



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 4

#### COMPENSATION UNDER AGRICULTURAL TENANCIES

### CHAPTER 1

#### COMPENSATION FOR IMPROVEMENTS

#### *1991 Act tenancies*

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

(1) After section 33 (improvements) of the 1991 Act there is inserted—

#### **“33A Agreements as to compensation for improvements**

Where the tenant has carried out an improvement—

- (a) specified in Part II or III of Schedule 5 to this Act; and
- (b) by executing work which the landlord was required, at the time the lease was entered into and by virtue of section 5(2)(a) of this Act, to execute in order to fulfil his obligations under the lease,

any term of the lease or of an agreement between the landlord and tenant made before the coming into force of this section which purports to provide that the amount of compensation payable to the tenant for the improvement is less than the amount of compensation to which the tenant is entitled under this Part of this Act for the improvement (or that no compensation is payable) shall not apply in relation to such part or proportion of the improvement as the landlord would have been so required to carry out in order to fulfil those obligations.”.

(2) The following provisions of that Act (which relate to agreements as to compensation for improvements) are repealed—

- (a) in section 34, paragraph (b) of subsection (4);
- (b) in section 37, subsection (2); and

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(c) in section 38, subsection (5).

(3) In section 38 (notice required of certain improvements) of that Act, after subsection (2) there is inserted—

“(2A) Subsection (1) above shall not apply in the case of an improvement mentioned in subsection (1)(c) above if the improvement was carried out by executing work which the landlord was required, at the time the lease was entered into and by virtue of section 5(2)(a) of this Act, to execute in order to fulfil his obligations under the lease.”.

**Commencement Information**

**I1** S. 43 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(d\)](#) (with [Sch.](#))

**44 Amount of compensation where grant made to tenant**

In section 36 (amount of compensation) of the 1991 Act, in subsection (3), for the words from “improvement” in the first place where it appears to the end there is substituted “improvement—

- (a) there shall be taken into account any benefit which the landlord has agreed in writing to give the tenant in consideration of the tenant carrying out the improvement; and
- (b) where a grant has been or will be made to the tenant in respect of the improvement, subject to the conditions of the grant—
  - (i) if either the landlord or tenant has not made or will not make a contribution towards the cost of the improvement, or neither of them has made or will make such a contribution, the grant shall not be taken into account;
  - (ii) in any other case, there shall be taken into account such proportion of the grant as equals the proportion of the contribution by the tenant towards the cost of the improvement as a proportion of the total of his contribution added to that of the landlord.”.

**Commencement Information**

**I2** S. 44 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(d\)](#) (with [Sch.](#))

*[<sup>F1</sup>New types of tenancy]*

**Textual Amendments**

**F1** [S. 45 cross-heading](#) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(15\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch.

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## 45 Right to compensation for improvements

- (1) Subject to sections 48 and 49, a tenant of a short limited duration tenancy [<sup>F2</sup>, a limited duration tenancy or a modern limited duration tenancy] is entitled, on quitting the land on termination of the tenancy, to compensation from the landlord in respect of any improvement to which this subsection applies carried out by the tenant.
- (2) Subsection (1) applies to the improvements specified in Schedule 5 to the 1991 Act (that Schedule applying for the purposes of that subsection as it does for the purposes of that Act).
- (3) Where an improvement is the improvement specified in paragraph 32 (laying down of temporary pasture) of that Schedule, the tenant is entitled to compensation under subsection (1) even if—
  - (a) that improvement; or
  - (b) the leaving of temporary pasture at the termination of the tenancy, was in contravention of a term of the lease or any agreement made by the tenant as to the method of cropping the arable lands.
- (4) Where a tenant has remained in occupation of the land during two or more tenancies, the tenant is not deprived of any right to compensation under subsection (1) by reason only that the improvements were not carried out during the tenancy on the termination of which the tenant quits the land.
- [<sup>F3</sup>(5) Nothing in any order made under section 73 of the 1991 Act which varies the provisions of schedule 5 to that Act affects the right of a tenant of a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy to claim, in respect of an improvement made or begun before the date on which such order comes into force, any compensation to which, but for the making of the order, the tenant would have been entitled.]

### Textual Amendments

- F2** Words in s. 45(1) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(16\)\(a\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch.
- F3** S. 45(5) inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(16\)\(b\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 14)

### Modifications etc. (not altering text)

- C1** S. 45 restricted (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 115\(1\)](#), 130(1) (with s. 128); S.S.I. 2017/20, reg. 2, sch.

### Commencement Information

- I3** S. 45 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(d\)](#) (with sch.)

## [<sup>F4</sup>45A Amnesty under the Land Reform (Scotland) Act 2016

A tenant under a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy is entitled to compensation under section 45 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.]

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#### Textual Amendments

- F4** S. 45A inserted (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 113(2), 130(1)** (with s. 128); [S.S.I. 2017/20](#), **reg. 2, sch.** (with [reg. 4](#))

## 46 Payment of compensation by incoming tenant

Subsections (2) to (5) of section 35 (payment of compensation by incoming tenant) of the 1991 Act (as read with Schedule 5 to that Act) apply to compensation which is payable or has been paid to an outgoing tenant of a short limited duration tenancy [<sup>F5</sup>, a limited duration tenancy or a modern limited duration tenancy] by the landlord under section 45(1) of this Act as they do to compensation to which that section of that Act applies, but as if—

- (a) in subsection (4), paragraph (a) were omitted;
- (b) in subsections (4) and (5), the references to an agricultural holding and the holding were references to the land; and
- (c) in subsection (5), the words “a new” were read as “an”.

#### Textual Amendments

- F5** Words in s. 46 substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 7(17)** (with s. 128); [S.S.I. 2017/299](#), **reg. 2, sch.**

#### Commencement Information

- I4** S. 46 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(d)** (with [Sch.](#))

## 47 Amount of compensation

- (1) The amount of compensation payable to a tenant under section 45(1) is such sum as fairly represents the value of the improvement to an incoming tenant.
- (2) In ascertaining the amount of compensation so payable—
  - (a) account is to be taken of any benefit which the landlord has agreed in writing to give the tenant in consideration of the tenant carrying out the improvement; and
  - (b) where a grant has been or will be made to the tenant in respect of the improvement, subject to the conditions of the grant—
    - (i) if either the landlord or tenant has not made or will not make a contribution towards the cost of the improvement, or neither of them has made or will make such a contribution, the grant is not to be taken into account;
    - (ii) in any other case, there is to be taken into account such proportion of the grant as equals the proportion of any contribution made by the tenant towards the cost of the improvement as a proportion of the total of the tenant’s contribution added to that of the landlord.
- (3) In ascertaining the amount of any compensation payable by virtue of subsection (3) of section 45, account is to be taken of any injury to or deterioration of the land due to the contravention of the lease or agreement mentioned in that subsection (except insofar as the landlord has recovered damages in respect of the injury or deterioration).

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**Modifications etc. (not altering text)**

- C2** S. 47 applied (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 117(3)**, 130(1) (with s. 128); [S.S.I. 2017/20](#), **reg. 2**, **sch.**

**Commencement Information**

- I5** S. 47 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(d)** (with **sch.**)

**48 Consent required for compensation in certain cases**

Compensation under section 45(1) is not payable for an improvement specified in Part I of Schedule 5 to the 1991 Act unless, before the improvement was carried out, the landlord consented to it in writing (whether unconditionally or upon terms agreed on between the parties).

**Commencement Information**

- I6** S. 48 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(d)** (with **Sch.**)

**49 Notice required for certain improvements**

- (1) Compensation under section 45(1) is not payable for an improvement specified in Part II of Schedule 5 to the 1991 Act unless the tenant gave notice in writing to the landlord specifying the tenant's intention to carry out the improvement and the manner in which it was proposed to carry it out.
- (2) In section 39 (approval of Land Court in certain cases) of the 1991 Act (as read with Schedule 5 to that Act), subsections (1) to (4) apply in relation to compensation under section 45(1) as they do in relation to compensation under Part IV of that Act but as if, in subsection (1) of that section—
  - (a) the words “a new” were omitted;
  - (b) the words “one month” read “60 days”; and
  - (c) the reference to notice under section 38(3) of that Act were a reference to the notice mentioned in subsection (1) of this section.

**Commencement Information**

- I7** S. 49 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(d)** (with **Sch.**)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7C inserted by [2016 asp 18 s. 93\(2\)](#)
- s. 7D inserted by [2016 asp 18 s. 106\(2\)](#)
- s. 8F8G inserted by [2016 asp 18 s. 94\(2\)](#)
- s. 16B inserted by [2016 asp 18 s. 95\(2\)](#)
- s. 17A inserted by [2016 asp 18 s. 96\(2\)](#)
- s. 18B inserted by [2016 asp 18 s. 97\(2\)](#)
- s. 26(1)(1A) substituted for s. 26(1) by [2016 asp 18 s. 99\(4\)\(a\)](#)
- s. 26(3) inserted by [2016 asp 18 s. 99\(4\)\(c\)](#)