law relating to the irritancy of leases (*SLC Discussion Paper No. 117: Irritancy in Leases of Land*).

**Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73)**

*Paragraph 7*

300. Section 7(2) of the 1985 Act excludes an agricultural holding as a type of lease which may not be irritated, except in compliance with the provisions of that Act. The amendment extends the definition of “agricultural holding” to include SLDTs and LDTs.

**Agriculture Act 1986 (c.49)**

*Paragraphs 9 & 10*

301. The amendments in paragraphs 9 and 10 are consequential on the amendments made to the 1991 Act by sections 75 and 76 of the 2003 Act. These replace compulsory arbitration under the 1991 Act with the extended jurisdiction of the Land Court (under the

new section 60 of that Act) and the right to make a joint reference to arbitration or other method of determination (under the new section 61(1) of that Act).

*Paragraph 10(1)*

302. Schedule 2 of the 1986 Act makes provision for the tenants' rights to compensation for milk quotas. Paragraph 7(2) of that Schedule specifies certain matters which are to be disregarded for the purposes of a review of rent under section 13 of the 1991 Act. This amendment reflects the replacement of the system of compulsory arbitration which applied to section 13 by the universal jurisdiction of the Land Court provided for in the new section 60 of the 1991 Act.

**The 1991 Act**

*Paragraphs 12, 14, 16, 21 – 34, 36, 37(c) and (d) and 45*

303. The amendments in paragraphs 12, 14, 16, 21 to 34, 37(c) and (d) and 45 are consequential on the amendments made by sections 59 and 60 of the 2003 Act.

*Paragraphs 13, 17 and 18*

304. The repeals in paragraphs 13, 17 and 18 are consequential on the amendments made to the 1991 Act by sections 75 and 76 of the 2003 Act.

*Paragraph 19*

305. Under section 20 of the 1991 Act a landlord can raise an action of removing in the sheriff court for non-payment of rent. This paragraph transfers jurisdictions over such actions from the sheriff court to the Land Court. The reference to sheriff court procedure in section 20 is therefore repealed. The form of procedure to be used in the Land Court will be regulated by the Land Court Rules.

*Paragraph 20*

306. This amendment clarifies that the scope of the notice to quit requirements within Part III of the 1991 Act is subject to sections 2 and 73 of the 2003 Act (relating to the conversion of a 1991 Act tenancy to an LDT and to the termination of tenancies with limited partnership tenants respectively).

*Paragraph 26*

307. The amendment in paragraph 26 is consequential on the amendments made to the 1991 Act by section 48 of the 2003 Act.

*Paragraph 35*

308. The repeal of sections 63 and 64 of the 1991 Act are consequential on the freedom of the parties to appoint an arbiter or arbiters under new section 61A of the 1991 Act.

*Paragraph 37(a)*

309. Section 68(1) of the 1991 Act defines sheep stock valuation. This amendment is consequential upon the extension of the jurisdiction of the Land Court to sheep stock valuations under section 75 of the 2003 Act and the repeal of sections 69 and 70 of the 1991 Act.

*Paragraph 37(b)*

310. A new section 68(1A) is inserted into the 1991 Act which applies the provisions of section 68 of that Act to the Land Court's determination of sheep stock valuations.

*Paragraph 37(e)*

311. Section 68(4) of the 1991 Act makes provision for the sheriff to set aside the arbiter's award where there is a failure to comply with the requirements of subsections (2) and (3). The repeal of this section is consequential on new section 61A(6) of the 1991 Act which provides for a right of appeal from the arbiter to the Land Court on questions of law.

*Paragraph 38*

312. Section 69 of the 1991 Act makes provision for the submission of questions of law in sheep stock valuations from the arbiter to the sheriff. This section is repealed and is consequential on section 61A(6) of the 1991 Act, which provides for a right of appeal from the arbiter to the Land Court on questions of law. Section 70(1) of the 1991 Act makes provision for the determination of sheep stock valuations by the Land Court instead of the manner provided for in the lease. The repeal of this sub-section is consequential on section 75 of the 2003 Act. Section 70(2) of the 1991 Act makes provision for the basis on which such determinations are to be made. The repeal of this sub-section is consequential on the amendments made to section 68 of that Act.

*Paragraph 39*

313. Section 71 of the 1991 Act makes provision for the submission of certain documents relating to sheep stock valuations. This amendment is consequential on the new section 61(1) of the 1991 Act.

*Paragraph 40*

314. Section 72(b) of the 1991 Act contains a specific definition of "arbiter" for the purposes of sheep stock valuations. Its repeal is consequential on the definition of "arbiter" in new section 61A(3) of the 1991 Act. The repeal of section 72(c) of the 1991 Act is consequential on paragraphs 37 to 39 of the schedule to the 2003 Act.

*Paragraph 41*

315. Section 80 of the 1991 Act makes provision for the determination of matters where the Scottish Ministers are a party to a lease. The repeal of section 80(2)(b) is consequential upon the abolition of the Scottish Ministers' role in relation to arbitration.

*Paragraphs 42 and 43*

316. The amendments to sections 85 and 86 of the 1991 Act are technical drafting amendments. The insertion of a definition for "enactment" ensures that the 1991 Act has regard to Acts of the Scottish Parliament and instruments made under such Acts.

*Paragraph 44*

317. Schedule 7 to the 1991 Act sets out the procedure to be followed in arbitrations under section 61(1) of the 1991 Act. The repeal of Schedule 7 is consequential on the new arbitration procedure set out in the new section 61A of the 1991 Act.

*Paragraph 46*

318. Schedule 9 to the 1991 Act makes provision for the method of sheep stock valuation in relation to leases entered into after 6 November 1946 but before 1 December 1986. The amendments to paragraph 1 of schedule 9 are consequential on sections 75 and 76 of the 2003 Act. Paragraph 4 of schedule 9 prescribes the method by which the Land Court is to determine the average price of certain stock in certain circumstances. It

remains competent for the Land Court to determine such prices on the basis set out in paragraph 4, but only at the joint request of the parties. Where such a matter is submitted to the Court by one of the parties unilaterally, the valuation is to be carried out by the Court as valuer under paragraph 2 of Schedule 9.

*Paragraph 47*

319. Schedule 10 to the 1991 Act makes provision for the method of sheep stock valuation in relation to leases entered into on or after 1 December 1986. The amendments to paragraph 1 of schedule 10 are consequential on sections 75 and 76 of the 2003 Act. Paragraph 4 of schedule 10 prescribes the method by which the Land Court is to determine the average price of certain stock in certain circumstances. It remains competent for the Land Court to determine such prices on the basis set out in paragraph 4, but only at the joint request of the parties. Where such a matter is submitted to the Court by one of the parties unilaterally, the valuation is to be carried out by the Court as valuer under paragraph 2 of Schedule 10.

**Tribunals and Inquiries Act 1992 (c.53)**

*Paragraph 48*

320. This amendment is consequential to repeal of section 64 and Schedule 7 of the 1991 Act by paragraphs 33 and 40 above. Schedule 1, Part 2, paragraph 46 to the 1992 Act made provision in relation to agricultural arbiters which is now obsolete.

**Crofters (Scotland) Act 1993 (c.44)**

*Paragraph 49*

321. Section 29(1) of the 1993 Act provides that a sub-tenant of a croft is not a 1991 Act tenant. Paragraph 45(a) extends this exclusion to SLDTs and LDTs.

322. Section 30(5) of the 1993 Act states that nothing in that Act shall affect the provisions of the 1991 Act in relation to payment to outgoing tenants of compensation for improvement. Paragraph 45(b) extends this to include the 2003 Act as well as the 1991 Act.

323. Crofting landlords are permitted by paragraph 11 of Schedule 2 to the 1993 Act to enter onto a crofter's land for a range of purposes. Paragraph 45(c) ensures that the crofter's right to compensation for game damage in these circumstances relates to both the 1991 and 2003 Acts. The reference to determination by arbitration is removed, given the universal jurisdiction that the Land Court is to acquire in agricultural holdings disputes.

**Criminal Justice and Public Order Act 1994 (c.33)**

*Paragraph 50*

324. Section 106 of the 1994 Act makes provision excluding the provisions of the 1991 Act from applying to leases granted by the Scottish Ministers in relation to contracted out prisons. This amendment extends the scope of the exclusion to LDTs and SLDTs.

**Town and Country Planning (Scotland) Act 1995 (c.8)**

*Paragraph 51*

325. Section 35 details notification requirements relating to applications for planning permission. The amendment applies these provisions to LDTs and SLDTs as they apply to 1991 Act tenancies.

**Immigration and Asylum Act 1999 (c.33)**

*Paragraph 52*

326. Section 149 of the 1999 Act makes provision excluding the provisions of the 1991 Act from applying to leases granted by the Secretary of State in relation to immigration detention centres. This amendment extends the scope of the exclusion to LDTs and SLDTs.

The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references to the Official Report of the proceedings and the dates on which Committee Reports were published and the references to those Reports.

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

<b>Proceedings and Reports</b>	<b>References</b>
<b>Introduction</b> 16 September 2002	SP Bill 62
<b>Stage 1</b> <i>(a) Rural Development Committee</i>	
25 <sup>th</sup> Meeting, 2002 26 <sup>th</sup> Meeting, 2002 27 <sup>th</sup> Meeting, 2002 29 <sup>th</sup> Meeting, 2002	29 October 2002, cols 3641-3688 5 November 2002, cols 2696-3745 12 November 2002, cols 3478-3783 19 November 2002, cols 3823-3845
<i>(b) Subordinate Legislation Committee</i>	
32 <sup>nd</sup> Meeting, 2002 33 <sup>rd</sup> Meeting, 2002	19 November 2002, cols 1091-1095 26 November 2002, cols 1105-1107
<i>(c) Stage 1 Report on the Agricultural Holdings (Scotland) Bill</i>	
13 <sup>th</sup> Report, 6 December 2002	SP Paper 712
<i>(d) Consideration by Parliament</i>	
19 December 2002	Cols 16111-16642
<b>Stage 2</b> <i>Rural Development Committee</i>	
1 <sup>st</sup> Meeting, 2003 2 <sup>nd</sup> Meeting, 2003 3 <sup>rd</sup> Meeting, 2003 4 <sup>th</sup> Meeting, 2003 5 <sup>th</sup> Meeting, 2003	7 January 2003, cols 4020-4024 14 January 2003, cols 4026-4056 21 January 2003, cols 4058-4106 28 January 2003, cols 4109-4134 4 February 2003, cols 4159-4233
<b>Stage 3</b> <i>Consideration by Parliament</i> 12 March 2003	Cols 19243-19402
<b>Royal Assent</b> 22 April 2003	

---

© Crown copyright 2006

Printed in the United Kingdom by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland

**Published by TSO (The Stationery Office)**

and available from:

**TSO**

(Mail, telephone and fax orders only)

PO Box 29, Norwich NR3 1GN

General enquiries 0870 600 5522

Order through the Parliamentary Hotline Lo-call 0845 7 023474

Fax orders 0870 600 5533

Email [book.orders@tso.co.uk](mailto:book.orders@tso.co.uk)

Internet <http://www.tso.co.uk/bookshop>

**TSO Shops**

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 60655 88

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

The Stationery Office Oriel Bookshop

18-19 High Street, Cardiff CF1 2BZ

029 2039 5548 Fax 029 2038 4347

**The Parliamentary Bookshop**

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders 020 7219 3890

General enquiries 020 7219 3890

Fax orders 020 7219 3866

**Accredited Agents**

(See Yellow Pages)

*and through good booksellers*

ISBN 0-10-591079-1



9 780105 910794