



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 5

MISCELLANEOUS AMENDMENTS TO THE 1991 ACT

60 Agreements as to fixed equipment

In section 5 (fixed equipment and insurance premiums) of the 1991 Act—

- (a) subsection (3) is repealed; and
- (b) after subsection (4) there is inserted—

“(4A) Any agreement between the landlord and tenant made before the coming into force of this subsection which purports to provide for the tenant to execute on behalf of the landlord (whether wholly at his expense or wholly or partly at the expense of the landlord) any work effecting such replacement or renewal of the building or other fixed equipment on the holding as is rendered necessary by natural decay or by fair wear and tear shall be nullified provided that subsection (4B) below is complied with.

(4B) This subsection is complied with if—

- (a) following a determination (in accordance with section 13 of this Act) of the rent payable in respect of the holding, the tenant gives notice to the landlord that the agreement be nullified as from a date specified in the notice; and
- (b) on that date—
 - (i) the buildings and other fixed equipment are in a reasonable state of repair; or
 - (ii) if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then.

(4C) Any agreement between the landlord and tenant made before the coming into force of this subsection which purports to provide for the tenant to bear any expense of any work effecting such replacement or renewal of the building or other fixed equipment on the holding as is

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rendered necessary by natural decay or by fair wear and tear shall be subject to subsections (4A) and (4B) above.

(4D) Any agreement between the landlord and tenant made on or after this subsection comes into force which purports to provide for the tenant to bear any expense of any work which the landlord is required to execute in order to fulfil his obligations under the lease shall be null and void.”.

61 Making of records

(1) In section 8 (record of condition, etc. of holding) of the 1991 Act—

(a) for subsection (3) there is substituted—

“(3) A record under this section shall be made by a person to be appointed by agreement between the parties; but, in the absence of such agreement, the Scottish Ministers shall on the application of either party appoint a person to make the record.

(3A) The Scottish Ministers may charge such reasonable fee as they may determine for making an appointment under subsection (3) above.

(3B) The record shall be in such form as the parties agree or, in the absence of such agreement, as the recorder considers appropriate.”;

(b) in subsection (6), the words “, on the application of the landlord or tenant,” are repealed; and

(c) in each of subsections (8) and (9), for the word “the” in the second place where it appears there is substituted “any”.

(2) In section 80 (determination of matters where the Scottish Ministers are landlord or tenant) of that Act—

(a) in subsection (2), after “Act” insert “(except section 8)”;

(b) after that subsection there is inserted—

“(3) Where this section applies, section 8 of this Act shall have effect—

(a) with the substitution for “Scottish Ministers” in subsection (3) of “sheriff”;

(b) as if subsection (3A) were omitted.”.

62 Interdict in certain cases

In section 7 (freedom of cropping and disposal of produce) of the 1991 Act—

(a) in subsection (3), the words “, but no other” are repealed;

(b) after that subsection there is inserted—

“(3A) Such interdict as is, or damages as are, mentioned in subsection (3) above shall be obtainable only in the Land Court; and, notwithstanding the terms of section 84 of the Agricultural Holdings (Scotland) Act 2003 (asp 11), no other remedy shall be available in respect of the circumstances mentioned in that subsection.”;

(c) for subsection (4) there is substituted—

“(4) For the purposes of any proceedings for an interdict brought under paragraph (a) of subsection (3) above, where the question whether the

tenant is exercising or has exercised his rights under subsection (1) above in such a manner as is referred to in subsection (3) above has, by virtue of section 61(1) of this Act, been determined by arbitration, a certificate of the arbiter as to his determination of the question shall, for the purposes of any proceedings brought under this section, be conclusive proof of the facts stated in the certificate.”; and

- (d) in subsection (6)(b), after the word “or” in the second place where it appears there is inserted “it has been determined”.

63 Variation of rent

In section 13 (variation of rent) of the 1991 Act—

- (a) in subsection (2), for the word “(7)” there is substituted “(7A)”;
- (b) in subsection (3), for the words from “there” to the end there is substituted “disregarding—
- (a) any effect on rent of the fact that the tenant is in occupation of the holding; and
- (b) any distortion in rent due to a scarcity of lets,

but having regard to the matters referred to in subsection (4) below.”;

- (c) for subsection (4) there is substituted—

“(4) For the purposes of determining the rent payable under subsection (3) above, the Land Court shall have regard to the following—

- (a) information about rents of other agricultural holdings (including when fixed) and any factors affecting those rents (or any of them) except any distortion due to a scarcity of lets; and
- (b) the current economic conditions in the relevant sector of agriculture.”;

- (d) in subsection (7)—

(i) the words from “any” to the end become paragraph (a); and

(ii) after that paragraph there is inserted “; or

(b) any reduction in the rental value of the holding resulting from—

(i) the use of the land or part of the land, or changes to the land, for a purpose that is not an agricultural purpose; or

(ii) the carrying out of conservation activities on the land.”; and

- (e) after that subsection there is inserted—

“(7A) The Land Court shall take into account any increase in the rental value of the holding resulting from the use of the land for a purpose that is not an agricultural purpose.”.

64 Tenant’s right to withhold rent

After section 15 (increase of rent for certain improvements by landlord) of the 1991 Act there is inserted—

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“Tenant’s right to withhold rent

15A Tenant’s right to withhold rent

- (1) Subsection (2) below shall apply to an order—
 - (a) made under subsection (1)(b) of section 84 of the Agricultural Holdings (Scotland) Act 2003 (asp 11); and
 - (b) which is in relation to a failure of the landlord of an agricultural holding to fulfil any obligation he has towards the tenant in respect of fixed equipment.
- (2) Where the landlord has failed—
 - (a) in a material regard; and
 - (b) as at the date specified under subsection (2) of that section,to comply with an order to which this subsection applies, the tenant may apply to the Land Court for an order under subsection (3) below.
- (3) An order under this subsection may (either or both)—
 - (a) authorise the tenant to carry out such work as the landlord would have to have carried out for the landlord to comply with the order to which subsection (2) above applies; and
 - (b) authorise the tenant to withhold payment of the rent payable to the landlord in respect of the holding on the condition that the tenant shall consign to the Land Court the amount otherwise so payable.
- (4) The Land Court may, on the application of the tenant, from time to time release to the tenant any of the amount so consigned towards or in satisfaction of any reasonable costs incurred or to be incurred by the tenant for the purposes of or in connection with the carrying out of such work as is mentioned in paragraph (a) of subsection (3) above.
- (5) The Land Court, on the application of the landlord and having regard to—
 - (a) whether any work mentioned in paragraph (a) of subsection (3) above remains to be carried out; and
 - (b) any costs mentioned in subsection (4) above,may terminate the order made under subsection (3) above if the Court consider that it would be not be appropriate for the order to remain in force.
- (6) Where the Land Court terminate the order made under subsection (3) above, the Court shall order such division between the landlord and tenant of the amount (or, where any of the amount has been released to the tenant, any remaining amount) consigned under subsection (3)(b) above as the Court consider to be equitable.
- (7) Any work carried out and authorised under subsection (3)(a) above shall be treated as having been carried out at the landlord’s expense in so far as the costs of the work have been or are to be satisfied by the release to the tenant of any amount consigned under subsection (3)(b) above.
- (8) Any right of the landlord—
 - (a) to irritate the lease on the grounds of non-payment of rent; or

(b) under section 20 or 22 of this Act in relation to non-payment of rent, shall be unenforceable if the non-payment is in consequence of an authorisation under subsection (3)(b) above to withhold rent.

(9) Any term of the lease or of any agreement between the landlord and tenant that purports to deprive the tenant of any right conferred by virtue of this section shall, in so far as it so purports, be null and void.”.

65 Termination of tenancy

After section 16 (leases not terminated by variation of terms, etc.) of the 1991 Act there is inserted—

“16A Leases not terminated on grounds of non-residence

- (1) The lease of an agricultural holding shall not be brought to an end, and accordingly the landlord shall not be entitled to bring proceedings to terminate the lease or to treat it as at an end, by reason only that the tenant is not or has not been resident on the agricultural holding.
- (2) Where there is a term in a lease of an agricultural holding which purports to require the tenant to reside on the holding, there shall, in place of that term, be deemed to be incorporated in the lease an undertaking by the tenant that he will, if he does not reside on the holding, ensure that a person who has the skills and experience necessary to farm the holding in accordance with the rules of good husbandry resides on the holding.”.

66 Assignment and subletting of tenancy

After section 10 (power of landlord to enter on holding) of the 1991 Act there is inserted—

“10A Assignment and subletting of tenancy

- (1) A lease of an agricultural holding may be assigned by the tenant to any of the persons who would be entitled to succeed to his estate on intestacy by virtue of the Succession (Scotland) Act 1964 (c. 41) if, following notice under subsection (2), the landlord consents to a proposed assignment.
- (2) The tenant must give the landlord a notice in writing of any intention of the tenant to assign the lease; and the notice must include the particulars of the proposed assignee, the terms upon which the assignment is to be made and the date on which it is to take effect.
- (3) The landlord may withhold consent to the proposed assignment if there are reasonable grounds for doing so; and, in particular the landlord may withhold consent if not satisfied that the proposed assignee—
 - (a) would have the ability to pay—
 - (i) the rent due under the lease; or
 - (ii) for adequate maintenance of the land; or
 - (b) has the skills or experience that would be required properly to manage and maintain the land in accordance with the rules of good husbandry.

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- (4) Any such withholding of consent (and the grounds for withholding it) is to be intimated in writing to the tenant within 30 days of the giving of the notice under subsection (2); and, if no such intimation is made, the landlord is deemed to have consented to the proposed assignation.
- (5) Any term of a lease or of an agreement between the landlord and tenant which purports to provide that the lease of an agricultural holding may not be assigned under this section shall, in so far as it so purports, be null and void.”.

67 Notices to quit

- (1) In section 22 (restriction on operation of notices to quit) of the 1991 Act, in paragraph (b) of subsection (2), for the words from “has” to the end there is substituted “requires to be obtained, and has been obtained, under the enactments relating to town and country planning”.
- (2) In section 24 (consents for the purposes of section 22) of that Act—
 - (a) in subsection (2)—
 - (i) the words from “that” in the second place where it appears to the end become paragraph (a); and
 - (ii) after that paragraph there is added “; or
 - (b) where the notice is to quit the whole of the holding, that use of the land for the purpose for which the landlord proposes to terminate the tenancy would not create greater economic and social benefits to the community than would exist were the tenancy not terminated.”; and
- (b) after subsection (4) there is added—
 - “(5) For the purposes of subsection (2)(b) above—
 - (a) “the community”—
 - (i) shall be defined by reference to the postcode unit (or postcode units) pertaining to the holding and the vicinity of the holding; and
 - (ii) comprises the persons from time to time resident in that postcode unit (or any of those postcode units);
 - (b) “economic benefits” shall be defined by reference to an increase, or the potential for increase, in employment or income;
 - (c) “social benefits” shall be defined by reference to the likely—
 - (i) sustaining of, or increase in, the population; and
 - (ii) improvement of amenities and services.
- (6) In subsection (5)(a) above, “postcode unit” means an area, determined by the Registrar General for Scotland, in relation to which a single postcode is used to facilitate the identification of postal service delivery points in the area.
- (7) The Land Court shall, for the purposes of its determining the matters referred to in subsection (2)(b) above, have regard to such representations as it considers may assist in its consideration of those matters.”.

68 Restoration of agricultural holding following mineral exploitation

After section 29 (notice to quit part of holding to be valid in certain cases) of the 1991 Act there is inserted—

“29A Holding to be restored in certain circumstances

- (1) Subsection (2) below applies where the tenancy of part of an agricultural holding has been terminated by reason of a notice to quit which is rendered valid by virtue of subsections (1)(b) and (2)(f) of section 29 of this Act.
- (2) Where—
 - (a) this subsection applies; and
 - (b) the land which formed that part has subsequently been made suitable for, and is available for, agricultural use,that land shall, if the conditions in subsection (3) below are fulfilled, be restored to the holding.
- (3) The conditions are that—
 - (a) the tenancy of the holding continues in force with the same landlord and tenant under the lease; and
 - (b) any compensation paid to the tenant in consequence of the termination was calculated on the basis that the holding would be restored under this section.”.

69 Good husbandry and conservation activities

- (1) In subsection (2) of section 85 (interpretation) of the 1991 Act, after “shall” there is inserted “, subject to subsections (2A) and (2B) below,”.
- (2) After that subsection there is inserted—

“(2A) For the purposes of this Act, conservation activities are to be treated as being in accordance with the rules of good husbandry if they are carried out in accordance with—

 - (a) an agreement entered into under any enactment by the tenant; or
 - (b) the conditions of—
 - (i) any grant for the purpose of such activities paid out of the Scottish Consolidated Fund; or
 - (ii) such other grant of a public nature as may be prescribed.

(2B) For the purposes of this Act, such use of the land or part of the land, or such change to the land, for a purpose that is not an agricultural purpose as has been permitted under section 40 or 41 of the Agricultural Holdings (Scotland) Act 2003 ([asp 11](#)) is to be treated as being in accordance with the rules of good husbandry.”.