



# Agriculture (Scotland) Act 1948

## 1948 CHAPTER 45

An Act to amend the enactments relating to agricultural holdings in Scotland; to make further provision for the improvement and development of agriculture and the use of agricultural land in Scotland; to authorise the making of grants towards the provision of houses and buildings for landholders and cottars in the Highlands and Islands; to extend the time for making applications for assistance under the Housing (Agricultural Population) (Scotland) Act, 1938; and for purposes connected with the matters aforesaid. [13th July 1948.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### AGRICULTURAL HOLDINGS.

*Compensation to tenant for improvements and to landlord for deterioration.*

#### **1 Provisions as to payment of compensation for improvements.**

- (1) Any agreement made after the commencement of this Part of this Act by an incoming tenant of a holding with his landlord to pay to an outgoing tenant any compensation payable by the landlord under or in pursuance of this Act in respect of improvements or to refund to his landlord any compensation payable as aforesaid which has been paid by the landlord to the outgoing tenant shall be null and void:

Provided that an incoming tenant may enter into an agreement in writing with his landlord to pay to an outgoing tenant, or to refund to his landlord up to such maximum amount as may be specified in the agreement, any compensation payable by the landlord under or in pursuance of this Act in respect of the whole or part of any

improvement included in Part III of the First Schedule to the Agricultural Holdings (Scotland) Act, 1923 (hereafter in this Act referred to as the Act of 1923 ").

- (2) Where an incoming tenant has in pursuance of such an agreement in writing as aforesaid paid to an outgoing tenant or refunded to his landlord any compensation in respect of the whole or part of any improvement, he shall be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding and quitted it at the time at which the incoming tenant quite it.
- (3) Where, in a case not falling within the foregoing subsections, an incoming tenant of a holding has paid to his landlord any amount in respect of the whole or part of any improvement, he shall, subject to any agreement in writing between the landlord and the tenant, be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as he would have been entitled if he had been tenant of the holding at the time when the improvement was carried out and the improvement or part had been carried out by him.
- (4) The foregoing provisions of this section shall have effect in substitution for the provisions of section seven of the Act of 1923.

## **2 Compensation to tenant for improvements.**

- (1) The First Schedule to this Act shall be substituted for the First Schedule to the Act of 1923.
- (2) The Secretary of State may, after consultation with persons appearing to him to represent the interests of landlords and tenants of agricultural holdings, by order vary the provisions of the First Schedule to the Act of 1923, and an order under this section may make such provision as to the operation of that Act and of this Part of this Act and the said Schedule in relation to tenancies current when the order takes effect as appears to the Secretary of State to be just having regard to the variation of the said Schedule effected by the order:

Provided that nothing in any order made under this subsection shall affect the right of a tenant to claim, in respect of an improvement made or begun before the date on which such order takes effect, any compensation to which, but for the making of the order, he would have been entitled.

An order under this subsection shall be embodied in a statutory instrument which shall be of no effect unless approved by resolution of each House of Parliament.

- (3) The last foregoing subsection shall apply in relation to the Third Schedule to the Act of 1923 as it applies in relation to the First Schedule to the said Act.

## **3 Assessment of compensation where grant "received by tenant".**

Where any grant out of moneys provided by Parliament has been or will be made to the tenant of a holding in respect of an improvement specified in the First Schedule to the Act of 1923, the grant shall be taken into account in assessing compensation under that Act for the improvement.

#### **4 Compensation to landlord for deterioration of holding.**

- (1) The landlord of a holding shall be entitled to recover from the tenant of the holding, on the tenant's quitting the holding on the termination of the tenancy, compensation in respect of any dilapidation or deterioration of, or damage to, any part of the holding, or anything in or on the holding, caused by non-fulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry:

Provided that compensation shall not be recoverable under this subsection unless the landlord has, not later than three months before the termination of the tenancy, given notice in writing to the tenant of his intention to claim compensation thereunder.

- (2) The amount of the compensation payable under the last foregoing subsection shall be the cost, as at the date of the tenant's quitting the holding, of making good the dilapidation, deterioration or damage.
- (3) Notwithstanding anything in section nine of this Act, the landlord may, in lieu of claiming compensation under subsection (1) of this section, claim compensation in respect of matters specified therein under and in accordance with a lease in writing, so however that—
- (a) compensation shall be so claimed only on the tenant's quitting the holding on the termination of the tenancy;
  - (b) compensation shall not be claimed in respect of any one holding both under such a lease and under the said subsection (1).

- (4) Where, on the quitting of a Holding by a tenant thereof on the termination of the tenancy, the landlord shows that the value of the holding generally has been reduced, whether by reason of any such dilapidation, deterioration or damage as is mentioned in subsection (1) of this section or otherwise by nonfulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry, the landlord shall be entitled to recover from the tenant compensation therefor, in so far as the landlord is not compensated therefor under subsection (1) or in accordance with subsection (3) of this section, of an amount equal to the decrease attributable thereto in the value of the holding:

Provided that compensation shall not be recoverable under this subsection unless the landlord has, not later than three months before the termination of the tenancy, given notice in writing to the tenant of his intention to claim compensation thereunder.

- (5) Where a tenant has remained in his holding during two or more tenancies, his landlord shall not be deprived of his right to compensation under this section in respect of any dilapidation, deterioration or damage by reason only that the tenancy during which an act or omission occurred which in whole or in part caused the dilapidation, deterioration or damage was a tenancy other than the tenancy at the termination of which the tenant quits the holding.
- (6) Compensation shall not be recoverable—
- (a) under subsection (1) or subsection (4) of this section in any case where the lease was entered into after the thirty-first day of July, nineteen hundred and thirty-one, or
  - (b) under and in accordance with any lease entered into after the commencement of this Part of this Act,

unless during the occupancy of the tenant a record of the condition of the holding has been made under the Act of 1923 or under this Part of this Act, or in respect of any

matter arising before the date of the record so made, or, where more than one such record has been made during his occupancy, before the date of the first such record:

Provided that if the landlord and the tenant enter into an agreement in writing in that behalf, a record of the condition of the holding shall, notwithstanding that it was made during the occupancy of a previous tenant, be deemed, for the purposes of this subsection, to have been made during the occupancy of the tenant and on such date as may be specified in the agreement and shall have effect subject to such modifications (if any) as may be so specified.

- (7) Section ten of the Act of 1923 (which provides for compensation to the landlord for deterioration of a holding) shall cease to have effect.

*Compensation for disturbance, and provisions as to notices to quit.*

## **5 Compensation for disturbance.**

- (1) Where the tenancy of a holding terminates by reason of a notice to quit given by the landlord, and in consequence of the notice the tenant quits the holding, then, subject to the provisions of this section, unless—
- (a) on an application in that behalf made to the Secretary of State not more than nine months before the giving of the notice to quit the Secretary of State was satisfied in relation to the holding that the tenant was not fulfilling his responsibilities to farm in accordance with the rules of good husbandry, and certified that he was so satisfied; or
  - (b) at the date of the giving of the notice to quit the tenant had failed to comply with a demand in writing served on him by the landlord requiring him within two months from the service of the demand to pay any rent due in respect of the holding, or within a reasonable time to remedy any breach by the tenant, which was capable of being remedied, of any term or condition of his tenancy which was not inconsistent with the fulfilment of his said responsibilities; or
  - (c) at the said date the interest of the landlord in the holding had been materially prejudiced by the commission by the tenant of a breach which was not capable of being remedied in reasonable time and at economic cost of any term or condition of the tenancy which was not inconsistent as aforesaid; or
  - (d) at the said date the tenant was a person who had become notour bankrupt or executed a trust deed for behoof of his creditors;

and unless the notice to quit states that it is given by reason of one or more of the matters aforesaid, specifying it or them, compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section.

The provisions of the Second Schedule to this Act shall have effect in relation to applications for certificates under paragraph (a) of this subsection.

- (2) The amount of the compensation payable under this section shall be the amount of the loss or expense directly attributable to the quitting of the holding which is unavoidably incurred by the tenant upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (not being expenses of an arbitration to determine any question arising under this section):

Provided that—

- (a) the compensation payable under this section shall be an amount equal to one year's rent of the holding at "the rate at which rent was payable immediately before the termination of the tenancy without proof by the tenant of any such loss or expense as aforesaid;
- (b) the tenant shall not be entitled to claim any greater amount than one year's rent of the holding unless he has given to the landlord not less than one month's notice of the sale of any such goods, implements, fixtures, produce or stock as aforesaid and has afforded him a reasonable opportunity of making a valuation thereof;
- (c) the tenant shall not in any case be entitled to compensation in excess of two years' rent of the holding.

In this subsection the expression " rent " means the rent after deduction of such an amount as the arbiter, failing agreement, may find to be equivalent to the aggregate of the following amounts, that is to say—

- (i) the amount payable by the landlord in respect of the holding for the year in which the tenancy was terminated by way of owners' rates or of any other public rates, taxes or assessments or other public burdens, the charging of which on the landlord would entitle him to relief in respect of tax under Rule 4 of No. V of Schedule A to the Income Tax Act, 1918; and
  - (ii) the amount (if any) recovered in respect of that year from the landlord in pursuance of subsection (1) of section forty-seven of the Local Government (Scotland) Act, 1929.
- (3) Where the tenant of a holding has lawfully sub-let the whole or part of the holding, and in consequence of a notice to quit given by his landlord becomes liable to pay compensation under this section to the sub-tenant, the tenant shall not be debarred from recovering compensation under this section by reason only that, owing to not being in occupation of the holding or of part of the holding on the termination of his tenancy, he does not quit the holding or that part.
- (4) Where under section thirty of the Act of 1923 the tenant accepts a notice to quit part of his holding as a notice to quit the entire holding, and—
- (a) the part of the holding affected by the notice given by the landlord, together with any part of the holding affected by any previous notice given by the landlord under that section, is either less than one fourth part of the area of the original holding or of a rental value less than one fourth part of the rental value of the original holding, and
  - (b) the holding as proposed to be diminished is reasonably capable of being farmed as a separate holding,
- compensation shall not be payable under this section except in respect of the part of the holding to which the notice to quit relates.
- (5) Compensation shall not be payable under this section in the case of a permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in his own occupation and which has been let to a tenant for a definite and limited period for cultivation as arable land on the condition that the tenant shall, along with the last or waygoing crop, sow permanent grass seeds.
- (6) Compensation payable under this section shall be in addition to any compensation to which the tenant may be entitled apart from this section.

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

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- (7) If, while a certificate under paragraph (a) of subsection (1) of this section is in force, the landlord within nine months from the application for the certificate gives notice to quit to the tenant—
- (a) the Secretary of State shall have power, after affording to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, to give to the tenant by notice in writing such directions as appear to the Secretary of State necessary for securing that the holding shall not further deteriorate before the determination of the tenancy, and subsections (5) to (9) of section twenty-nine and section thirty-seven of this Act shall apply to directions under this subsection as they apply to directions under the said section twenty-nine; and
  - (b) where the tenant contravenes or fails to comply with any directions given under the foregoing paragraph, the Secretary of State may order that the tenancy shall terminate by virtue of the notice to quit at such date earlier than the date specified in that notice as may be specified in the order, being a date not less than three months later than the service on the tenant of notice in writing of the making of the order, and such order shall provide for the reference to arbitration under the Act of 1923 of any question or difference arising between the landlord and the tenant by reason of the earlier termination of the tenancy.
- (8) Sections twelve to fourteen of the Act of 1923 (which relate to compensation for disturbance) shall cease to have effect.
- (9) Nothing in this section shall apply to a notice to terminate a tenancy of a holding subsisting under a lease entered into before the fifteenth day of May, nineteen hundred and forty-seven, where—
- (a) immediately before the creation of the tenancy the holding had been for a period of not less than twelve months in the occupation of the landlord; and
  - (b) the holding is let upon the express terms that if the landlord desires to resume that occupation before the expiration of a specified period not exceeding seven years the landlord shall be entitled to give notice to quit, without becoming liable to pay to the tenant any compensation for disturbance; and
  - (c) the notice to terminate the tenancy is given so as to enable the landlord to resume occupation of the holding within the specified period.

## 6 Notice of termination of tenancy.

For subsection (x) of section twenty-six of the Act of 1923 (which relates to notices to quit) there shall be substituted the following subsection—

“(1) Notwithstanding the termination of the stipulated endurance of any lease, the tenancy shall not come to an end unless, not less than one year nor more than two years before the termination of the lease, written notice has been given by either party to the other of his intention to bring the tenancy to an end.

The provisions of this subsection shall have effect notwithstanding any agreement or any provision in the lease to the contrary.”

## **7 Restrictions on termination by notice of tenancies of holdings.**

- (1) Where notice to quit a holding or part of a holding is given to the tenant thereof, and not later than one month from the giving of the notice to quit the tenant serves on the landlord notice in writing requiring that this subsection shall apply to the notice to quit, then, subject to the provisions of the next following subsection, the notice to quit shall not have effect unless the Secretary of State consents to the operation thereof.
- (2) The last foregoing subsection shall not apply—
  - (a) where the Secretary of State has consented under this section to the operation of the notice to quit before the giving thereof, and that fact is stated in the notice;
  - (b) where one or more of the conditions specified in paragraphs (a) to (d) of subsection (1) of section five of this Act is fulfilled, and it is stated in the notice to quit that the notice is given by reason thereof;
  - (c) where permanent pasture has been let so that subsection (5) of section five of this Act applies to the lease;
  - (d) where the notice to quit is given on the ground that the land is required for a use, other than for agriculture, for which permission has been granted on an application made under the enactments relating to town and country planning, or for which (otherwise than by virtue of any provision of those enactments) such permission is not required, and that fact is stated in the notice.
- (3) Without prejudice to the discretion of the Secretary of State in a case falling within paragraphs (a) to (e) of this subsection, the Secretary of State shall withhold his consent under this section to the operation of a notice to quit unless he is satisfied—
  - (a) that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of efficient farming whether as respects good estate management or good husbandry or otherwise; or
  - (b) that the carrying out thereof is otherwise desirable for the purposes of agricultural research, education, experiment or demonstration or for the purposes of the enactments relating to smallholdings or such holdings as are mentioned in section sixty-four of this Act or allotments; or
  - (c) where the tenancy was created after the passing of this Act, that the landlord proposes to terminate the tenancy for a purpose, specified in the lease, for which the interest of the landlord was held immediately before the creation of the tenancy, and that greater hardship would be caused by the Secretary of State's withholding than by his granting his consent to the operation of the notice; or
  - (d) where the tenancy was created before the passing of this Act and the same person was landlord at the passing thereof as at the time when the notice to quit was given -or, if the application for the consent of the Secretary of State is made before giving the notice to quit, at the time of the application, that greater hardship would be caused by the Secretary of State's withholding than by his granting his consent to the operation of the notice; or
  - (e) that the landlord proposes to terminate the tenancy for the purpose of the land being used for a use, other than for agriculture, not falling within paragraph (d) of the last foregoing subsection.
- (4) The Secretary of State shall not give or withhold his consent under this section to the operation of a notice to quit except after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State.

- (5) Forthwith after the giving or withholding of his consent as aforesaid the Secretary of State shall give notice thereof in writing to the landlord and to the tenant.
- (6) If the landlord or the tenant is dissatisfied with the Secretary of State's decision to withhold or to give his consent to the operation of a notice to quit, the landlord or the tenant may, within twenty-one days after notice has been given to him under the last foregoing subsection, appeal to the Land Court against the decision; and where an appeal has been so taken subsections (1) to (3) of this section shall have effect with the substitution (except in so much of paragraph (d) of the said subsection (3) as relates to the application for the consent of the Secretary of State) for references to the Secretary of State of references to the Land Court.
- (7) Where the Secretary of State or the Land Court consents under this section to the operation of a notice to quit the Secretary of State or the Court may impose such conditions as appear to the Secretary of State or the Court requisite for securing that the land to which the notice relates will be used for the purpose for which the landlord proposes to terminate the tenancy, and if the Secretary of State is satisfied that within a reasonable time after the notice to quit has expired any condition imposed under this section has not been complied with—
- (a) the Secretary of State may take possession of the land for the purpose of farming it, and
  - (b) the provisions of section thirty-three of this Act shall apply as they apply where the Secretary of State takes possession of land under that section, but with the substitution for the reference to a requirement of a reference to a condition.

Where on an application by the landlord in that behalf the Secretary of State is satisfied that by reason of any change of circumstances or otherwise any condition imposed under this subsection ought to be varied or revoked, he shall vary or revoke the condition accordingly.

- (8) The Secretary of State may make regulations—
- (a) for requiring any question arising under subsection (2) of this section to be determined by arbitration under the Act of 1923, for limiting the time within which any such arbitration may be required or any proceedings for the purposes thereof may be taken, and for extending the period within which a notice may be given by the tenant under subsection (1) of this section where any such arbitration is required;
  - (b) as to the time within which and the manner in which applications for the Secretary of State's consent to the operation of notices to quit may be made under this section;
  - (c) for suspending the operation of notices to quit until the issue of the arbiter's award or the decision of the Land Court under this section ;
  - (d) for postponing the date at which a tenancy is to be terminated by a notice to quit, which has effect in consequence of any such award or decision as aforesaid;
  - (e) for excluding the application of subsection (1) of this section in relation to sub-tenancies in such cases as may be prescribed, and for making such provision as appears to the Secretary of State expedient for the purpose of safeguarding the interests of sub-tenants, including provision enabling the Secretary of State or the Land Court, where the interest of a tenant is terminated by notice to



quit, to secure that a subtenant will hold from the landlord on the like terms as he held from the tenant.

- (9) Nothing in this section shall apply to any such notice as is specified in subsection (9) of section five of this Act.

## **8 Provisions as to notices to quit where holding agreed to be sold.**

- (1) The provisions of the two following subsections shall have effect where, whether before or after the commencement of this Part of this Act, notice to quit land being or comprised in a holding has been given to the tenant and at any time after the commencement of this Part of this Act while the notice is current a contract is made for the sale of the landlord's interest in the land or any part thereof.
- (2) Unless within the period of three months ending with the making of the contract the landlord and the tenant have agreed in writing whether on the making of such a contract the notice shall continue in force or be of no effect.—
- (a) the landlord shall, within the period of fourteen days from the making of the contract, or, where the notice to quit expires within the last mentioned period, before the expiration of the notice to quit, give notice in writing to the tenant of the making of the contract, and
- (b) the tenant may before the expiration of the notice to quit notify the landlord in writing that the tenant elects that the notice to quit shall continue in force, so however that the tenant shall not give a notification under this paragraph after the expiration of one month from the receipt by him of a notice under the last foregoing paragraph of the making of the contract.
- (3) In default of any such agreement or notification as aforesaid the notice to quit shall be of no effect unless the landlord has failed duly to give notice of the making of the contract and the tenant quits the holding in consequence of the notice to quit.
- (4) A notice to quit shall not be Invalid by reason only that under any such agreement as aforesaid the operation of the notice is conditional.
- (5) The foregoing provisions of this section shall have effect in substitution for the provisions of section twenty-seven of the Act of 1923.

### *Supplementary provisions as to compensation.*

## **9 Extent to which compensation recoverable under agreements.**

- (1) Save as expressly provided in the provisions of the Act of 1923, of this Part of this Act and of the Schedules therein. referred to, in any case for which apart from this section those provisions provide for compensation a tenant or a landlord shall be entitled to compensation in accordance with those provisions and not otherwise, and shall be so entitled notwithstanding any agreement to the contrary.
- (2) Nothing in the said provisions, apart from this section, shall be construed as disentitling a tenant or a landlord to compensation in any case for which the said provisions do not provide for compensation, but a claim for compensation in any such case as aforesaid shall not be enforceable except under an agreement in writing.
- (3) Section forty-five of the Act of 1923 (which provides that certain contracts not in accordance with the provisions of that Act shall be void) shall cease to have effect.

## **10 Transitional provisions as to compensation.**

- (1) The provisions relating to compensation of this Part of this Act and the Schedules therein referred to, other than this section, shall not have effect where the tenant of a holding quits the holding in consequence of a notice to quit given (whether by the landlord or the tenant) before the commencement of this Part of this Act, or in consequence of a renunciation of the tenancy in pursuance of an agreement in writing made before the commencement of this Part of this Act.
- (2) Subject to the last foregoing subsection, the said provisions shall apply whether the tenant entered into occupation of the holding before or after the commencement of this Part of this Act, except that the said provisions shall not apply in relation to any improvements specified in the First Schedule to the Act of 1923 begun before the commencement of this Part of this Act.
- (3) References in this section to the said provisions include references to so much of Part VII of this Act as repeals provisions of the Act of 1923 relating to compensation or any enactment amending those provisions of the Act of 1923.

### *Variation and ascertainment of terms of leases.*

## **11 Variation of rent of holdings.**

- (1) Subject to the provisions of this section the landlord or the tenant of a holding may, whether the tenancy was created before or after the commencement of this Part of this Act, by notice in writing served on his tenant or his landlord demand a reference to arbitration of the question what rent should be payable in respect of the holding as from the next ensuing day on which the tenancy could have been terminated by notice to quit given at the date of demanding the reference, and the matter shall be referred accordingly.
- (2) On any reference under the last foregoing subsection the arbiter—
  - (a) shall not take into account any increase in the rental value of the holding which is due to improvements which have been executed thereon in so far as they were executed wholly or partly at the expense of the tenant (whether or not that expense has been or will be reimbursed by a grant out of moneys provided by Parliament) without any equivalent allowance or benefit made or given by the landlord in consideration of their execution, and have not been executed under an obligation imposed on the tenant by the terms of his lease, or to improvements which have been executed thereon by the landlord in so far as the landlord has received Or will receive grants out of moneys provided by Parliament in respect of the execution thereof, or fix the rent at a higher amount than would have been properly payable if these improvements had not been so executed, and
  - (b) shall not fix the rent at a lower amount by reason of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant.

Subject as aforesaid, and subject to the provisions of section forty-eight of the Local Government (Scotland) Act, 1929, and of paragraph (6) of section nineteen of the Agricultural Marketing Act, 1931, the arbiter shall determine what rent should properly be payable in respect of the holding as from the day mentioned in the last foregoing subsection.

- (3) A reference to arbitration under subsection (1) of this section shall not be demanded in such circumstances that any increase or reduction of rent made in consequence thereof would take effect as from a date earlier than the expiration of five years from the latest in time of the following dates, that is to say—
- (a) the commencement of the tenancy, or
  - (b) the date as from which there took effect a previous increase or reduction of rent (whether made under this section or otherwise), or
  - (c) the date as from which there took effect a previous direction under this section that the rent should continue unchanged:

Provided that there shall be disregarded for the purposes of this subsection—

- (i) any increase of rent under subsection (4) of this section or any such increase as is referred to in paragraph (i) of the proviso to that subsection;
  - (ii) any reduction of rent under subsection (7) of section thirty-two of this Act or under section thirty-one of the Act of 1923;
  - (iii) any other variation of rent which under the following provisions of this Act is directed to be disregarded for the purposes of this subsection.
- (4) Where the landlord of a holding has, whether before or after the commencement of this Part of this Act, carried out on the holding any improvement, whether specified in the First Schedule to the Act of 1923 or not, being an improvement—
- (a) carried out at the request of or in agreement with the tenant, or in pursuance of an undertaking given by the landlord under subsection (3) or paragraph (b) of subsection (6) of section three of the Act of 1923, or
  - (b) carried out in compliance with a direction given by the Secretary of State under powers conferred on him by or under any enactment, or
  - (c) carried out in such circumstances that apart from this Act any interest or rent in respect thereof would be recoverable by the landlord under section nine of the Agriculture (Miscellaneous Provisions) Act, 1943, or section nine of the Hill Farming Act, 1946,

the rent of the holding shall, if the landlord by notice in writing served on the tenant within six months from the completion of the improvement so requires, be increased as from the completion of the improvement, or, where- the improvement was completed before the commencement of this Part of this Act, as from the commencement of this Part of this Act, by an amount equal to the increase in the rental value of the holding attributable to the carrying out of the improvement:

Provided that—

- (i) no increase shall be made under this subsection if before the commencement of this Part of this Act the landlord and the tenant have agreed on any increase in rent or other benefit to the landlord in respect of the improvement, or if before the commencement of this Part of this Act any sum has become payable under subsection (3) of section three of the Act of 1923, the said Act of 1943, or the said Act of 1946;
  - (ii) where any grant has been made to the landlord in respect of the improvement out of moneys provided by Parliament, the increase in rent provided for by the foregoing provisions of this subsection shall be reduced proportionately.
- (5) No interest or rent shall be recoverable by a landlord under the said Act of 1943 or the said Act of 1946 in respect of any improvement specified in paragraph (c) of the last foregoing subsection, whether completed before or after the commencement of this

Part of this Act, except where before the commencement of this Part of this Act either the landlord and the tenant have agreed on the payment of interest or rent, or interest or rent has become payable in respect of the improvement.

- (6) Any question arising between the landlord and the tenant of the holding under the two last foregoing subsections shall be determined by arbitration.

## **12 Variation of terms of tenancy as to permanent pasture.**

- (1) Where under the lease of a holding, whether entered into before or after the commencement of this Part of this Act, provision is made for the maintenance of specified land, or a specified proportion of the holding, as permanent pasture, and it appears to the Secretary of State, either on the application of the landlord or the tenant or otherwise.—

- (a) that it is expedient in order to secure the full and efficient farming of the holding that the amount of land required to be maintained as permanent pasture should be reduced, and
- (b) where there has been an application under this section by the landlord or the tenant, that the landlord or the tenant has requested his tenant or his landlord to agree to the appropriate reduction but no agreement has been reached thereon,

the Secretary of State may, after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, direct that the lease shall have effect subject to such, modifications of the provisions thereof as to land which is to be maintained as permanent pasture or is to be treated as arable land, and as to cropping, as appear to the Secretary of State expedient as aforesaid and are specified in the direction.

- (2) Where by virtue of a direction under this section a lease has effect subject to a reduction of the land which is to be maintained as permanent pasture, the provisions of paragraphs 2 and 3 of the Third Schedule to this Act shall have effect in relation to the direction.
- (3) Where the landlord and the tenant of a holding enter into an agreement in writing for any such variation of the terms of the lease as could be made by direction under subsection (1) of this section, or under the said paragraph 2, the agreement may, notwithstanding anything in this Part of this Act, provide for the exclusion of compensation in like manner as under the said paragraph 3.

## **13 Respective liabilities of landlord and tenant for provision and maintenance of fixed equipment and for payment of insurance premiums.**

- (1) Where a lease has been entered into after the commencement of this Part of this Act for the letting of a holding, a record of the condition of the fixed equipment on the holding shall be made forthwith, and on being so made shall be deemed to form part of the lease; and the provisions of section thirty-seven of the Act of 1923 shall apply to the making of such a record and to the cost thereof as they apply to a record made under that section.
- (2) There shall be deemed to be incorporated in every lease entered into after the commencement of this Part of this Act for the letting of a holding—
- (a) an undertaking by the landlord that, at the commencement of the tenancy or as soon as is reasonably possible thereafter, he will put the fixed equipment

on the holding into a thorough state of repair, and will provide such buildings and other fixed equipment as will enable an occupier reasonably skilled in husbandry to maintain efficient production as respects both the kind of produce specified in the lease, or (failing such specification) in use to be produced on the holding and the quality and quantity thereof, and will during the tenancy effect such replacement or renewal of the buildings or other fixed equipment as may be rendered necessary by natural decay or by fair wear and tear; and

- (b) a provision that the liability of the tenant in relation to the maintenance of fixed equipment shall extend only to a liability to maintain the fixed equipment on the holding in as good a state of repair (natural decay and fair wear and tear excepted) as it was in immediately after it was put in repair as aforesaid or, in the case of equipment provided, improved, replaced or renewed during the tenancy, as it was in immediately after it was so provided, improved, replaced or renewed.
- (3) Nothing in the last foregoing subsection shall be deemed to prohibit any agreement made after the lease has been entered into between the landlord and the tenant whereby one of the parties undertakes to execute on behalf of the other party, and wholly at his own expense or wholly or partly at the expense of the other party, any work which the other party is required to execute in order to fulfil his obligations under the lease.
  - (4) Any provision in a lease entered into after the commencement of this Part of this Act requiring the tenant to pay the whole or any part of the premium due under a fire insurance policy over any fixed equipment on the holding shall be null and void.
  - (5) Any question arising as to the liability of a landlord or of a tenant under this section shall be determined by arbitration.

#### **14 Provisions for securing written leases and for the revision of certain leases.**

- (1) Where in respect of the tenancy of a holding—
  - (a) there is not in force a lease in writing embodying the terms of the tenancy, or
  - (b) there is in force such a lease, being either a lease entered into after the commencement of this Part of this Act or a lease entered into before that date, the stipulated period of which has expired and which is being continued in force by tacit relocation, but it contains no provision for one or more of the matters specified in the Fourth Schedule to this Act or contains a provision inconsistent therewith or with the last foregoing section,the landlord or the tenant may give notice in writing to his tenant or his landlord requesting him to enter into such a lease containing provision for all of the said matters or a provision not inconsistent with the said Schedule or the said section, as the case may be; and if within the period of six months after the giving of such notice no such lease has been concluded, the terms of the tenancy shall be referred to arbitration.
- (2) On any such reference the arbiter shall by his award specify the terms of the existing tenancy, and, in so far as those terms make no provision for all the matters specified in the Fourth Schedule to this Act or make provision inconsistent therewith or with the last foregoing section, make such provision for those matters as appears to the arbiter to be reasonable.
- (3) On any such reference the arbiter may include in his award any further provisions not inconsistent with the provisions of this Act relating to the tenancy which may be agreed between the landlord and the tenant.

## **15 Supplementary provisions as to s. 13 and s. 14.**

- (1) Where by virtue of section fourteen of this Act the liability for the maintenance or repair of any item of fixed equipment is transferred from the tenant to the landlord, the landlord may within the prescribed period beginning with the date on which the transfer takes effect require that there shall be determined by arbitration, and paid by the tenant, the amount of any compensation which would have been payable under section four of this Act or in accordance with subsection (3) of that section, in respect of any previous failure by the tenant to discharge the said liability, if the tenant had quitted the holding on the termination of his tenancy at the date on which the transfer takes effect.
- (2) For the purposes of so much of subsection (3) of section four of this Act as prevents a landlord claiming compensation in respect of the same holding both under a lease and under subsection (1) of the said section four, any claim under the last foregoing subsection shall be disregarded.
- (3) Where by virtue of section fourteen of this Act the liability for the maintenance or repair of any item of fixed equipment is transferred from the landlord to the tenant, any claim by the tenant in respect of any previous failure by the landlord to discharge the said liability shall, if the tenant within the prescribed period beginning with the date on which the transfer takes effect so requires, be determined by arbitration and any amount directed by the award to be paid by the landlord shall be paid by him to the tenant.
- (4) Where it appears to the arbiter—
  - (a) on any reference under subsection (5) of section thirteen of this Act that by reason of any provision included in his award, or
  - (b) on any reference under section fourteen of this Act that by reason of any provision which he is required by that section to include in his award,it is equitable that the rent of the holding should be varied, he may vary the rent accordingly, and for the purposes of subsection (3) of section eleven of this Act any variation of rent under this subsection shall be disregarded.
- (5) The award of an arbiter under section thirteen or fourteen of this Act shall have effect as if the terms and provisions specified and made therein were contained in an agreement in writing entered into by the landlord and the tenant and having effect as from the making of the award or, if the award so provides, from such later date as may be specified therein.

## **16 Leases to continue in force notwithstanding variation of terms, etc.**

The lease of a holding shall not be deemed to have been brought to an end, and accordingly neither the landlord nor the tenant of the holding shall be entitled to bring proceedings to terminate the lease or, except with the consent of the other party, to treat it as at an end, by reason only that any new term has been added to the lease or that any of the terms of the lease (including the rent payable thereunder) have been varied or revised in pursuance of any provision of this Part of this Act in that behalf.

*General.*

**17 Restriction on letting agricultural land for less than from year to year.**

- (1) Subject to the provisions of this section, where under a lease entered into after the commencement of this Part of this Act any land is let to a person for use as agricultural land for a shorter period than from year to year, and the circumstances are such that if he were a tenant from year to year he would in respect of that land be the tenant of a holding as defined in the Act of 1923, then, unless the letting was approved by the Secretary of State before the lease was entered into, the lease shall take effect, with the necessary modifications, as if it were a lease of the land from year to year:

Provided that this subsection shall not have effect in relation to a lease of land, entered into (whether or not the lease expressly so provides) in contemplation of the use of the land only for grazing or mowing during some specified period of the year, or to a lease of land granted by a person whose interest in the land is that of a tenant under a lease which is for a shorter period than from year to year, and which has not by virtue of this section taken effect as a lease from year to year.

- (2) Any question arising as to the operation of the last foregoing subsection in relation to any lease shall be determined by arbitration.

**18 Power of tenant to obtain charge on holding in respect of compensation.**

- (1) Where after the commencement of this Part of this Act any sum has become payable to the tenant of a holding in respect of compensation by the landlord and the landlord has failed to discharge his liability therefor within the period of one month from the date on which the sum became payable, the Secretary of State may, on the application of the tenant and after giving not less than fourteen days' notice of his intention so to do to the landlord, create, where the landlord is the absolute owner of the holding, a charge on the holding, or where the landlord is the lessee of the holding under a lease recorded under the Registration of Leases (Scotland) Act, 1857, a charge on the lease, for the payment of the sum due.
- (2) For the purpose of creating a charge under this section for the payment of any sum due, the Secretary of State may make in favour of the tenant a charging order charging and burdening the holding or the lease, as the case may be, with an annuity to repay the sum due together with the expenses of obtaining the charging order and recording it in the appropriate Register of Sasines; and the provisions of subsection (2) and subsections (4) to (10) of section fifty-five of the Water (Scotland) Act, 1946, shall with the following and any other necessary modifications apply to any such charging order—
- (a) for any reference to the local authority there shall be substituted a reference to the Secretary of State;
  - (b) for any reference to the period of thirty years there shall be substituted a reference to such period (not exceeding thirty years) as the Secretary of State may determine;
  - (c) for references to Part III of the said Act of 1946 there shall be substituted references to the Agricultural Holdings (Scotland) Acts, 1923 to 1948.
- (3) The creation of a charge on a holding or the lease of a holding under this section shall not be deemed to be a contravention of any prohibition against charging or burdening contained in the deed or instrument under which the holding is held.

**19 Power of landlord to enter on holding.**

Without prejudice to the provisions of section thirty-two of the Act of 1923 (which confers on a landlord power to enter to view the state of a holding), the landlord of a holding or any person authorised by him may at all reasonable times enter on the holding for the purpose of fulfilling the landlord's responsibilities to manage the holding in accordance with the rules of good estate management, or for the purpose of providing, improving, replacing or renewing fixed equipment on the holding otherwise than in fulfilment of his said responsibilities.

**20 Right of landlord to object to heir-at-law of tenant succeeding to holding.**

- (1) Within three months after the right to the lease of a holding devolves upon the heir-at-law of the tenant the landlord, if he objects to receive the heir-at-law as tenant under the lease, may make application to the Land Court for an order terminating the interest of the heir-at-law in the holding.
- (2) If on the hearing of such application any reasonable ground of objection is established to the satisfaction of the Land Court, they shall make an order terminating the interest of the heir-at-law in, and requiring him to give up his occupation of, the holding.
- (3) The termination of the interest of the heir-at-law under this section shall be treated, for the purposes of the provisions relating to compensation of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, as the termination of his tenancy of the holding; but nothing in this section shall be construed as entitling him to any compensation for disturbance.
- (4) The Land Court may, on cause shown, direct that while proceedings are pending under this section the heir-at-law shall not have possession of the holding.

**21 Provisions as to payment for implements etc. sold on quitting holding.**

- (1) Where a tenant has entered into an agreement, or it is a term of the lease of the holding, that the tenant will on quitting the holding sell to the landlord or to the incoming tenant any implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, it shall be deemed, notwithstanding anything in the agreement or in the lease of the holding to the contrary, to be a condition of the agreement or of the lease, as the case may be, that the property in the goods shall not pass to the buyer until the price is paid and that payment of the price shall be made within one month after the tenant has quitted the holding or, if the price of the goods is to be ascertained by a valuation, within one month after the delivery of the award in the valuation.
- (2) Where payment of the price is not made within one month as aforesaid the outgoing tenant shall be entitled to sell or remove the goods and to receive from the landlord or the incoming tenant, as the case may be, by whom the price was payable compensation of an amount equal to any loss or expense unavoidably incurred by the outgoing tenant upon or in connection with such sale or removal together with any expenses reasonably incurred by him in the preparation of his claim for compensation.
- (3) Any question arising as to the amount of compensation payable under the last foregoing subsection shall be determined by arbitration.



## **22 Provisions as to arbitration.**

(1) Without prejudice to any other provision of this Act or of the Act of 1923, any claim of whatever nature by the tenant or the landlord of a holding against his landlord or his tenant, being a claim which arises—

- (a) under the Agricultural Holdings (Scotland) Acts, 1923 and 1931, or this Act or any custom or agreement, and
- (b) on or out of the termination of the tenancy of the holding or part thereof after the commencement of this Part of this Act,

shall, subject to the provisions of this section, be determined by arbitration.

(2) Without prejudice to any other provision of this Act or of the Act of 1923, no such claim as aforesaid shall be enforceable unless before the expiration of two months from the termination of the tenancy the claimant has served notice in writing on his landlord or his tenant, as the case may be, of his intention to make the claim.

A notice under this subsection shall specify the nature of the claim, and it shall be a sufficient specification thereof if the notice refers to the statutory provision, custom, or term of an agreement under which the claim is made.

(3) The landlord and the tenant may within the period of four months from the termination of the tenancy by agreement in writing settle any such claim as aforesaid, and the Secretary of State may upon the application of the landlord or the tenant made within that period extend the said period by two months and, on a second such application made during those two months, by a further two months.

(4) Where before the expiration of the said period and any extension thereof under the last foregoing subsection any such claim as aforesaid has not been settled, the claim shall cease to be enforceable unless before the expiration of one month from the end of the said period and any such extension, or within such longer time as the Secretary of State may in special circumstances allow, an arbiter has been appointed by agreement between the landlord and the tenant under the provisions in that behalf of the Act of 1923, or an application for the nomination of an arbiter under those provisions has been made by the landlord or the tenant.

(5) Where a tenant lawfully remains in occupation of part of a holding after the termination of a tenancy, references in subsections (2) and (3) of this section to the termination thereof shall be construed as references to the termination of the occupation.

(6) Nothing in section forty-six of the Act of 1923 (which contains a general saving for the remedies of a landlord or tenant) shall be construed as limiting the generality of the provisions of subsection (1) of this section.

(7) Subsection (1) of section six and subsection (2) of section fifteen of the Act of 1923 (which relate to the reference of matters to arbitration) shall cease to have effect; and in subsection (1) of the said section fifteen for the words from the beginning to " any other question or difference " there shall be substituted the words " Save as otherwise expressly provided in this Act, any question or difference ".

## **23 Revision of panel of arbiters.**

(1) Section seventeen of the Act of 1923 (which provides for the constitution of a panel of arbiters) shall have effect as if at the end of subsection (1) there were added the following words—

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“The panel of arbiters constituted under this subsection shall be subject to revision by the Lord President of the Court of Session, after such consultation as aforesaid, as soon as may be after the passing of the Agriculture (Scotland) Act, 1948, and at such intervals thereafter, not exceeding five years, as the Lord President and the Secretary of State may from time to time agree.”

(2) This section shall come into operation on the passing of this Act.

#### **24 Minor and consequential amendments relating to Part I.**

The enactments specified in the Ninth Schedule to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential on the provisions of this Part of this Act.

#### **25 Construction, citation and application of Part I.**

- (1) The provisions of this Part of this Act and the Schedules therein referred to shall be construed as one with the Agricultural Holdings (Scotland) Acts, 1923 and 1931; and those Acts and those provisions may be cited together as the Agricultural Holdings (Scotland) Acts, 1923 to 1948.
- (2) Without prejudice to section forty of the Act of 1923 (which relates to land belonging to His Majesty in right of the Crown) it is hereby declared that the provisions of the Agricultural Holdings (Scotland) Acts, 1923 and 1931, and this Part of this Act and the Schedules therein referred to apply to land notwithstanding that the interest of the landlord or the tenant thereof belongs to a government department or is held on behalf of His Majesty for the purposes of any government department; but in the application thereof to any land belonging, or an interest in which is held, as aforesaid the said provisions shall have effect subject to such modifications as may be prescribed.

## **PART II**

### **GOOD ESTATE MANAGEMENT AND GOOD HUSBANDRY.**

#### **26 Duties of good estate management and good husbandry.**

- (1) The following provisions of this Part of this Act shall have effect for the purpose of securing that owners of agricultural land fulfil their responsibilities to manage the land in accordance with the rules of good estate management, and that occupiers of agricultural land fulfil their responsibilities to farm the land in accordance with the rules of good husbandry.
- (2) The provisions of the Fifth Schedule and of the Sixth Schedule to this Act shall have effect respectively for the purpose of determining for the purposes of this Act whether the owner of agricultural land is fulfilling his responsibilities to manage it in accordance with the rules of good estate management, and whether the occupier of an agricultural unit is fulfilling his responsibilities to farm it in accordance with the rules of good husbandry.

## **27 Powers of Secretary of State in cases of bad estate management or bad husbandry.**

- (1) Where the Secretary of State is satisfied that the owner of agricultural land is not fulfilling his responsibilities to manage the land in accordance with the rules of good estate management, or that the occupier of an agricultural unit is not fulfilling his responsibilities to farm the unit in accordance with the rules of good husbandry, the Secretary of State may, after affording to the owner or the occupier, as the case may be, an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, serve on such owner or occupier a notice (hereafter in this Part of this Act referred to as a "warning notice") to that effect, and so long as such notice continues in force—
  - (a) any person authorised by the Secretary of State in that behalf may at all reasonable times enter upon the land to which the notice relates for the purpose of inspecting the way in which it is being managed or farmed, as the case may be;
  - (b) the Secretary of State shall have the powers of direction and dispossession conferred by the following provisions of this Part of this Act.

For the avoidance of doubt it is hereby declared that the fact that a person is both the occupier of the unit and also the owner of the unit or part thereof does not prevent the serving of notices under this subsection both in relation to fanning and in relation to management.

- (2) A warning notice served under the last foregoing subsection shall specify the general grounds on which the Secretary of State is satisfied as mentioned in subsection (1) of this section.
- (3) While a warning notice is in force the Secretary of State shall within twelve months from the date on which the warning notice becomes effective and thereafter at intervals of not more than twelve months while the warning notice is in force review the management (if the notice relates to management) or the farming (if the notice relates to farming) of the land or agricultural unit to which the notice relates; and if he is satisfied that by reason of the standard of management or farming, as the case may be, attained by the person to whom the notice relates it is no longer necessary that the notice should continue in force, the Secretary of State shall withdraw the notice, and shall give notice in writing to the person to whom the notice relates that he has done so, or if he is not so satisfied the Secretary of State shall inform the person to whom the warning notice relates that the warning notice is to continue in force;

Provided that the withdrawal of the notice shall not affect any direction given thereunder in so far as it is in force immediately before the withdrawal of the notice.

- (4) Where the owner of land is not also the occupier thereof—
  - (a) an opportunity of making representations to the Secretary of State shall be afforded under subsection (1) of this section both to the owner and to the occupier, and not only to the person on whom the Secretary of State is considering serving the notice;
  - (b) forthwith after serving a warning notice on, or giving notice of the withdrawal or of the continuance of a warning notice to the owner or the occupier, as the case may be, the Secretary of State shall serve a copy of the notice on, or give notice in writing of the withdrawal or of the continuance to the other party.

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- (5) If while a warning notice is in force in relation to the farming of an agricultural unit additional land becomes comprised in the unit, the notice shall by virtue of this subsection extend to the farming of that additional land; and references in this Act to the coming into operation of the notice shall be construed as references to the date at which the notice originally came into operation as well in relation to the additional land as in relation to any other land to which the notice relates:

Provided that nothing in this subsection shall be construed as imposing on any person any liability with respect to the additional land at a date before it became part of the said agricultural unit.

**28 Changes of owner or occupier effected without approval of Secretary of State not to invalidate warning notices.**

Where a warning notice is in force, any transfer of any interest in the land to which the notice relates, otherwise than by a testamentary disposition or by operation of law, whereby some other person becomes the owner or the occupier of that land shall not, unless approved by the Secretary of State either before or after the transfer is completed, affect the continued operation of the notice, and accordingly in default of such approval the notice shall continue in force so far as it relates to that land (but subject to the provisions of subsection (3) of the last foregoing section) as if it had been served on the new owner or occupier, as the case may be, as well as on the former owner or occupier.

*Directions to secure good estate management and good husbandry.*

**29 Directions to secure good estate management and good husbandry.**

- (1) Where a warning notice is in force, the Secretary of State, after affording to the person to whom the notice relates an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, may by notice in writing served on the person to whom the notice relates give to that person such directions as the Secretary of State is satisfied are required—
- (a) where the notice relates to the management of land, to secure that the said person fulfils his responsibilities to manage the land in accordance with the rules of good estate management;
  - (b) where the notice relates to the farming of an agricultural unit, to secure that the said person fulfils his responsibilities to farm the unit in accordance with the rules of good husbandry.
- (2) Without prejudice to the generality of the provisions of the last foregoing subsection, in so far as it appears to the Secretary of State requisite for the purposes of that subsection—
- (a) a direction under paragraph (a) thereof may impose requirements, restrictions or prohibitions as to the carrying out of work and may require that the management to which the direction relates shall be entrusted to a person appointed by the owner to whom the notice relates and approved, by the Secretary of State;
  - (b) a direction under paragraph (b) thereof may impose requirements, restrictions or prohibitions as to the carrying out of work and as to the purpose for which and the manner in which land is to be used for agricultural production:

Provided that a direction under the said paragraph (b) shall not be given to the tenant of a holding (as defined in the Act of 1923) to carry out on the holding any improvement falling within Part I of the First Schedule to that Act unless either the landlord has consented to the carrying out of the improvement or, by virtue of the provisions of the Act of 1923 and this Act relating to market gardens, compensation for the carrying out of the improvement does not depend on the landlord's consent thereto.

- (3) Any direction requiring only the doing of one or more of the following things, that is to say, the provision, improvement, replacement, renewal, maintenance or repair of fixed equipment which could be given under subsection (1) of this section while a warning notice is in force may be given notwithstanding that no such notice is in force.
- (4) Any direction under this section requiring the provision or improvement of fixed equipment on a holding (as defined in the Act of 1923) or such replacement or renewal of fixed equipment thereon as has been rendered necessary by natural decay or fair wear and tear shall, notwithstanding the terms of any lease to which he may be a party, be given to the owner of the land.
- (5) If any person to whom a direction is given under this section contravenes or fails to comply with the direction, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.
- (6) Without prejudice to the bringing of proceedings under the last foregoing subsection, where a direction under this section to carry out any work is not complied with and the Secretary of State is satisfied that an adequate opportunity has been afforded to the person to whom the direction has been given to carry out the direction, any person authorised by the Secretary of State in that behalf may enter upon the land to which the direction relates and any other land managed or, as the case may be, farmed in conjunction therewith, and carry out the work required by the direction, and the reasonable cost of carrying out work in the exercise of powers conferred by this subsection shall be recoverable by the Secretary of State from the person to whom the direction was given.
- (7) Any question arising under the last foregoing subsection as to what is the reasonable cost of any work shall be determined by an arbiter appointed in default of agreement in accordance with the provisions of the Act of 1923.
- (8) Any person who obstructs a person acting in the exercise of powers conferred by subsection (6) of this section shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.
- (9) Where a direction under this section provides for the doing of anything within a specified time and (whether before or after the expiration of the said time) the Secretary of State is satisfied that it is reasonable that the said time should be extended, he may extend it accordingly.

### **30 Supplementary provisions as to directions.**

- (1) The Secretary of State shall not give to the owner of land consisting of or comprised in any agricultural unit a direction under the last foregoing section to provide fixed equipment on that land until, after affording to the owner an opportunity of making representations to the Secretary of State, as required by subsection (1) thereof, the Secretary of State has given to the owner notice in writing of the proposal to give the

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direction, specifying the nature of the direction which the Secretary of State proposes to give.

The references in this and in the next succeeding subsection to the provision of fixed equipment include references to the improvement, replacement or renewal thereof, the provision thereof by the conversion of existing fixed equipment and the improvement thereof by the enlargement of buildings.

- (2) An owner to whom notice of a proposal is given under the last foregoing subsection may require that the proposal shall be referred to the Land Court, and the provisions of Part VI of this Act shall apply accordingly, either in any case in which the owner proves to the satisfaction of the . Court that—
- (a) the estimated reasonable cost of the work involved in the proposal, and
  - (b) the cost borne by the owner of any other work for providing fixed equipment on the agricultural unit carried out within the two years immediately preceding the service of the notice, being work requisite for compliance with the owner's responsibilities to manage in accordance with the rules of good estate management,

together exceed the annual value of the land owned by him and comprised in the agricultural unit, or in any case in which either an authority or person has, at the time when the notice is given, power without further authorisation to acquire compulsorily the land to which the notice relates, or at that time that land is designated by a development plan under the enactments relating to town and country planning as subject to compulsory acquisition, or is designated by an order under section one of the New Towns Act, 1946.

For the purposes of this subsection, the annual value of land shall be taken to be the gross annual value thereof as entered in the valuation roll in force at the time when the notice under the last foregoing subsection was given, or, if the land is not separately entered in the valuation roll, such proportion of the gross annual value as so entered of the lands and heritages of which it forms part as the Land Court may determine to be appropriate.

- (3) Where a direction is proposed to be given under the last foregoing section to an owner who is not the occupier of the land in question or to an occupier who is not the owner thereof, and the proposed direction would require the provision, improvement, replacement, renewal, maintenance or repair of fixed equipment, or the ploughing-up of permanent pasture, an opportunity of making representations to the Secretary of State shall be afforded under subsection (1) of the last foregoing section both to the owner and to the occupier, and not only to the person to whom it is proposed to give the direction.
- (4) The provisions of the Third Schedule to this Act shall have effect where a direction is given under the last foregoing section requiring the ploughing-up of permanent pasture or the carrying out of other acts of cultivation.
- (5) Where a direction has been given under the last foregoing section to an owner requiring him to carry out any work on land of which he is not also the occupier, he or any person authorised by him may at all reasonable times enter on the land and carry out the work specified in the direction.

*Dispossession of owners or occupiers on grounds  
of bad estate management or bad husbandry.*

**31 Dispossession on grounds of bad estate management.**

- (1) Where a warning notice is in force in relation to the management of land, and the Secretary of State is satisfied that the management thereof does not while the notice is in force show satisfactory improvement, and certifies accordingly, the Secretary of State shall, subject to the provisions of this section, have power to purchase compulsorily in accordance with the provisions of this Act in that behalf the land to which the notice relates or any part of that land.
- (2) Where the Secretary of State proposes to purchase any land under the last foregoing subsection and is satisfied that it is necessary for the purpose of securing the proper management thereof that he should acquire any other adjacent or contiguous land which is being managed by the same person in conjunction with the first-mentioned land, and certifies accordingly, the Secretary of State shall, subject to the provisions of this section, have power to purchase that other land compulsorily in accordance with the provisions aforesaid.
- (3) Where any person having an interest in land, by notice in writing served on the Secretary of State within six months of the giving by the Secretary of State of a certificate under the foregoing provisions of this section relating to any other land, represents to the Secretary of State that the first-mentioned land was at the time when the certificate was given being managed in conjunction with that other land and that it is not reasonably practicable to manage it except in conjunction therewith, and requires that the Secretary of State shall purchase the said interest, then unless the Secretary of State is satisfied that the representation is not justified and certifies accordingly before the expiration of the prescribed period, the Secretary of State shall be deemed on the date on which the said period expires to have been authorised to purchase the interest compulsorily in accordance with the provisions of this Act in that behalf and to have served a notice to treat in respect of the interest on that date.

The power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this subsection.

- (4) The Secretary of State shall not give any certificate under subsection (1), (2) or (3) of this section until, after affording to any such person as is specified in subsection (6) of this section an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, the Secretary of State has given to any such person as is so specified notice in writing of the proposal to give the certificate together with such particulars as appear to the Secretary of State requisite for informing him of the general grounds on which the Secretary of State is satisfied as mentioned in subsection (1) of this section.
- (5) Any person to whom notice of a proposal is given under the last foregoing subsection may require that the proposal shall be referred to the Land Court, and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- (6) The persons referred to in subsection (4) of this section are—
  - (a) in the case of a proposed certificate under subsection (1) or (2) of this section, every person on whom under paragraph 3 of the First Schedule to

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the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947, a notice would be required to be served of a proposed compulsory purchase order under that Act authorising the compulsory purchase of the land to which the proposed certificate is to relate;

- (b) in the case of a proposed certificate under subsection (3) of this section, the person by whom the representation in question was made.

- (7) No certificate under subsection (1) or (2) of this section shall be given until not less than twelve months has expired from the coming into operation of the warning notice in question, except where the person who for the time being is the owner to whom the notice relates has failed to comply with any direction under the foregoing provisions of this Part of this Act given to him as the owner—

- (a) in the case of a proposed certificate under subsection (1) of this section, of the land to which the proposed certificate is to relate,
- (b) in the case of a proposed certificate under subsection (2) thereof, of the land proposed to be acquired under subsection (1) of this section;

and no person on whom a notice to treat is served under powers conferred by either of the said subsections (1) and (2) shall be required to convey his interest to the Secretary of State, or, if he is in occupation of the land in question, to give up the occupation thereof, before the expiration of three months from the service of the notice to treat.

### **32 Dispossession on grounds of bad husbandry.**

- (1) Where a warning notice is in force in relation to the farming of an agricultural unit, and the Secretary of State is satisfied that the farming thereof does not while the notice is in force show satisfactory improvement, then subject to the provisions of this section—
  - (a) where in the case of any land comprised in the unit the occupier is not the owner thereof, the Secretary of State shall have power by order to terminate the occupier's interest in, and to require him to give up his occupation of, that land, or any part thereof specified in the order, as from such date not earlier than three months after the making of the order as may be specified therein, and to require that the owner shall as from the said date either farm it himself, if he so elects and the Secretary of State approves, or let it to a tenant approved by the Secretary of State;
  - (b) where in the case of any land comprised in the unit the occupier is the owner thereof, the Secretary of State shall have power by order to direct that as from such date as aforesaid the occupier shall give up his occupation of that land, or any part thereof specified in the order, and let it to a tenant approved by the Secretary of State:

Provided that in any case where under this subsection the approval of the Secretary of State is withheld the owner may require that the matter shall be referred to the Land Court and the provisions in that behalf of Part VI of this Act shall apply accordingly.

- (2) The Secretary of State shall not make an order, under the last foregoing subsection until, after affording to the occupier and, in the case of a proposal to make an order under paragraph (a) thereof, to the owner of the land to which the proposed order is to relate an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, the Secretary of State has given to the occupier, and in such a case as aforesaid to the said owner, notice in writing of the proposal to make the order, together with such particulars as appear to the Secretary of State requisite for informing the recipient of the notice



of the general grounds on which the Secretary of State is satisfied as mentioned in subsection (1) of this section.

- (3) The Secretary of State, before making an order under subsection (1) of this section in the case of any land which is situated in a crofting parish and is occupied by a landholder or a statutory small tenant, shall take into consideration the general circumstances of the occupier, including his employment, if any, in one or more of the occupations commonly followed as subsidiary or auxiliary to the cultivation of a holding, and the need of the occupier for the land as a place of residence.

In this subsection the expressions " crofting parish," " landholder," " statutory small tenant " and " holding " have the like meanings as in the Small Landholders (Scotland) Acts, 1886 to 1931.

- (4) An occupier or owner to whom notice of a proposal is given under subsection (2) of this section may require that the proposal shall be referred to the Land Court, and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- (5) No order under subsection (1) of this section shall be made until not less than twelve months has expired from the coming into operation of the warning notice in question, except where the person who for the time being is the occupier to whom the notice relates has failed to comply with any direction under the foregoing provisions of this Part of this Act given to him as the occupier of land comprised in the agricultural unit to which the proposed order under subsection (1) of this section is to relate.
- (6) For the avoidance of doubt it is hereby declared that the termination under paragraph (a) of subsection (1) of this section of the interest of a tenant in any land is to be treated, for the purposes of the provisions relating to compensation of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, as the termination of his tenancy of the land, but nothing in this section shall be construed as entitling the tenant to any compensation for disturbance.
- (7) Where under paragraph (a) of subsection (1) of this section an order is made terminating the interest of a tenant in part only of a holding (as defined in the Act of 1923),—
- (a) the said provisions relating to compensation shall apply as if the part to which the order relates were - a separate holding; and
  - (b) the tenant shall be entitled to a reduction of rent proportionate to the value of the part to which the order relates, and the amount of that reduction shall, in default of agreement, be determined by arbitration under the Act of 1923.
- (8) A certified copy of an order under subsection (1) of this section requiring an occupier to give up his occupation of any land shall be a sufficient warrant for ejection against the occupier or any party in his right in the event of noncompliance with such order.

### **33 Power of Secretary of State to take possession where occupier dispossessed and no other arrangements made.**

- (1) Where, at the date as from which a person is required under paragraph (a) or (6) of section (i) of the last foregoing section himself to farm any land or to let it to a person approved by the Secretary of State, the person on whom the requirement is imposed has not complied therewith, the Secretary of State may take possession of the land for the purpose of farming it, and—

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- (a) on the Secretary of State taking possession of the land any tenancy thereof granted without the approval of the Secretary of State and since the imposition of the requirement shall be deemed to have terminated by reason of a notice to quit duly given by the landlord, and
  - (b) the Secretary of State may by order require the tenant whose tenancy is deemed to have terminated as aforesaid to give up his occupation of the land.
- (2) While the Secretary of State is in possession of land under this section it shall be his duty to secure that it is farmed in accordance with the rules of good husbandry either—
- (a) by a person acting under the direction of the Secretary of State, or
  - (b) by a person entrusted by the Secretary of State with the farming thereof on such terms, being terms which in the opinion of the Secretary of State would be 'appropriate to a letting thereof to a tenant from year to year, as may be agreed between the Secretary of State and the said person;
- and subject to the provisions of this section the Secretary of State and the person who, apart from any tenancy deemed to have terminated under paragraph (a) of subsection (1) of this section, for the time being would be entitled to possession of the land but for the exercise by the Secretary of State of his powers under this section (hereafter in this section referred to as "the landlord") shall have the like rights against and liabilities to each other as if the Secretary of State were a tenant of the land under a tenancy from year to year beginning on the date on which the Secretary of State took possession of the land and granted by the landlord under a lease containing such provisions (other than provisions as to rent or any such payment as is mentioned in the next following subsection) as may be agreed between the Secretary of State and the landlord, and providing for the making of payments by the Secretary of State of such amounts at such times as a tenant under such a lease might reasonably be expected to make by way of rent.
- (3) On the Secretary of State taking possession of land under this section there shall be ascertained—
- (a) the amount (if any) in addition to rent which might reasonably have been expected to be payable by an incoming tenant, under the lease referred to in the last foregoing subsection, in respect of things previously done for the purposes of the farming of the land, and in respect of seeds, tillages, growing crops and other matters;
  - (b) the cost of the carrying out of any work which under the rules of good husbandry or under the lease ought to have been carried out on the land by the occupier before the Secretary of State took possession thereof, being work which is necessary for putting the land into good tenantable condition;
- and if the said amount is greater than the said cost the difference shall be recoverable from the Secretary of State by the landlord, and if less the difference shall be recoverable from the landlord by the Secretary of State.
- (4) Where the Secretary of State has taken possession of land under this section in consequence of the termination of the interest of a tenant, then, without prejudice to his responsibilities under the rules of good estate management, the landlord shall be liable to the Secretary of State to carry out any work which under the lease with the tenant he was liable to carry out, being work which is necessary for putting the land into good tenantable condition; and any such liability shall be enforceable by the Secretary of State in like manner as if it were imposed by the lease referred to in subsection (2) of this section.

- (5) The Secretary of State shall be entitled to continue in possession of land under this section—
- (a) where it is being farmed by a person acting under the direction of the Secretary of State, and it is shown to the Secretary of State that the landlord has made arrangements satisfactory to the Secretary of State for the farming of the land by himself or by a person approved by the Secretary of State, until the next twenty-eighth day of May or twenty-eighth day of November as may be specified in a notice in writing served on the Secretary of State by the landlord not later than two months before the said day;
  - (b) where it is being farmed by a person to whom the Secretary of State has entrusted the farming thereof, until that person is entitled to possession of the land as tenant thereof under an agreement with the landlord approved by the Secretary of State.
- (6) Nothing in subsection (2) of this section shall entitle the Secretary of State, on giving up possession of land, to compensation for disturbance; but save as aforesaid that subsection shall apply as if when the Secretary of State gives up possession he were quitting the land on the termination of the tenancy referred to in that subsection by notice to quit duly given by the landlord.
- (7) The enactments relating to income tax, and in particular such of those enactments as relate to the deduction of tax from rent and to the taxation of excess rents, shall apply—
- (a) in relation to payments made under subsection (2) of this section by the Secretary of State to the landlord, as if the Secretary of State were a tenant and the landlord were a lessor of the land under such a lease as is mentioned in the said subsection (2) and the payments were rent paid thereunder;
  - (b) in relation to payments made by any such person as is mentioned in paragraph (b) of that subsection to the Secretary of State, as if the said person were a tenant and the Secretary of State were a lessor of the land under such a letting as is mentioned in the said paragraph (b) and the payments were rent paid thereunder.
- (8) Any question arising under subsections (2) to (6) of this section between the Secretary of State and the landlord shall, in default of agreement, be determined by arbitration under the Act of 1923.
- (9) A certified copy of an order under subsection (1) of this section requiring a tenant to give up his occupation of any land shall be a sufficient warrant for ejection against the tenant or any party in his right in the event of non-compliance with such order.

#### **34 Power of tenant or landlord to apply for dispossession of owner or occupier.**

- (1) On any review under subsection (3) of section twenty-seven of this Act of the management of land or the farming of an agricultural unit of which the owner is not also the occupier.—
- (a) if the review is of management, the Secretary of State shall consider any request made by the occupier that the Secretary of State shall exercise his powers under subsection (1) of section thirty-one of this Act in relation to the land;
  - (b) if the review is of farming, the Secretary of State shall consider any request made by any owner of land comprised in the agricultural unit that the Secretary

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of State shall exercise his powers under subsection (1) of section thirty-two of this Act in relation to the said land.

- (2) Where such a request is made the Secretary of State shall not comply therewith unless he is satisfied that the management or the farming, as the case may be, has not shown satisfactory improvement while the warning notice has been in force, but save as aforesaid may, subject to the provisions of this section, either comply with or refuse the request.
- (3) If the Secretary of State proposes to refuse such a request, he shall give notice in writing of his proposal to the owner and to the occupier.
- (4) If before the expiration of the prescribed period from the making of such a request no notice has been given either under the last foregoing subsection of a proposal to refuse the request or under section thirty-one or thirty-two of this Act of a proposal complying with the request, the Secretary of State shall be deemed to have given notice of his proposal to refuse the request.
- (5) Where notice of a proposal to refuse such a request is given or deemed to have been given the person by whom the request was made may require that the proposal shall be referred to the Land Court and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- (6) Where in consequence of a report of the Land Court on a reference under the last foregoing subsection the Secretary of State complies with such a request as aforesaid, the provisions of subsections (4) and (5) of section thirty-one of this Act or subsections (2) and (4) of section thirty-two thereof, as the case may be, shall not apply to any action of the Secretary of State necessary to comply with the request.

*Special directions to secure production.*

### **35 Special directions to secure production.**

- (1) Where it appears to the Secretary of State necessary so to do in the interest of the national supply of food or other agricultural products, he may by statutory instrument order that all or any of the powers conferred on him by the next following subsection shall be exercisable by him for a period of one year from the making of the instrument, or in the case of an instrument made before the first day of January, nineteen hundred and fifty, and confined to the powers conferred by paragraph (d) of the next following subsection, for the period ending with the thirty-first day of December in that year.
- (2) During the period for which the said powers are exercisable the Secretary of State may by notice in writing served on the person occupying or entitled to occupy any agricultural land give such directions—
  - (a) as to the use of the land for any of the purposes of agriculture and the manner in which and the produce for which it is to be so used;
  - (b) as to the carrying out of any work required to enable the land to be used as directed under paragraph (a) of this subsection,
  - (c) as to any other matters as to which directions may be given to an occupier of an agricultural unit where a warning notice under this Part of this Act is in force in relation to his farming of the unit,
  - (d) without prejudice to the general powers conferred by the foregoing paragraphs, as to the maximum area of land which may be maintained on an

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agricultural unit under pasture laid down with clover, grass, lucerne, sainfoin or other seeds or under herbage crops grown for commercial seed production, as appear to the Secretary of State expedient in the interest aforesaid and reasonable having regard to the character and situation of the land and other relevant circumstances.

- (3) If any person to whom a direction is given under this section contravenes or fails to comply with the direction, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.
- (4) Subsections (6) to (9) of section twenty-nine of this Act shall apply in relation to directions under this section as they apply in relation to directions under the said section twenty-nine.
- (5) The provisions of the Third Schedule to this Act shall have effect where a direction is given under this section requiring the ploughing-up of permanent pasture or the performing of other acts of cultivation.
- (6) Nothing done or omitted by an occupier in pursuance of a direction under this section shall be treated as a failure to fulfil his responsibilities to farm land in accordance with the rules of good husbandry, so long as the act or omission was reasonably necessary in consequence of the giving of the direction.
- (7) Any period for which the powers conferred on the Secretary of State by subsection (2) of this section are exercisable shall be extended by a further year if the Secretary of State by statutory instrument made not earlier than one month before the date on which the said period would otherwise expire orders that the said period shall be so extended.
- (8) The expiration of the said period shall not affect the operation of any direction under this section previously given.
- (9) A statutory instrument made under this section shall be of no effect unless approved by resolution of each House of Parliament:

Provided that if at the time when such an instrument is made Parliament is dissolved or prorogued or both Houses are adjourned for more than four days, the foregoing provisions of this subsection shall not apply but the instrument shall be laid before Parliament as soon as may be and shall cease to have effect unless approved by resolution of each House of Parliament before the expiration of the twenty-eighth day on which that House has sat after the instrument is laid before it.

### **36 Special directions as to stocking of deer forests and grouse moors.**

- (1) Where it appears to the Secretary of State desirable in the interests of food production that steps should be taken for the purpose of promoting, maintaining or increasing the stocking with sheep or cattle, or with both sheep and cattle, of any land forming part of a deer forest or of a grouse moor, the Secretary of State may by notice in writing served on the owner, or, where part of such land is let for agricultural purposes, on the occupier of that part, give such directions as appear to the Secretary of State expedient for the purpose aforesaid.
- (2) The Secretary of State shall not give to the owner or the occupier, as the case may be, of any land a direction under subsection (1) of this section until, after affording to him an opportunity of making representations to the Secretary of State, whether in

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writing or on being heard by a person appointed by the Secretary of State, the Secretary of State has given to the owner or the occupier notice in writing of the proposal to give the direction, specifying the nature of the direction which the Secretary of State proposes to give.

- (3) Where a direction is proposed to be given under this section to an occupier, an opportunity of making representations to the Secretary of State shall be afforded, and notice in writing of the proposal to give the direction shall be given, to the owner of the land as well as to the occupier.
- (4) Any person to whom notice of a proposal is given under this section may require that the proposal shall be referred to the Land Court, and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- (5) Subsections (5) and (9) of section twenty-nine of this Act shall apply in relation to a direction, under this section as they apply in relation to a direction under the said section twenty-nine.
- (6) Where the person to whom a direction has been given under this section has contravened or failed to comply with the direction, then—
  - (a) if that person is the owner of the land to which the direction relates, the Secretary of State shall have power to purchase the land or any part thereof compulsorily as if a warning notice had been in force in relation thereto for not less than twelve months and the Secretary of State were satisfied that the management thereof had not, during that period, shown satisfactory improvement, and the provisions of section thirty-one of this Act shall, subject to any necessary modifications, apply accordingly;
  - (b) if that person is the occupier of the land to which the direction relates, the Secretary of State shall have the like powers in relation to the land as if it were an agricultural unit in relation to the farming of . ' which a warning notice had been in force for not less than twelve months and the Secretary of State were satisfied that the farming thereof had not, during that period, shown satisfactory improvement, and the provisions of sections thirty-two and thirty-three of this Act shall, subject to any necessary modifications, apply accordingly.

*Supplementary.*

**37 Service of notices on agents.**

Without prejudice to the general provisions of Part VII of this Act as to the service of notices, any warning notice and any other notice required or authorised by the provisions of this Part of this Act relating to warning notices or to the giving of directions to be served on an owner or occupier shall, where an agent or servant of the owner or occupier is responsible for the control of the management or farming, as the case may be, of the land in question, be duly served if served on that agent or servant:

Provided that where by virtue of this subsection any notice is served in connection with a direction to entrust the management of land to a person approved by the Secretary of State a copy of the notice shall be served on the owner.

### **38 Interpretation of references in Part II to "owner" and "manager".**

- (1) In this Part of this Act, the expression "owner", subject to the provisions of the next following subsection, means the person who for the time being is the proprietor of the *dominium utile* or, in the case of land other than feudal land, is the owner thereof.
- (2) Where, in relation to all or any of the provisions of this Part of this Act.—
  - (a) all persons appearing to the Secretary of State to be concerned agree, with the approval of the Secretary of State, that some person shall be treated as the owner of land other than the person who would be so treated apart from the agreement, or
  - (b) on an application in that behalf the Land Court determine, having regard to, the respective interests of the persons interested in the land, that some person shall be treated as the owner of the land other than the person who would be so treated apart from the determination,that person shall be so treated, but without prejudice to a subsequent agreement or determination or to his ceasing to be so treated if the Secretary of State withdraws his approval under paragraph (a) of this subsection.
- (3) Any question arising under this Part of this Act whether two parcels of land are being managed by the same person shall be determined, if the management of either or both of the parcels is under the control of an agent or servant, by reference to the person by whom the agent or servant is employed and not by reference to the agent or servant.

## **PART III**

### **CONTROL OF INJURIOUS ANIMALS, BIRDS AND WEEDS.**

#### *Prevention of damage by injurious animals and birds.*

### **39 Control of injurious animals and birds.**

- (1) If it appears to the Secretary of State that it is expedient so to do for the purpose of preventing damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on land, he may by notice in writing served on any person having the right so to do require that person to take, within such time as may be specified in the notice, such steps as may be so specified for the killing, taking or destruction on land so specified of such animals or birds to which this section applies as may be so specified or the eggs of such birds.
- (2) A requirement shall not be imposed under the last foregoing subsection if apart from this subsection the killing, taking or destruction in question would be prohibited by law:

Provided that a requirement may be so imposed to kill or destroy game within the meaning of the Game (Scotland) Act, 1772, at a time of year at which apart from this proviso the killing or destruction would be prohibited by section one of that Act; and for the purposes of the last foregoing subsection a person shall not be deemed not to have the right to comply with a requirement falling within this proviso by reason only that apart from this proviso compliance therewith would be prohibited as aforesaid.
- (3) The animals to which this section applies are rabbits, hares and other rodents, deer, foxes and moles, and the birds to which this section applies are, in relation to any

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area, wild birds other than those the killing or taking of which is for the time being prohibited in that area by the Wild Birds Protection Acts, 1880 to 1939, or by any order made by the Secretary of State under those Acts; and this section shall apply to such other animals as may be prescribed:

Provided that regulations under this subsection may provide that for the purposes of section forty-nine of this Act any such other animals specified in the regulations shall not be treated as animals to which this section applies.

- (4) The Secretary of State may with the approval of the Treasury make contributions towards the expenses incurred or to be incurred by any person or body of persons in killing, taking or destroying animals or birds to which this section applies or the eggs of such birds.

#### **40 Prevention of escape of captive animals.**

If it appears to the Secretary of State that, for the purpose of preventing such damage as is mentioned in the last foregoing section, it is expedient to prevent the escape of any animals from land on which they are kept in captivity, the Secretary of State may by notice in writing served on the occupier of the land require him to take within such time as may be specified in the notice such steps to prevent the escape thereof, as may be specified in the notice.

#### **41 Supplementary provisions as to s. 39 and s. 40.**

- (1) If any person fails to comply with a requirement imposed under either of the two last foregoing sections, he shall be liable on summary conviction to a fine not exceeding twenty-five pounds, and to a further fine not exceeding five pounds for each day after conviction on which the failure continues.
- (2) Without prejudice to any proceedings under the last foregoing subsection, where a requirement imposed under either of the two last foregoing sections has not been complied with, any person authorised by the Secretary of State in that behalf may at any time enter on the land to which the requirement relates and take such steps as the Secretary of State may direct to secure compliance with the requirement; and the reasonable cost of taking such steps shall be recoverable by the Secretary of State from the person on whom the requirement was imposed. Any question arising under this subsection as to what is the reasonable cost of taking any such steps as aforesaid shall be determined, in default of agreement, by the Land Court.
- (3) The Secretary of State may give such directions as appear to him to be expedient authorising the keeping of animals, birds, or eggs killed or taken in pursuance of section thirty-nine of this Act or this section and requiring or authorising the disposal of such animals, birds or eggs, whether for the purpose of being used as food or otherwise.
- (4) Where a person incurs any expense reasonably necessary for the purpose of complying with any requirement imposed on him under either of the two last foregoing sections, or where any cost is recovered from a person under subsection (2) of this section, then if he alleges that the expense or cost ought to be borne wholly or in part by some other person having an interest in the land to which the requirement in question relates, he may apply to the Land Court who may make such order for securing that the applicant is wholly or in part indemnified by that other person in respect of the said expense or cost as they consider just and equitable in the circumstances of the case.



- (5) Without prejudice to the general provisions of Part VII of this Act as to the service of notices, any notice to be served -under either of the two last foregoing sections on the owner or the occupier of land used for agriculture shall, where an agent or servant of the owner or the occupier is responsible for the control of the farming of the land, be duly served if served on the said agent or servant.

**42 Provision by Secretary of State of equipment and services for pest control.**

- (1) The Secretary of State may, for the purpose of assisting in the killing, taking or disposal of animals or birds to which section thirty-nine of this Act applies, and the eggs of such birds, provide or make contributions towards the provision of such services and equipment, appliances and other material as appear to him to be requisite for that purpose.
- (2) The Secretary of State may make such reasonable charges, if any, as he thinks fit in respect of any assistance rendered under the last foregoing subsection, and may recover the amount of any such charge from the person at whose request the assistance was rendered.

*Prevention of Damage by Deer.*

**43 Right of occupier of agricultural holding to kill deer.**

- (1) The occupier of an agricultural holding or of enclosed woodlands and any person authorised by him in writing shall be entitled, notwithstanding anything in any contract or agreement between such occupier and his landlord, to kill and take, and to sell or otherwise dispose of the carcasses of, any deer found on any arable land, garden grounds or land laid down in permanent grass (other than moorland and unenclosed land) forming part of the holding, or on such woodlands, as the case may be.
- (2) A right conferred by or in pursuance of the foregoing subsection shall not be exercised between one hour after sunset and one hour before sunrise.

**44 Powers of Secretary of State to reduce number of deer.**

- (1) Without prejudice to the powers conferred on him by the foregoing provisions of this Part of this Act, the Secretary of State shall, after considering any complaint made to him concerning damage caused on any land by deer to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on that land, and after affording to the occupier and the owner of the land and any other person appearing to the Secretary of State to have an interest an opportunity of making representations to the Secretary of State whether in writing or on being heard by a person appointed by the Secretary of State, have power to do, if he should think fit, either or both of the following things, that is to say—
- (a) to authorise in writing the occupier of any agricultural holding forming part of the land and such number of persons authorised by the occupier in writing as the Secretary of State may determine, notwithstanding anything in any contract or agreement between such occupier and his landlord, to kill, during such period and subject to such conditions (including conditions as to the removal and sale of the carcasses of deer killed) as the Secretary of State may determine, deer found on any moorland or unenclosed land forming part of the holding; or

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- (b) to authorise in writing any person to enter on the land of any owner who has failed to take reasonable steps to control the number of deer on his land, and to kill on such land, during such period and subject to such conditions (including conditions as to the removal and sale of the carcasses of deer killed) as the Secretary of State may determine, such number of deer of either sex as the Secretary of State may think necessary.
- (2) A right conferred in pursuance of paragraph (a) of the last foregoing subsection on the occupier of an agricultural holding and persons authorised by him shall not be exercised—
  - (a) at any time between the tenth day of April and the sixteenth day of October in any year; or
  - (b) between one hour after sunset and one hour before sunrise.
- (3) A person authorised under paragraph (b) of subsection (1) of this section shall not be entitled to enter on the land at any time between the tenth day of April and the sixteenth day of October in any year, and shall, before entering on any land for the purpose of killing deer thereon, give to the owner and, any tenant thereof not less than ten days' notice of his intention to do so, and shall allow such owner or tenant, if they so desire, an opportunity of assisting in any operations undertaken for the purpose of reducing the number of deer on such land.
- (4) Before authorising any person in pursuance of paragraph (a) of subsection (1) of this section, the occupier shall give notice in writing to the Secretary of State and to his landlord of the name of the person proposed to be so authorised and shall at the same time certify that that person is experienced in the use of firearms; and the occupier shall not authorise that person until the approval in writing of the Secretary of State has been given.
- (5) The Secretary of State may at any time by notice in writing given to the occupier of an agricultural holding withdraw any authorisation granted to him under paragraph (a) of subsection (1) of this Section or vary any condition attached to such authorisation with respect to the periods during which the right may be exercised, the number of persons who may be authorised by the occupier, or the number of deer of each sex that may be killed.
- (6) The Secretary of State may at any time by notice in writing given to the person in respect of whom approval has been given by him under subsection (4) of this section withdraw that approval; and on such approval being so withdrawn that person shall be deemed to have ceased to be authorised by the occupier.
- (7) The Secretary of State shall give notice in writing to the landlord concerned of the granting or the withdrawal of, or of the variation of any condition attached to, any authorisation under paragraph (a) of subsection (1) of this section and of the giving of any approval under subsection (4) of this section, and shall give notice-in writing to the occupier and the landlord concerned of the withdrawal under the last foregoing subsection of any approval.

#### **45 Recovery of expenses of killing deer.**

- (1) When an authority granted by the Secretary of State under paragraph (b) of subsection (1) of the last foregoing section for the killing of deer on any land includes authority to sell the carcasses of the deer killed, the expenses incurred in carrying out the operations so authorised shall be defrayed in the first instance from the proceeds

of the sale of the carcasses, and if the said expenses are greater than the said proceeds, the difference shall be recoverable from the owner of the land by the Secretary of State, and if less, the difference shall be recoverable from the Secretary of State by the owner of the land.

- (2) When such authority does not include authority to sell the carcasses, the carcasses shall be deemed to be the property of the owner of the land, and the expenses, or such proportion thereof as the Secretary of State may think equitable, incurred in carrying out the operations so authorised shall be recoverable by the Secretary of State from the owner of the land.
- (3) Where the land belongs to two or more owners the difference between the expenses and the "proceeds as ascertained under subsection (1) of this section, or the expenses or the proportion thereof as ascertained under subsection (2) of this section, shall be recoverable by or recoverable from, as the case may require, those owners' in such proportions as the Secretary of State may allocate, and in making such allocation the Secretary of State shall take into account any services rendered by any owner in connection with the carrying out of operations on his land.
- (4) The Secretary of State shall furnish to each owner a statement showing the expenses incurred in carrying out the operations authorised as aforesaid, the amount, if any, received in respect of the sale of the carcasses and the amount recoverable by or recoverable from each owner under this section ; and any owner who is aggrieved by such statement or any part thereof may, within one month after such statement has been furnished to him, appeal, to the Land Court who may, if it appears to them equitable so to do, vary the amount recoverable by or recoverable from the owner, as the case may be.

#### **46 Returns of numbers etc. of deer.**

- (1) The Secretary of State may .by notice in writing served on the owner of any land require him to make a return in such form as the Secretary of State may require showing the number of deer of each sex which to his knowledge have been killed on the land during such period (not exceeding- five years) immediately preceding the service of the-notice as may be specified therein, and also a return showing the number of deer of each sex which he estimates to be on the land.
- (2) If any person on whom a notice under the foregoing subsection has been served—
  - (a) fails or neglects to make the required return within thirty-six days after the service of the notice, of
  - (b) in making such a return as aforesaid knowingly or recklessly furnishes any information which is false in a material particular,he shall be liable on summary conviction to a fine not exceeding fifty pounds.

#### **47 Entry on and inspection of lands.**

Notwithstanding the provisions of section eighty-two of this Act, the powers of entry and inspection thereby conferred shall not, during the period beginning on the first day of August and ending on the fifteenth day of October, be exercisable in relation to land occupied and used as a deer forest for the purpose of determining whether, and if so in what manner, any of the powers conferred on the Secretary of State under this Part of this Act are to be exercised.

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

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*Amendments of Law relating to Killing of Hares and Rabbits.*

**48 Amendment of 43 and 44 Vict. c. 47, s.1.**

(1) Paragraph (3) of the proviso to section one of the Ground Game Act, 1880 (which paragraph restricts the exercise of the rights conferred by the section on the occupiers of certain lands to kill and take ground game otherwise than by the use of firearms to the period from the first day of September to the thirty-first day of March, and as regards killing and taking with firearms to the period from the eleventh day of December to the thirty-first day of March), shall cease to apply as regards killing and taking otherwise than by the use of firearms, and shall, as regards killing and taking with firearms, have effect as if for the words "eleventh day of December " the words " first day of July " were substituted.

(2) The Secretary of State may, on the application of an occupier of land, and after affording to the landlord thereof an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, sanction the authorisation by such occupier of such number of persons .to kill and take ground game on the land in addition to any person so authorised in pursuance of section one of the Ground Game Act, 1880, as the Secretary of State may, having regard to the extent of the land, think reasonable; and the provisions of the said section one with regard to the production by persons authorised by the occupier of the documents by which they are so authorised shall apply to any person authorised in pursuance of any such sanction as aforesaid in like manner as those provisions apply to persons authorised in pursuance of that section. The occupier shall on authorising any person in pursuance of this subsection, forthwith give notice in writing to the landlord of the name of that person:

Provided that the number of persons who may be authorised as aforesaid shall not be increased without an opportunity being given to the landlord of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State.

(3) The Secretary of State may at any time—  
 (a) require an occupier to withdraw any authorisation, or  
 (b) recall or vary any sanction,  
 granted under the last foregoing subsection.

(4) Section three of the Ground Game Act, 1880, shall not apply to prevent the occupier of land and the owner of such land or any other person having a right to kill and take game thereon from making and enforcing agreements for the joint exercise, or the exercise for their joint benefit, of the right to kill and take ground game otherwise than by the use of firearms:

Provided that this subsection shall not apply in relation to any such agreement as aforesaid which was made after the commencement of this section and to which the tenant of a holding within the meaning of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, is a party, unless the agreement was made after the lease under which the tenant holds the land was entered into.

(5) The Ground Game (Amendment) Act, 1906, shall cease to have effect.

**49 Provision as to use of poisonous substances.**

A person shall not be guilty of an offence under section seven of the Protection of Animals (Scotland) Act, 1912, by reason only that he uses poisonous gas, or places a substance which, by evaporation or in contact with moisture, generates poisonous gas, in any hole, burrow or earth for the purpose of killing animals to which section thirty-nine of this Act applies.

**50 Prohibition of night shooting and use of spring traps.**

- (1) If any person—
- (a) between the expiration of the first hour after sunset and the commencement of the last hour before sunrise, uses a firearm for the purpose of killing hares or rabbits; or
  - (b) uses or knowingly permits the use for that purpose of a spring trap other than a spring trap of a type and make for the time being approved by the Secretary of State;

he shall be liable on summary conviction to a fine not exceeding twenty pounds or, in the case of a second or subsequent conviction under this section, to a fine not exceeding fifty pounds:

Provided that it shall be a defence for a person charged with the offence mentioned in paragraph (b) of this subsection to prove that the trap was used under an authority granted by the Secretary of State and that it was used in a rabbit hole.

- (2) The Secretary of State may from time to time by order authorise the use for the purpose aforesaid of spring traps other than traps of a type and make approved by him, and such authority may be granted as respects all land in Scotland, or as respects the land in any county or any part of a county, or as respects any particular land or class of land, as may be specified in the order:

Provided that when the Secretary of State is satisfied that there are available in sufficient quantities spring traps of a type and make approved by him he may by regulation withdraw all authorities granted by him under this subsection; and after such regulation has been made it shall not be lawful for the Secretary of State, unless such regulation is revoked under subsection (1) of section five of the Statutory Instruments Act, 1946, to authorise the use of spring traps other than traps of a type and make approved by him.

- (3) Section six of the Ground Game Act, 1880 (which relates to night shooting and the use of spring traps above ground or of poison for the purpose of killing hares or rabbits), shall cease to have effect.

*Injurious Weeds.*

**51 Destruction of injurious weeds.**

The Schedule to the Corn Production Acts (Repeal) Act, 1921 (which contains provisions for securing the destruction of injurious weeds specified in paragraph (8) thereof) shall have effect, in its application to Scotland, as if there were specified in the said paragraph (8) such additional injurious weeds as the Secretary of State may by regulations under this section prescribe.

*Supplementary.***52 Saving of right to compensation for damage by game.**

Nothing in this Part of this Act or anything done there- under shall preclude the occupier of an agricultural holding from recovering any compensation for damage by game which he would have been entitled to recover if this Act had not passed.

**53 Persons acting under this Part of this Act not required to obtain game licences.**

A person authorised or required to kill or to take any animal or bird under the provisions of this Part of this Act shall not be required to obtain for that purpose a licence to kill game, and shall have the like power of selling any such animal or bird in pursuance of any such authorisation or requirement as if he had such a licence; but nothing in this Part of this Act shall exempt any person from the provisions of the Gun Licence Act, 1870.

**54 Interpretation of Part III.**

In this Part of this Act, the following expressions have, unless the context otherwise requires, the meanings hereby respectively assigned to them, that is to say—

" deer " includes deer of any species;

" occupier of an agricultural holding " includes the tenant of a holding within the meaning of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, and a landholder and a statutory small tenant within the meaning of the Small Landholders (Scotland) Acts, 1886 to 1931;

" owner ", in relation to land, includes any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking;

" woodlands " includes forests of trees and plantations.

**PART IV**

## ACQUISITION OF LAND.

*General powers of acquisition and management of land by the Secretary of State.***55 Power of Secretary of State to acquire land by agreement.**

The Secretary of State may by agreement acquire whether by way of purchase, feu, lease, excambion or otherwise—

- (a) any land used for agriculture;
- (b) any other land which in the opinion of the Secretary of State ought to be brought into use for agriculture;
- (c) where any such land as aforesaid is offered to the Secretary of State for acquisition by him on the condition that he also acquires other land not falling within the two foregoing paragraphs, that other land;

- (d) any other land as respects which power is conferred on the Secretary of State by this Act to purchase the land compulsorily in accordance with the provisions of this Act in that behalf.

**56 Acquisition by Secretary of State of land for research experiment and demonstration.**

The Secretary of State may acquire by compulsory purchase in accordance with the provisions of this Act in that behalf any land for the purposes of agricultural research or experiment or of demonstrating agricultural methods.

**57 Acquisition of land by Secretary of State to ensure full and efficient use thereof.**

(1) Where—

- (a) the Secretary of State is satisfied in the case of any agricultural land that the full and efficient use of the land for agriculture is being prevented by reason of work not being carried out or fixed equipment not being provided, and that having regard to the nature of the work or equipment required for such use of the land as aforesaid it cannot reasonably be expected to be carried out or provided unless the Secretary of State exercises his powers under this subsection; or
- (b) the Secretary of State is satisfied in the case of any agricultural land that the full and efficient use of the land for agriculture will be prevented if existing fixed equipment thereon is not maintained, and that having regard to the nature of the equipment it cannot reasonably be expected to be maintained unless the Secretary of State exercises his powers under this subsection; or
- (c) agricultural land has been severed from other such land in the exercise of powers conferred, for purposes other than agricultural purposes, by or under any enactment, or has been otherwise injuriously affected in the exercise of such powers, or such powers have been conferred and the Secretary of State is satisfied that they will be exercised so that agricultural land will be severed or otherwise injuriously affected as aforesaid, and (in any case) the Secretary of State is satisfied that the full and efficient use of the land for agriculture cannot be achieved unless the land is used therefor in conjunction with other land and that it cannot reasonably be expected to be so used unless the Secretary of State exercises his powers under this subsection,

then, if the Secretary of State proposes to secure the carrying out of the work, the provision or maintenance of the equipment, or the use of the land in conjunction with other land, as the case may be, he may acquire the land or any part thereof by compulsory purchase in accordance with the provisions of this Act in that behalf.

- (2) Before proceeding with the acquisition of land under paragraph (a) or paragraph (b) of the last foregoing subsection the Secretary of State shall refer to the Land Court for their report thereon the question whether the conditions are fulfilled as to which, under the said paragraph (a) or (b), as the case may be, the Secretary of State must be satisfied before acquiring the land, and shall take into consideration the report of the Land Court, and the Secretary of State shall make a similar reference to the Land Court before proceeding with the acquisition of land under paragraph (c) of the foregoing subsection or subsection (5) of this section if the owner of the land so requires.

- (3) On any such reference the Land Court, after inspecting the land in question and making such other enquiries as appear to them requisite and after affording an opportunity of

being heard to the owners, lessees and occupiers of the land in question, shall prepare and submit to the Secretary of State a report on the question referred to them containing such information as to work to be carried out or fixed equipment to be provided or maintained as mentioned in the said paragraph (a) or (b) as appears to the Land Court necessary for indicating whether such work or equipment can reasonably be expected to be carried out, provided or maintained without the exercise by the Secretary of State of his powers under subsection (1) of this section.

- (4) The Secretary of State shall serve a copy of the report submitted under the last foregoing subsection on the owners, lessees and occupiers of the land to which the report relates.
- (5) The Secretary of State may acquire by compulsory purchase in accordance with the provisions of this-Act in that behalf any land as to which he is satisfied that its acquisition by him is necessary in order to put to full and efficient use for agriculture land acquired by him under subsection (1) of this section.

**58 Amendment of 4 and 5 Geo. 6. c. 50, ss. 9 and 10, and 6 and 7 Geo. 6. c. 16, s. 16.**

Nothing in section nine or ten of the Agriculture (Miscellaneous Provisions) Act, 1941, or section sixteen of the Agriculture (Miscellaneous Provisions) Act, 1943, shall require the Secretary of State, in the case of land acquired by him under the said section nine or sixteen, to resell the land except in pursuance of an offer made and duly accepted under subsections (i) to (4) of the said section ten.

**59 Transfer to Secretary of State of land vested in other government departments.**

- (1) The appropriate Ministers may by order provide for the transfer to and vesting in the Secretary of State of any interest in land, being an interest belonging to a government department or held on behalf of His Majesty for the purposes of any government department, in any case where it appears to the appropriate Ministers to be expedient that the interest should be transferred to the Secretary of State either on the ground that it is no longer required to be held for the purpose for which it was acquired or otherwise, and any order under this section may contain such incidental and supplementary provisions as appear to the appropriate Ministers necessary or expedient for giving effect to the order.
- (2) In this section the expression " the appropriate Ministers " means the Secretary of State and the Minister in charge of the government department in question.

**60 Power of Secretary of State to appropriate land.**

The Secretary of State may by order made with the consent of the Treasury provide for the appropriation by him for the purposes of any function conferred on him by any enactment of any interest in land acquired by or vested in him for the purposes of any function conferred on him by any other enactment; and an order under this section may contain such incidental and supplementary provisions as appear to the Secretary of State necessary or expedient for giving effect to the order.

**61 Powers of management etc. of land acquired by Secretary of State.**

- (1) The Secretary of State may manage, farm, sell, let or otherwise deal with or dispose of land acquired by him under this Act—



- (a) in such manner as appears to him expedient for the purpose for which the land was acquired; or
  - (b) if he is satisfied that the land ought to be devoted to some other purpose, in such manner as appears to him expedient therefor.
- (2) The Secretary of State may manage, farm or let any land which is placed at his disposal for the purpose, being land an interest in which belongs to a government department or is held in trust for His Majesty for the purposes of a government department, or an interest in which belongs to any Authority, Board, Commission or body constituted by or under any Act which embodies any scheme for the carrying on of any industry, or part of an industry, or any undertaking, under national ownership, or control.
- (3) The Secretary of State shall have power to provide such facilities for the welfare of tenants of, or other persons employed in agriculture on, land managed by him as he thinks expedient.

## **62 Repeal of 21 and 22 Geo. 5. c. 41, ss. 1 to 4.**

Sections one to four of the Agricultural Land (Utilisation) Act, 1931 (which enable the Secretary of State to acquire land for demonstration farms and for reclamation) shall cease to have effect.

*Provisions as to compulsory acquisition of land.*

## **63 Procedure for compulsory purchase of land.**

- (1) Subject to the provisions of this and of the next following section, where under any provision of this Act power is conferred on the Secretary of State to purchase land compulsorily, the power shall be exercisable for the purchase of any particular land on . the Secretary of State being authorised so to purchase the land in accordance with the provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947, and that Act shall apply accordingly—
- (a) as if paragraph (a") of subsection (1) of section one thereof (which refers to the compulsory purchase of land by the Secretary of State under the National Health Service (Scotland) Act, 1947) included a reference to any compulsory purchase of land by the Secretary of State under this Act; and
  - (b) as if this Act had been in force immediately before the commencement of the said Act of 1947:

Provided that section two of that Act (which confers temporary powers for the speedy acquisition of land in certain cases) shall not apply to any compulsory purchase of land under this Act.

- (2) Where under any provision of this Act .power is conferred on the Secretary of State to purchase any particular land compulsorily on the giving of a certificate by him, the certificate shall have effect as if it were a compulsory purchase order made under section one of the said Act of 1947, and—
- (a) where the certificate relates to land falling within subsection (2) of the said section one (which applies to purchases of local authorities' and statutory undertakers' land, commons, open spaces, land held inalienably by the National Trust for Scotland and ancient monuments and other objects of archaeological interest, the special procedure set out in Part III of the First

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

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Schedule to that Act) the certificate shall be embodied in an order of the Secretary of State and the said Part III shall apply accordingly;

- (b) subsection (3) of the said section one and the Second Schedule to the said Act of 1947 (which provide for incorporation of the Lands Clauses Acts and other enactments) shall have effect in relation to the purchase, and anything which under that Schedule may be provided by a compulsory purchase order may be provided by the said certificate;
- (c) in the application to the certificate of Part IV of the First Schedule to the said Act of 1947 (which relates to the validity and coming into operation of compulsory purchase orders) for references to the first publication of notice of the making of an order there shall be substituted references to the service of notice of the giving of the certificate, and for references to the requirements of the said First Schedule and of regulations made thereunder there shall be substituted references to the requirements of this Act as to the proceedings to be taken before the giving of the certificate.

## PART V

### LAND SETTLEMENT.

#### *Provision of holdings by the Secretary of State.*

#### **64 Power of Secretary of State to provide and equip holdings.**

- (1) For the purpose of providing agricultural holdings, being either holdings of which the area does not exceed seventy-five acres or holdings the annual rent of which does not exceed one hundred and fifty pounds, the Secretary of State shall have the like power to acquire land by agreement or compulsorily as he has for the purposes of the Small Holding Colonies Acts, 1916 and 1918, and those Acts and Part I of the Land Settlement (Scotland) Act, 1919, shall have effect as if the provision of such agricultural holdings as aforesaid were included among the purposes of the said Acts of 1916 and 1918.
- (2) The Secretary of State shall have, in relation to any land acquired or appropriated by him for the purpose first mentioned in the last foregoing subsection, the like powers of adaptation, equipment and management as he has in relation to land acquired by him for the purpose of providing smallholdings.

#### *Provisions as to loans.*

#### **65 Loans to tenants of holdings.**

- (1) The Secretary of State may make loans to provide working capital to any person who after the commencement of this Part of this Act becomes the tenant of a holding provided by the Secretary of State on land vested in him of an amount not exceeding three-quarters of the estimated aggregate working capital required for the proper working of the holding.
- (2) The Secretary of State may make grants or loans to any body of persons, whether corporate or unincorporated, having for its object or one of its objects the promotion through cooperative methods of efficiency in the conduct of holdings.

- (3) The powers of the Secretary of State under this section shall be exercised in accordance with arrangements made by him with the approval of the Treasury.
- (4) In this section the expression " holding " means a holding within the meaning of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, or a holding within the meaning of the Small Landholders (Scotland) Acts, 1886 to 1931.

**66 Recovery of loans in the event of failure of statutory successor.**

Section eight of the Small Landholders (Scotland) Act, 1911 (which contains provisions regulating loans to landholders) shall have effect as if after subsection (1) there were inserted the following subsection—

“(2) In the event of failure of a statutory successor taking place or being deemed under section twenty-two of this Act to have taken place the landlord shall be liable to repay to the Board the amount of any outstanding liability in respect of a loan made under the immediately preceding section:

Provided that the Board shall not be entitled to recover from the landlord under this subsection any sum in excess of such amount as may be agreed or, in the event of dispute, be assessed by the Land Court to be the amount which would have been due by the landlord by way of compensation for permanent improvements if the holding had been renounced at the date at which failure of a statutory successor took place or was deemed as aforesaid to have taken place.”

*Agriculture (Scotland) Fund.*

**67 Winding-up of Agriculture (Scotland) Fund.**

The Agriculture (Scotland) Fund shall, in accordance with directions of the Treasury, be wound up as at such date as the Treasury may direct, being a date not later than the end of the financial year next after that in which this section comes into operation, and—

- (a) any balance in that Fund at that date shall be applied in repayment of the amounts outstanding of any loans made by the Public Works Loan Commissioners under section twenty-six of the Land Settlement (Scotland) Act, 1919, and any remainder shall be paid into the Exchequer;
- (b) any payments which apart from this section would be authorised to be paid out of that Fund shall, if falling due after that date, be defrayed out of moneys provided by Parliament;
- (c) any receipts of the Secretary of State after that date, being receipts which apart from this section would be authorised to be paid into that Fund, shall be paid into the Exchequer.

## PART VI

### ADMINISTRATIVE.

#### *Agricultural Executive Committees.*

#### **68 Establishment and functions of Agricultural Executive Committees.**

- (1) For each of such areas as may be prescribed the Secretary of State shall establish an Agricultural Executive Committee which shall be charged, in relation to the area for which the Committee are established, with the duty of exercising such functions as the Secretary of State may delegate to the Committee under the next following section.
- (2) An Agricultural Executive Committee may with the approval of the Secretary of State, and shall if the Secretary of State so requires, appoint one or more sub-committees, and the Agricultural Executive Committee shall refer to a subcommittee for report and recommendation such matters as may be determined by the Committee or as may be required by the Secretary of State, and shall delegate to a sub-committee such of the functions delegated to the Committee, to such extent and subject to such conditions or restrictions, as may with the approval of the Secretary of State be so determined or as may be so required.
- (3) In the exercise of the functions delegated to them an Agricultural Executive Committee shall comply with any directions given by the Secretary of State, and a sub-committee shall comply with any directions given (whether on the requirement of the Secretary of State or not) by the Agricultural Executive Committee by whom the sub-committee were established.
- (4) The provisions in that behalf of Part I of the Eighth Schedule to this Act shall have effect as to the constitution of Agricultural Executive Committees and sub-committees and otherwise in relation thereto.
- (5) Without prejudice to the provisions of the next following section, the functions under any enactment of any Agricultural Executive Committee therein referred to shall in such cases as may be prescribed be transferred to the Secretary of State.

#### **69 Delegation of functions of Secretary of State to Agricultural Executive Committees.**

The Secretary of State may make regulations providing for delegating to an Agricultural Executive Committee, to such extent and subject to such conditions or restrictions as may be specified by or under the regulations, such of his functions—

- (a) under this Act;
  - (b) under any other enactment (whether passed before or after the passing of this Act), being functions relating to agriculture,
- as may be so specified.

### *The Land Court.*

#### **70 Provisions as to appointment of additional members of the Land Court.**

- (1) The number of persons who may be appointed by His Majesty by virtue of section three of the Small Landholders (Scotland) Act, 1911, to be members of the Scottish Land Court (in this Act referred to as " the Land Court ") shall be increased from five to seven; and accordingly the said section three shall have effect as if in subsection (1) for the word " five " there were substituted the word " seven. "
- (2) Any increase arising by reason of the provisions of this section in the sums charged on the Consolidated Fund of the United Kingdom under the said section three, and in the expenditure incurred under the Scottish Land Court Act, 1938, shall respectively be charged on and paid out of that Fund and defrayed out of moneys provided by Parliament.

#### **71 References to the Land Court.**

- (1) In any case where by any of the provisions of this Act a person is empowered to require that a proposal of the Secretary of State to take any action shall be referred to the Land Court, then if within the prescribed time and in the prescribed manner the said person so requires, the proposal shall be referred accordingly.
- (2) On any such reference the Land Court shall determine
  - (a) whether the conditions as to which the Secretary of State must be satisfied before taking the action are fulfilled, and
  - (b) whether, having regard to their determination under the foregoing paragraph and to all the circumstances of the case, the Secretary of State should or should not take the action proposed,and shall report to the Secretary of State accordingly; and the Secretary of State shall forward a copy of the report to any person who availed himself of an opportunity to make representations to the Secretary of State afforded to him under the provisions in question of this Act.
- (3) In any such case as is mentioned in subsection (1) of this section the Secretary of State shall not give effect to the proposal until the expiration of the period within which a reference to the Land Court may be required.
- (4) Where such a reference is duly required, the Secretary of State shall act in accordance with the report of the Land Court and not otherwise.
- (5) Forthwith after taking action in any such case as is mentioned in subsection (1) of this section, the Secretary of State shall serve notice thereof in writing on any person who under the provisions in question of this Act was entitled to be afforded an opportunity to make representations to the Secretary of State.

#### **72 Proceedings of the Land Court.**

The provisions of the Small Landholders (Scotland) Acts, 1886 to 1931, with regard to the Land Court shall, with any necessary modifications, apply for the purpose of the determination of any matter which they are required by or under this Act to determine, in like manner as those provisions apply for the purpose of the determination by the Land Court of matters referred to them under those Acts.

*Agricultural Advisory Committees.***73 Establishment and functions of Agricultural Advisory Committees.**

- (1) The Secretary of State may, for each of such districts as he may determine, establish an Agricultural Advisory Committee for the purpose of advising him or any agricultural college or other body concerned with agricultural education or agricultural advisory services in Scotland, on matters relating to—
  - (a) technical education and development in agriculture,
  - (b) the improvement of farming practice or of estate management, whether generally or in relation to any particular agricultural land,
  - (c) agricultural development and improvement schemes administered by him.
- (2) The provisions in that behalf of Part II of the Eighth Schedule to this Act shall have effect as to the constitution of Agricultural Advisory Committees and otherwise in relation thereto.

**PART VII**

## GENERAL.

*Minor Arterial Drainage.***74 Amendment of 3 and 4 Geo. 6. c. 14. s. 29.**

- (1) Section twenty-nine of the Agriculture (Miscellaneous War Provisions) Act, 1940 (which provides that the Secretary of State may, on consideration of a report from the appropriate Agricultural Executive Committee, take steps to secure the cleansing of the channels of water courses or the carrying out of other measures for preventing damage by flooding in any case where the cost of the operations would not exceed an amount equal to five pounds for each acre of agricultural land benefited by the operations) shall have effect subject to the following amendments, that is to say—
  - (a) in subsection (1) the words " on consideration of a report from the Agricultural Executive Committee for any area in Scotland ", the words " in the area of that Committee " and the words "in the area of the Committee " shall cease to have effect;
  - (b) in paragraph (c) of subsection (1), for the words " five pounds " there shall be substituted the words " ten pounds "; and
  - (c) in subsection (10) the words from " and the expression " to the end of the subsection shall be omitted.
- (2) There shall be paid out of moneys provided by Parliament any increase attributable to the passing of this section in the expense authorised by subsection (9) of the said section twenty-nine to be defrayed out of moneys so provided.

*Provision of Goods and Services.*

**75 Schemes for provision of agricultural goods and services.**

- (1) For the purpose of promoting efficiency in agriculture or facilitating food production, the Secretary of State may with the approval of the Treasury make schemes for providing goods and services to persons managing or farming agricultural land.

Any scheme under this section shall be embodied in a statutory instrument which shall be laid before Parliament after being made.

- (2) A scheme under this section shall not authorise the provision of goods after the expiration of five years from the first day of October, nineteen hundred and forty-seven or such longer period as may be prescribed.
- (3) The Secretary of State may make such reasonable charges, if any, as he thinks fit in respect of goods and services provided in pursuance of a scheme under this section.
- (4) The Secretary of State may acquire by agreement any land which he requires for the purposes of a scheme under this section.
- (5) Section one hundred and three of the Agriculture Act, 1947, shall, in so far as it applies to Scotland, cease to have effect, and anything done by the Secretary of State or any scheme made under that section shall be deemed to have been done or made under this section.

**76 Provision of machinery for agricultural drainage works.**

Without prejudice to any powers competent to him under the last foregoing section, the Secretary of State may at the request of and by agreement with the owner or the occupier of any agricultural land carry out agricultural drainage works by means of mechanical excavators or otherwise as may be agreed, and may recover from such owner or occupier the cost of carrying out the works.

**77 Grants towards provision of houses to for landholders and cottars in Highlands and Islands.**

- (1) The Secretary of State may provide 'assistance by way of grants towards the erection or improvement or rebuilding of dwelling-houses and other buildings for landholders and cottars in the Highlands and Islands.
- (2) The powers of the Secretary of State under this section shall be exercised in accordance with arrangements made by him with the approval of the Treasury
- (3) Regulations shall be made by the Secretary of State—
  - (a) for securing that where a grant has been made towards the erection, improvement or rebuilding of a house or other building, conditions with respect to the occupation and maintenance thereof shall apply thereto for such period from the completion of the work (not being longer than forty years) as may be specified in the regulations;
  - (b) for securing that in the event of a breach of any of the conditions the Secretary of State may recover from such person as may be specified in the regulations a sum bearing the same proportion to the grant made as the period between the date of the breach of the condition and the expiration of the period specified

under paragraph (a) of this subsection bears to the last-mentioned period, together with interest on such sum from the date on which the grant was made at such rate as may be specified in the regulations;

- (c) for providing that the conditions applied by the regulations to a house or building shall cease to apply on payment to the Secretary of State by such person as may be specified in the regulations of such amount as may be so specified;
  - (d) for applying, subject to any necessary modifications, in relation to a house or building towards the erection, improvement or rebuilding of which a grant has been made under this section, the provisions of section seven of the Housing (Agricultural Population) (Scotland) Act, 1938 (which restricts the compensation payable in respect of improvements, and prohibits increases in the rents of houses, in respect of which assistance has been granted under Part II of that Act);
  - (e) for such other incidental and supplementary matters as appear to the Secretary of State to be requisite or expedient for the purposes aforesaid.
- (4) No assistance by way of grant shall be given under this section towards the erection, improvement or rebuilding of any house in respect of which assistance under section four of the Housing (Agricultural Population) (Scotland) Act, 1938, has been given.
- (5) In this section the expressions "landholder" and "cottar" have the like meanings as in the Small Landholders (Scotland) Acts, 1886 to 1931, and the expression "Highlands and Islands" has the like meaning as in the Housing (Agricultural Population) (Scotland) Act, 1938.

**78 Extension of time for applying for assistance under s. 4 of the Housing (Agricultural Population) (Scotland) Act, 1938.**

- (1) Subsection (3) of section four of the Housing (Agricultural Population) (Scotland) Act, 1938 (which, as amended by the Housing (Agricultural Population) (Scotland) Act, 1943, provides among other things that applications for assistance in the replacement of unsatisfactory houses must be made within ten years after the passing of the said Act of 1938) shall have effect as if for the words "ten years" there were substituted the words "fifteen years."
- (2) Subject to the provisions of any amending scheme made after the commencement of this section by a local authority with the approval of the Secretary of State, so much of any scheme in force at the commencement of this section under section four of the said Act of 1938 as specifies the date before which applications for assistance must be received by the local authority shall have effect subject to such modifications as may be required to give effect to the foregoing provisions of this section.
- (3) No assistance shall be given under section four of the said Act of 1938 in respect of any house in respect of which a grant has been made under the last foregoing section of this Act.
- (4) Any increase attributable to the provisions of this section in the sums payable out of moneys provided by Parliament by virtue of sections eight and nine of the said Act of 1938 shall be defrayed out of moneys so provided.
- (5) Subsection (2) of section one of the Housing (Agricultural Population) (Scotland) Act, 1943, shall cease to have effect.



- (6) This section shall come into operation on the passing of this Act.

*Provision as to congested districts.*

**79 Amendment of 60 and 61 Vict. c. 53.**

For the purposes of the Congested Districts (Scotland) Act, 1897, the landward parts of the parishes specified in the Seventh Schedule to this Act shall be deemed to be congested districts, and the provisions of that Act shall have effect accordingly.

*Supplementary.*

**80 Provisions as to representations.**

- (1) Any enactment in this Act providing, in relation to the taking of any action by the Secretary of State, for his taking the action after affording to a person an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, shall be construed as a provision that the Secretary of State shall comply with the following requirements.
- (2) The Secretary of State shall give notice to the said person specifying the action proposed to be taken and informing him of the effect of the three following subsections.
- (3) If within the prescribed time and in the prescribed manner the said person makes representations to the Secretary of State in writing, the Secretary of State shall not take the action in question until he has considered the representations.
- (4) If, whether or not representations are made to the Secretary of State in writing, the said person within the prescribed time and in the prescribed manner requires that an opportunity be afforded to him of being heard by a person appointed by the Secretary of State for the purpose, such an opportunity shall be afforded to him and, on the same occasion, to any other person to whom under the enactment referred to in subsection (1) of this section the Secretary of State is required to afford such an opportunity, and the Secretary of State shall not take the action in question until he has considered any representations made at the hearing.
- (5) No officer or servant of an Agricultural Executive Committee or of any sub-committee thereof shall be appointed under the last foregoing subsection to receive representations relating to land in the area of the Committee.

**81 Expenses and receipts.**

- (1) All expenses incurred by the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament.
- (2) All sums received by the Secretary of State under this Act, including sums received on his behalf by any person or body of persons exercising functions on behalf of the Secretary of State, shall be paid into the Exchequer.

**82 Provisions as to entry and inspection.**

- (1) Any person authorised by the Secretary of State in that behalf shall have power at all reasonable times to enter on and inspect any land for the purpose of determining whether, and if so in what manner, any of the powers conferred on the Secretary of State by this Act are to be exercised in relation to the land, or whether, and if so in what manner, any direction given under any such power has been complied with.
- (2) Any person authorised by the Secretary of State who proposes to exercise any power of entry or inspection conferred by this Act shall if so required produce some duly authenticated document showing his authority to exercise the power.
- (3) Admission to any land shall not be demanded as of right in the exercise of any such power as aforesaid—
  - (a) if the power is being exercised for determining whether the land is to be acquired under Part IV or Part V of this Act, or
  - (b) if the land is being used for residential purposes,unless twenty-four hours notice of the intended entry has been given to the occupier of the land.
- (4) Save as provided by the last foregoing subsection, admission to any land shall not be demanded as of right in the exercise of any such power as aforesaid, other than the power conferred by paragraph (a) of subsection (1) of section twenty-seven of this Act, unless notice has been given to the occupier of the land that it is proposed to enter during a period, specified in the notice, not exceeding fourteen days and beginning at least twenty-four hours after the giving of the notice, and the entry is made on the land during the period specified in the notice:

Provided that where the power of entry is being exercised for the purpose of taking measures to secure compliance with a direction or requirement under the provisions of section, twenty-nine or of section thirty-five or of Part III of this Act, and notice is given in accordance with this subsection on the first occasion on which the power is exercised, no further notice shall be required before entering on the land on a subsequent occasion in connection with the taking of the measures.
- (5) Where notice is served in a case falling within the proviso to the last foregoing subsection, and- the person to whom the direction therein referred to was given, or on whom the requirement therein referred to was imposed, is not the occupier of the land, a like notice shall be served on that person.
- (6) Any notice served in pursuance of the last foregoing subsection or the proviso therein referred to may be served in like manner as the notice giving the said direction or imposing the said requirement.
- (7) Any person who, in any case for which no penalty is provided by the foregoing provisions of this Act, obstructs any person authorised by the Secretary of State exercising any such power as aforesaid shall be guilty of an offence and liable on summary conviction to a fine not exceeding five pounds in the case of a first offence or twenty pounds in the case of a second or any subsequent offence.

**83 Service of notices.**

- (1) Any notice or other document required or authorised by or under this Act to be given to or served on any person shall be duly given or served if it is delivered to him, or left at his proper address, or sent to him by post in a registered letter.

- (2) Any such document required or authorised to be given to or served on an incorporated company or body shall be duly given or served if given to or served on the secretary or clerk of the company or body.
- (3) For the purposes of this section and of section twenty-six of the Interpretation Act, 1889, the proper address of any person to or on whom any such document as aforesaid is to be given or served shall, in the case of the secretary or clerk of any incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person in question.
- (4) Where any document is to be given to or served on a person as being the person having any interest in land, and it is not practicable after reasonable inquiry to ascertain his name or address, the document may be given or served by addressing it to him by the description of the person having that interest in the land (naming it), and delivering the document to some responsible person on the land or by affixing it, or a copy of it, to some conspicuous object on the land.

#### **84 Nomination of arbiter in cases to which the Secretary of State is a party.**

Where the Secretary of State is a party to any question or difference which under the Agricultural Holdings (Scotland) Acts, 1923 and 1931, or this Act, is to be determined by arbitration under the Act of 1923 or by an arbiter appointed in accordance with the provisions of that Act, the arbiter shall in lieu of being nominated by the Secretary of State be nominated by the Land Court, and the remuneration of the arbiter so nominated shall be such amount as may be fixed by the Land Court.

#### **85 Regulations and orders.**

- (1) Any regulations made by the Secretary of State under this Act shall be embodied in a statutory instrument which shall be subject to annulment in pursuance of resolution of either House of Parliament.
- (2) In this Act the expression " prescribed " means prescribed by regulations made by the Secretary of State.
- (3) Any power conferred by this Act to make an order shall include a power, exercisable in the like manner and subject to the like conditions, to revoke or vary the order.

#### **86 Interpretation.**

- (1) In this Act the expression " agricultural land " means land used for agriculture which is so used for the purposes of a trade or business, or which is designated by the Secretary of State for the purposes of this subsection, and includes any land so designated as land which in the opinion of the Secretary of State ought to be brought into use for agriculture:

Provided that no designation under this subsection shall extend—

- (a) to land used as pleasure grounds, private gardens or allotment gardens, or
- (b) to land kept or preserved mainly or exclusively for the purposes of sport or recreation, except where the Secretary of State is satisfied that its use for agriculture would not be inconsistent with its use for the said purposes and it is so stated in the designation.

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- (2) In this Act the expression " agricultural unit " means land which is occupied as a unit for agricultural purposes, including—
- (a) any dwelling-house or other building occupied by the same person for the purpose of farming the land, and
  - (b) any other land falling within the definition in this Act of the expression " agricultural land " which is in the occupation of the same person, being land as to which the Secretary of State is satisfied that having regard to the character and situation thereof and other relevant circumstances it ought in the interests of full and efficient production to be farmed in conjunction with the agricultural unit, and directs accordingly:

Provided that the Secretary of State shall not give a direction under this subsection as respects any land if it is for the time being in use for any purpose which appears to him to be substantial having regard to the use to which it might be put for agriculture.

- (3) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

" the Act of 1923 " means the Agricultural Holdings (Scotland) Act, 1923;

" agriculture " includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and " agricultural " shall be construed accordingly;

" allotment garden " means an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetables or fruit for consumption by himself or his family;

" fixed equipment " includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity, and, without prejudice to the foregoing generality, includes the following things, that is to say—

- (a) all permanent buildings, including farm houses and farm cottages, necessary for the proper conduct of the holding;
- (b) all permanent fences, including hedges, stone dykes, gate posts and gates;
- (c) all ditches, open drains and tile drains, conduits and culverts, ponds, sluices, flood banks and main water courses;
- (d) stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding;
- (e) farm access or service roads, bridges and fords;
- (f) water and sewerage systems;
- (g) electrical installations including generating plant, fixed motors, wiring systems, switches and plug sockets;
- (h) shelter belts;

and references to fixed equipment on land shall be construed accordingly.

" functions " includes powers and duties;

" livestock " includes any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land;

" pasture " includes meadow;

" prescribed " has the meaning assigned to it by the last foregoing section;

" produce " includes anything (whether live or dead) produced in the course of agriculture;

" relevant circumstances," in relation to an owner or an occupier, includes all circumstances affecting management or farming, other than the personal circumstances of the owner or the occupier.

- (4) References in this Act to any enactment shall be construed, except where, the context otherwise requires, as references to that enactment as amended by or under any other enactment, including this Act.
- (5) References in this Act to the farming of land include references to the carrying on in relation to the land of any agricultural activity; and in, relation to any agricultural activity the person having the right to carry it on shall be deemed to be the occupier of the land.
- (6) References in this Act to the use of land for agriculture include, in relation to land forming part of an agricultural unit, references to any use of the land in connection with the farming of the unit.

## **87 Repeals.**

The enactments specified in the Tenth Schedule to this Act are, save as provided in Part I of this Act, hereby repealed to the extent specified in the third column of that Schedule.

## **88 Short title, commencement and extent.**

- (1) This Act may be cited as the Agriculture (Scotland) Act, 1948.
- (2) Save as otherwise expressly provided this Act shall come into operation on such date as His Majesty may by Order in Council appoint; and an Order under this subsection may appoint different dates in relation to different provisions of this Act.
- (3) This Act shall extend to Scotland only.

## SCHEDULES.

### FIRST SCHEDULE

Section 2.

#### PART I

##### IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

- 1 Laying down of permanent pasture.
- 2 Making of water-meadows or works of irrigation.
- 3 Making of gardens.
- 4 Planting of orchards or fruit bushes.
- 5 Warping or weiring of land.
- 6 Making of embankments and sluices against floods.
- 7 Making or planting of osier beds.
- 8 Haulage or other work done by the tenant in aid of the carrying out of any improvement made by the landlord for which the tenant is liable to pay increased rent.

#### PART II

##### IMPROVEMENTS IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

- 9 Land drainage.
- 10 Construction of silos.
- 11 Making or improvement of farm access or service roads, bridges and fords.
- 12 Making or improvement of watercourses, ponds or wells, or of works for the application of water power for agricultural or domestic purposes or for the supply of water for such purposes.
- 13 Making or removal of permanent fences, including hedges, stone dykes and gates.
- 14 Reclaiming of waste land.
- 15 Renewal of embankments and sluices against floods.
- 16 Provision of stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding.
- 17 Provision or laying on of electric light or power, including the provision of generating plant, fixed motors, wiring systems, switches and plug sockets.
- 18 Erection, alteration or enlargement of buildings, and making or improvement of permanent yards, loading banks and stocks.

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- 19 Erection of hay or sheaf sheds, sheaf or grain drying racks, and implement sheds.
- 20 Provision of fixed threshing mills, barn machinery and fixed dairying plant.
- 21 Improvement of permanent pasture by cultivation and re-seeding.
- 22 Provision of means of sewage disposal.
- 23 Repairs to fixed equipment, being equipment reasonably required for the efficient farming of the holding, other than repairs which the tenant is under an obligation to carry out.

### PART III

#### IMPROVEMENTS IN RESPECT OF WHICH CONSENT OF, OR NOTICE TO, LANDLORD IS NOT REQUIRED.

- 24 Protecting fruit trees against animals.
- 25 Chalking of land.
- 26 Clay burning.
- 27 Claying of land.
- 28 Liming of land.
- 29 Marling of land.
- 30 Eradication of bracken, whins or broom growing on the holding at the commencement of the tenancy and, in the case of arable land, removal of tree roots, boulders, stones or other like obstacles to cultivation.
- 31 Application to land of purchased manure (including artificial manure).
- 32 Consumption on the holding of corn (whether produced on the holding or not) or of cake or other feeding stuff not produced on the holding by
  - (a) horses, cattle, sheep or pigs ; or
  - (b) poultry folded on the land as part of a system of farming practised on the holding.
- 33 Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the termination of the tenancy, in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation.

## SECOND SCHEDULE

Section 5.

### APPLICATIONS FOR CERTIFICATES OF BAD HUSBANDRY.

- 1 An application to the Secretary of State for a certificate under paragraph (a) of subsection (1) of section five of this Act shall not be made at any time while a warning notice is in force under this Act in relation to the tenant's farming of the holding to which the application relates.

- 2 Any such application shall be made in the prescribed manner, and before it is made the landlord shall give notice in writing to the tenant of the proposed application.
- 3 Where such an application is made the Secretary of State shall, after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, either—
- (a) give notice in writing to the landlord and to the tenant that he proposes to grant or refuse the certificate, or
  - (b) serve a warning notice under section twenty-seven of this Act on the tenant in relation to the farming of the holding to which the application relates ;
- and if before the expiration of the prescribed period from the making of the application the Secretary of State has not given or served one or other of such notices as aforesaid, he shall be deemed to have given notice in writing to the landlord and to the tenant that he proposes to refuse the certificate.
- 4 Within one month of notice of a proposal being given or being deemed to have been given under the last foregoing paragraph the landlord may require that the Secretary of State's proposal to refuse a certificate shall be referred to the Land Court or the tenant may require that the Secretary of State's proposal to grant a certificate shall be so referred ; and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- 5 Where a holding forms part only of an agricultural unit, an opportunity of making representations shall be afforded under paragraph 3 of this Schedule to every person who for any of the purposes of Part II of this Act is the owner of land comprised in the unit, and sub-paragraph (b) of that paragraph shall have effect with the substitution for the reference to the holding of a reference to the unit.

### THIRD SCHEDULE

Sections 12, 30, 35.

#### PROVISIONS WHERE PERMANENT PASTURE DIRECTED TO BE-PLOUGHED UP OR OTHER CULTIVATIONS TO BE CARRIED OUT.

- 1 Where the Secretary of State gives to a person a direction under section twenty-nine or thirty-five of this Act requiring the ploughing-up of any land consisting of permanent pasture, compliance with the direction shall, notwithstanding the provisions of" any lease or instrument affecting the land or any custom, not render the said person liable thereby to sow it again at his own expense, or to pay any sum by way of increased rent, damages or penalty, or to suffer any forfeiture by reason of the ploughing-up or of the failure to sow it again ; and for the purposes of any provision of any such lease or instrument as aforesaid, any custom or any provision of Part I of this Act the land shall thereafter be deemed to be arable land and to have been arable land at all material times.
- 2 Where in the case of an occupier who is a tenant the Secretary of State gives such a direction as aforesaid, or a direction under section twelve of this Act reducing the area of land which under the lease is to be maintained as permanent pasture, he may, after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, order that the lease shall have effect as if it provided that on quitting the holding on the termination of the tenancy the tenant should leave—



- (a) as permanent pasture, or
- (b) as temporary pasture sown with a seeds mixture of such kind as may be specified in the order,

such area of land (in addition to the land required by the lease, as modified by the direction, to be maintained as permanent pasture) as may be so specified, so however that the area required to be left as aforesaid shall not exceed the area by which the land required by the lease to be maintained as permanent pasture has been reduced by virtue of the direction.

- 3 (1) Notwithstanding anything in the provisions of Part I of this Act or any custom or agreement—
- (a) no compensation shall be payable to the tenant in respect of anything done in pursuance of an order under the last foregoing paragraph;
  - (b) in assessing compensation to an outgoing tenant of a holding (as defined in the Act of 1923) where land has been ploughed up in pursuance of any such direction as aforesaid, the value per acre of any tenant's pasture comprised in the holding shall be taken not to exceed the average value per acre of the whole of the tenant's pasture comprised in the holding on the termination of the tenancy.
- (2) In this paragraph the expression " tenant's pasture " means pasture laid down at the expense of the tenant or paid for by the tenant on entering the holding.

4 In relation to a direction under section twenty-nine or thirty-five of this Act, paragraph 1 of this Schedule shall have effect as if references to the ploughing-up of permanent pasture included references to the carrying out, on land which apart from the direction the occupier is under an obligation to cultivate in a particular way, of any other act of cultivation specified in the direction, and references to the sowing of land again and to arable land shall be construed accordingly.

5 Where the ploughing-up of permanent pasture or the carrying out of any other act of cultivation is reasonably necessary in consequence of the giving of a direction, this Schedule shall apply as if the ploughing-up or other act of cultivation were required by the direction and specified therein; and subsection (4) of section thirty and subsection (5) of section thirty-five of this Act shall be construed accordingly.

#### FOURTH SCHEDULE

Section 14.

##### MATTERS FOR WHICH PROVISION IS TO BE MADE IN WRITTEN LEASES.

- 1 The names of the parties.
- 2 Particulars of the holding with sufficient description, by reference to a map or plan, of the fields and other parcels of land comprised therein to identify the extent of the holding.
- 3 The term or terms for which the holding or different parts thereof is or are agreed to be let.
- 4 The rent and the dates on which it is payable.
- 5 An undertaking by the landlord in the event of damage by fire to any building comprised in the holding to reinstate or replace the building if its reinstatement or replacement is required for the fulfilment of his responsibilities to manage the

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holding in accordance with the rules of good estate management, and (except where the interest of the landlord is held for the purposes of a government department or a person representing His Majesty under section forty of the Act of 1923 is deemed to be the landlord, or where the landlord has made provision approved by the Secretary of State for defraying the cost of any such reinstatement or replacement as aforesaid) an undertaking by the landlord to insure to their full value all such buildings against damage by fire.

- 6 An undertaking by the tenant, in the event of the destruction by fire of harvested crops grown on the holding for consumption thereon, to return to the holding the full equivalent manorial value of the crops destroyed, in so far as the return thereof is required for the fulfilment of his responsibilities to farm in accordance with the rules of good husbandry, and (except where the interest of the tenant is held for the purposes of a government department or where the tenant has made provision approved by the Secretary of State in lieu of such insurance) an undertaking by the tenant to insure to their full value all dead stock on the holding and all such harvested crops as aforesaid against damage by fire.

## FIFTH SCHEDULE

Section 26.

### RULES OF GOOD ESTATE MANAGEMENT.

- 1 For the purposes of this Act, the owner of agricultural land shall be deemed to fulfil his responsibilities to manage it in accordance with the rules of good estate management in so far as his management of the land and (so far as it affects the management of that land) of other land managed by him is such as to be reasonably adequate, having regard to the character and situation of the land and other relevant circumstances, to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as respects both the kind of produce and the quality and quantity thereof.
- 2 In determining whether the management of land is such as aforesaid regard shall be had, but without prejudice to the generality of the provisions of the last foregoing paragraph, to the extent to which the owner is making regular muirburn in the interests of sheep stock, exercising systematic control of vermin on land not in the control of a tenant, and undertaking the eradication of bracken, whins and broom so far as is reasonably practicable, and to the extent to which the owner is fulfilling his responsibilities in relation to the provision, improvement, replacement and renewal of the fixed equipment on the land in so far as is necessary to enable an occupier reasonably skilled in husbandry to maintain efficient production as aforesaid

## SIXTH SCHEDULE

Section 26.

### RULES OF GOOD HUSBANDRY.

- 1 For the purposes of this Act, the occupier of an agricultural unit shall be deemed to fulfil his responsibilities to farm it in accordance with the rules of good husbandry in so far as the extent to which and the manner in which the unit is being farmed (as respects both the kind of operations carried out and the way in which they are carried out) are such that, having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, the

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occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality and quantity thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future

2 In determining whether the manner in which a unit is being farmed is such as aforesaid regard shall be had, but without prejudice to the generality of the provisions of the last foregoing paragraph, to the following :—

- (a) the maintenance of permanent grassland (whether meadow or pasture) properly mown or grazed and in a good state of cultivation and fertility;
- (b) the handling or cropping of the arable land, including the treatment of temporary grass, so as to maintain it clean and in a good state of cultivation and fertility;
- (c) where the system of farming practised requires the keeping of livestock, the proper stocking of the holding;
- (d) the maintenance of an efficient standard of management of livestock;
- (e) as regards hill sheep farming in particular :—
  - (i) the maintenance of a sheep stock of a suitable breed and type in regular ages (so far as is reasonably possible) and the keeping and management thereof in accordance with the recognised practices of hill sheep fanning;
  - (ii) the use of lug, horn or other stock marks for the purpose of determining ownership of stock sheep ;
  - (iii) the regular selection and retention of the best female stock for breeding;
  - (iv) the regular selection and use of tups possessing the qualities most suitable and desirable for the flock;
  - (v) the extent to which regular muirburn is made;
- (f) the extent to which the necessary steps are being taken—
  - (i) to secure and maintain the freedom of crops and livestock from disease and from infestation by insects and other pests;
  - (ii) to exercise systematic control of vermin and of bracken, whins, broom and injurious weeds;
  - (iii) to protect and preserve crops harvested or in course of being harvested ;
  - (iv) to carry out necessary work of maintenance and repair of the fixed and other equipment.

## SEVENTH SCHEDULE

Section 79.

### PARISHES DEEMED TO BE CONGESTED DISTRICTS.

<i>Parish.</i>	<i>County:</i>
Campbeltown	Argyll.
Dunoon and Kilmun	
Gigha and Cara	
Inverchaolain	

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<i>Parish.</i>	<i>County:</i>
Killean and Kilchenzie	
Kilmartin	
Kilmodan	
Southend	
Croy and Dalcross (part of).	Inverness.
Cromarty	Ross and Cromarty
Rosemarkie	

## EIGHTH SCHEDULE

Section 68.

**PART I**

## AGRICULTURAL EXECUTIVE COMMITTEES AND SUB-COMMITTEES.

- 1 (1) An Agricultural Executive Committee shall consist of not more than twelve members appointed by the Secretary of State after consultation with persons appearing to him to represent the interests of farmers, of workers employed in agriculture, and of owners of agricultural land.
- (2) A majority of the members of each Agricultural Executive Committee shall consist of persons having a practical knowledge of agriculture and drawn from the industry.
- 2 (1) The Secretary of State shall designate a member of each Agricultural Executive Committee to act as chairman of the Committee.
- (2) The term of office of a chairman of an Agricultural Executive Committee shall be at the pleasure of the Secretary of State.
- (3) The Secretary of State shall appoint one or more members of the Committee to act as vice chairman in the absence of the chairman.
- 3 (1) Subject to the provisions of this paragraph, the term of office of any member (except the chairman) of an Agricultural Executive Committee shall be three years, but a member who ceases to hold office shall, subject to the provisions of this Schedule, be eligible for reappointment.
- (2) The following provisions shall regulate the tenure of office of the first members of an Agricultural Executive Committee other than the chairman:—
  - (a) at the end of the first year from the establishment of the Committee one-third (or, if one-third is not an integral number, the nearest integral number not exceeding one-third) of the said members, to be chosen by lot, shall retire from the Committee;
  - (b) at the end of two years from the establishment of the Committee one-half (or, if one-half is not an integral number, the nearest integral number not exceeding one-half) of the remaining first members of the Committee, to be chosen by lot, shall retire from the Committee.

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- (3) Any member of the Committee may resign his membership by notice in writing to the Secretary of State.
- (4) The Secretary of State may revoke the appointment of a member of an Agricultural Executive Committee if in his view such revocation is desirable.
- (5) Where the Secretary of State appoints a person in the place of a member whose office is vacated otherwise than in accordance with sub-paragraph (1) or (2) of this paragraph, the said sub-paragraphs (1) and (2) shall apply to the person so appointed as if he had become a member of the Committee at the same time as the member in whose place he was appointed, or, where two or more persons are appointed as aforesaid in succession, as if he had become a member of the Committee at the same time as the first member whose office was vacated as aforesaid.
- 4 An Agricultural Executive Committee may add to any subcommittee established by them persons not being members of the Committee, who shall continue as members of the sub-committee for such period as the Committee may determine.
- 5 An Agricultural Executive Committee or sub-committee shall have power to fix and regulate their own procedure, including power to determine the number of members necessary to form a quorum.
- 6 A member of the Committee shall not vote on any question which relates to land of which he is the owner or occupier, or the agent or factor of the owner or occupier, or enter into any contract with the Committee unless the contract has been approved by the Secretary of State:

Provided that this paragraph shall not apply in relation to a contract entitling him to participate, on terms not more favourable than are available to similar members of the farming community in the area, in any service (including the supply of labour or goods) provided by the Committee in the interests of the farming community in the area.

*Disqualification for appointment.*

- 7 A person shall be disqualified for being appointed or being a member of an Agricultural Executive Committee or sub-committee so long as he is a member of the Commons House of Parliament.

*Validity of acts.*

- 8 (1) An Agricultural Executive Committee or sub-committee shall have power to act notwithstanding any vacancy among their members.
- (2) All acts done at any meeting of any such body shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment or any disqualification of a person purporting to be a member thereof, be as valid as if that defect had not existed.
- (3) Nothing in sub-paragraph (1) of this paragraph shall affect any requirement as to the number of members necessary to constitute a meeting of any such body as aforesaid.

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*Officers and Servants.*

- 9 The Secretary of State shall attach to the Agricultural Executive Committees and sub-committees such of his officers and servants as he may with the approval of the Treasury determine to be required for providing the committees with the necessary officers and servants.

*Allowances and Expenses.*

- 10 (1) The Secretary of State may pay to the members of an Agricultural Executive Committee or sub-committee such allowances as he may with the approval of the Treasury determine.
- (2) The expenses of an Agricultural Executive Committee or subcommittee shall be defrayed by the Secretary of State.

*Proof of Instruments.*

- 11 Any document purporting to be a document duly executed or issued on behalf of an Agricultural Executive Committee or sub-committee thereof shall, until the contrary is proved, be deemed to be a document so executed or issued, as the case may be.

*Provisions as to holdings situated partly in one area and partly in another.*

- 12 Where any agricultural holding lies partly in the area of one Agricultural Executive Committee and partly in the area of another, the Secretary of State may direct that for the purposes of anything required or authorised to be done by, to or before such a Committee in relation to that holding the whole of the holding shall be deemed to be comprised in the area comprising such part of the holding as may be specified in the direction.

## **PART II**

### **AGRICULTURAL ADVISORY COMMITTEES.**

- 1 An Agricultural Advisory Committee shall consist of not more than two members appointed by the Secretary of State and of twelve other members (hereinafter referred to as "nominated members") nominated in accordance with the provisions of this Schedule, and appointed by the Secretary of State.
- 2 The nominated members shall be persons nominated—
- (a) in the case of two members, by the appropriate agricultural college,
  - (b) in the case of two members, by the county council of the county in which the Committee district is situated, or where that district is situated in two or more counties by the county councils of those counties acting jointly,
  - (c) in the case of two members, by such organisation as appears to the Secretary of State to represent the interests of farmers,
  - (d) in the case of two members, by such organisation as appears to him to represent the interests of workers employed in agriculture,
  - (e) in the case of two members, by such organisation as appears to him to represent the interests of owners of agricultural land, and

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- (f) in the case of two members, by such other organisation or organisations interested in the welfare or development of agriculture as the Secretary of State may think fit to invite to make nominations.

- 3 If in relation to any appointment of a nominated member it appears to the Secretary of State that the college, council or organisation concerned have failed, within a reasonable time after he has called upon them by notice in writing so to do, to nominate a person for the appointment, the Secretary of State may, notwithstanding anything in the foregoing provisions of this Part of this Schedule, appoint as the nominated member in question such person as he thinks fit.
- 4 A Committee shall be deemed to be duly constituted and shall have power to act notwithstanding any vacancy among the members thereof.
- 5 Each Committee shall appoint a Chairman from among their members, and if they fail to do so within a period of one month from the date of their constitution, the appointment may be made by the Secretary of State.
- 6 The term of office of any member of a Committee shall be three years, but a member who ceases to hold office shall, subject to the provisions of this Part of this Schedule as to nomination, be eligible for re-appointment.
- 7 Any member of a Committee may resign his membership by notice in writing to the Secretary of State.
- 8 A Committee shall have power to regulate their own procedure, including power to determine the number of persons necessary to form a quorum.
- 9 The director of education and the medical officer of health of the county in which a Committee district is situated shall be entitled to attend meetings of the Committee in the capacity of assessors.
- 10 The Secretary of State may, with the approval of the Treasury, make such arrangements as appear to him expedient, after consultation with the appropriate agricultural college, for placing at the disposal of a Committee any secretarial and technical assistance which he may consider necessary or desirable.
- 11 The expenses up to such amount as may be approved by the Secretary of State incurred by a Committee in carrying out their duties shall be defrayed by the Secretary of State.
- 12 In this Schedule the expression " appropriate agricultural college " in relation to any Agricultural Advisory Committee means the agricultural college responsible for agricultural education in that part of Scotland in which the district of the Committee is situated.

## NINTH SCHEDULE

Section 24.

### MINOR AND CONSEQUENTIAL AMENDMENTS.

#### *The Agricultural Holdings (Scotland) Act, 1923.*

- 1 In section one (which relates to the right of the tenant to compensation for improvements)—

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- (a) in paragraph (a) of subsection (2) after the word " which " there shall be inserted the words " under an agreement in writing " and the words " whether expressly stated in the lease to be so given or allowed or not " shall be omitted ;
- (b) paragraph (b) of subsection (2) shall cease to have effect;
- (c) in subsection (3) for the words " custom, agreement or other wise " there shall be substituted the words " an agreement in writing ".

2 In section three (which relates to the giving of notice to the landlord as to improvements comprised in Part II of the First Schedule)—

- (a) in subsection (1) the words " more than six nor " shall be omitted and for the words " may agree " there shall be substituted the words " may enter into an agreement in writing ";
- (b) subsection (3) shall cease to have effect ;
- (c) in subsection (4) after the word " agree," there shall be inserted the words " in writing ";
- (d) after subsection (4) there shall be added the following subsections—

“(5) Subject to the provisions of the next following subsection, compensation under this Act shall not be payable in respect of an improvement comprised in Part II of the First Schedule to this Act if, within one month after receiving notice under subsection (1) of this section from the tenant of his intention to execute the improvement, the landlord gives notice in writing to the tenant that he objects to the execution of the improvement or to the manner in which the tenant proposes to do the intended work.

(6) Where notice of objection has been given as aforesaid, the tenant may, after giving notice in writing to the landlord of his intention so to do, apply to the Board for approval of the execution of the improvement, and on any such application—

- (a) the Board may, after affording to the tenant and to the landlord an opportunity of making representations to the Board, whether in writing or on being heard by a person appointed by the Board, approve the carrying out of the improvement either unconditionally or upon such terms, whether as to reduction of the compensation which would be payable if the Board approved unconditionally or as to other matters, as appear to the Board to be just, or may withhold their approval, and in either case forthwith after coming to a decision on the application shall give notice in writing of their decision to the landlord and to the tenant;
- (b) if the Board grant their approval, the landlord may, within one month after receiving notice of the Board's decision, serve notice in writing on the tenant undertaking himself to execute the improvement ;
- (c) where the Board grant their approval, then if either no notice is served by the landlord under the last foregoing paragraph, or such a notice is served but on an application made by the tenant in that behalf the Board, after affording to the tenant and to the landlord such an opportunity as aforesaid, determine that the landlord has failed to execute



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the improvement within a reasonable time, the tenant may execute the improvement and shall be entitled to compensation under this Act in respect thereof as if notice of objection had not been given by the landlord, and any terms subject to which the approval was given shall have effect as if they were contained in an agreement in writing between the landlord and the tenant.”

- 3 In section five (which makes further provision as to improvements)—
- (a) in subsection (1) for the word-“ desires,” there shall be substituted the words “ intimates to the landlord in writing his desire ”; for the words “ after hearing the landlord or his representative ” there shall be substituted the words “ after affording to the landlord and to the tenant an opportunity to make representations to the Board, whether in writing or on being heard by a person appointed by the Board ” ; the proviso shall cease to have effect; and in paragraph (c) for the words “ settled by the Board ” there shall be substituted the words “ determined by arbitration ”;
  - (b) subsections (3) and (4) shall cease to have effect;
  - (c) after subsection (5) there shall be added the following subsection—

“(6) Nothing in Part I of the Agriculture (Scotland) Act, 1948, shall prevent the landlord and the tenant of a holding who have agreed that the holding shall be let or treated as a market garden from substituting, by agreement in writing, the provisions as to compensation set out in paragraphs (a) and (b) of subsection (1) of this section for the provisions as to compensation which would otherwise be applicable to the holding.”
- 4 In section nine (which relates to compensation for the continuous adoption of a special standard or system of farming), in subsection (1) the words “ (if any) ” shall be omitted ; after the words “ required by the lease ” there shall be inserted the words “ or in so far as no system of farming is so required, than the system of farming normally practised on comparable holdings in the district ” ; in paragraph (a) of the proviso, after the words “ record so made ” there shall be inserted the words “ or, where more than one such record has been made during the tenancy, before the date of the first such record ” ; and in paragraph (b) of the proviso, after the words “ the tenant has ” there shall be inserted the words “ not later than one month ”
- 5 In section eleven (which relates to compensation for damage by game)—
- (a) subsection (3) shall cease to have effect;
  - (b) after subsection (4) there shall be inserted the following subsection—

“(4A) Any question arising under the last foregoing subsection shall be determined by arbitration under this Act in like manner as questions arising on a claim under this section by a tenant.”
- 6 In section twenty-one (which relates to the power of a landlord on paying compensation to obtain a charge on the holding) for subsections (1) to (4) there shall be substituted the following subsections—
- “(1) Where after the commencement of Part I of the Agriculture (Scotland) Act, 1948, a landlord, not being the absolute owner of a holding, has paid to the tenant of the holding the amount due to him under this Act, or under custom or agreement or otherwise, in respect of compensation for an improvement comprised in the First Schedule hereto, or in respect of compensation for

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disturbance, or has himself defrayed the cost of an improvement proposed to be executed by the tenant, the Board may, on the application of the landlord and after giving not less than fourteen days notice to the absolute owner of the holding, make in favour of the landlord a charging order charging and burdening the holding with an annuity to repay the amount of the compensation or of the cost of the improvement, as the case may be, together with the expenses of obtaining the charging order and recording it in the appropriate Register of Sasines ; and the provisions of subsections (2) and (4) and of subsections (6) to (10) of section fifty-five of the Water (Scotland) Act, 1946, shall with the following and any other necessary modifications apply to any such charging order—

- (a) for any reference to the local authority there shall be substituted a reference to the Board ;
- (b) for any reference to the period of thirty years there shall be substituted in the case of a charging order made in respect of compensation for, or of the cost of, an improvement a reference to the period within which the improvement will, in the opinion of the Board, have become exhausted;
- (c) for references to Part III of the said Act of 1946 there shall be substituted references to the Agricultural Holdings (Scotland) Acts, 1923 to 1948.

(2) An annuity constituted a charge by a charging order recorded in the appropriate Register of Sasines shall be a charge on the holding specified in the order and shall rank after all prior charges heritably secured thereon.

(3) The creation of a charge on a holding under this section shall not be deemed to be a contravention of any prohibition against charging or burdening contained in the deed or instrument under which the holding is held.”

7 Section twenty-two (which relates to the incidence of charges) shall cease to have effect.

8 In section twenty-three (which relates to the power of land improvement companies to advance money) for the words from " an advance of money " to the end of the section there shall be substituted the words " an advance of money upon a charging order duly made and recorded under this Act, on such terms and conditions as may be agreed upon between the company and the person entitled to the order ".

9 Section twenty-four (which relates to certificates as to charges) shall cease to have effect.

10 In section twenty-six, in subsection (2) (which subsection relates to the renewal of a lease by tacit relocation) for the word " renewed," in both places where it occurs, there shall be substituted the words " continued in force. "

11 In section twenty-eight (which relates to the right of a tenant of a holding to bequeath his lease)—

- (a) for any reference to the sheriff there shall be substituted a reference to the Land Court, and for any reference to a petition praying for decree there shall be substituted a reference to an application for an order ;
- (b) paragraph (f) shall cease to have effect.

12 Section twenty-nine (which provides that fixtures and buildings affixed to or erected on a holding by the tenant shall, subject to certain exceptions, be his property

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and removable by him on the termination of the tenancy) shall be amended in accordance with the following provisions of this paragraph, that is to say—

- (a) the right of the tenant to remove any fixture or building shall not unless otherwise agreed be exercisable after the expiration of six months from the termination of the tenancy;
- (b) for paragraph (iv) of the proviso to subsection (1) (which provides for notice to the landlord of the tenant's intention to remove a fixture or building) there shall be substituted the following paragraph:—

“(iv) the tenant shall not remove any fixture or building without giving at least one month's previous notice in writing to the landlord of his intention to remove it, and any such notice shall be given at least one month before the termination of the tenancy”;

- (c) for subsection (2) there shall be substituted the following subsection :—

“(2) Nothing in this section shall confer on a tenant or former tenant, as respects any period after his right of removal has ceased to be exercisable, any property in a fixture or building not removed by him.”

13 In section thirty (which enables a landlord to give notice to quit part of a holding where the notice is given for certain purposes and states that it is so given)—

- (a) in paragraph (iv) (which enables notice to quit part of a holding to be given for the purpose of the provision of small ' holdings under the Small Landholders (Scotland) Acts, 1886 to 1931) the reference to small holdings as so defined shall include a reference to such holdings as are mentioned in section sixty-four of this Act;
- (b) for the words from " and the notice states " to " any such use " there shall be substituted the words " or for the purpose of adjusting the boundaries between agricultural units or amalgamating agricultural units or parts thereof, and the notice states that it is given with a view to any such use as aforesaid or for the said purpose, as the case may be ";
- (c) in paragraph (c) for the words " as in case of compensation " there shall be substituted the words " by arbitration ";
- (d) in the proviso after the words " after service of the notice to. quit " there shall be inserted the words " or, in a case where the operation of the notice to quit depends on any proceedings under section seven of the Agriculture (Scotland) Act, 1948, within twenty-eight days after the time at which it is determined that the notice to quit has effect, " and for the words " the expiration of the then current year of tenancy " there shall be substituted the words " the same time as the original notice ".

14 In section thirty-three (which extends the meaning of the expression " holding " so as to include certain other lands)—

- (a) in subsection (1) for the words " Where the land " there shall be substituted the words " Where any land ";
- (b) subsection (a) shall cease to have effect.

15 In section thirty-four (which provides that the landlord of a holding shall not be entitled to recover, in respect of a breach or non-fulfilment of a term or condition in the lease, any sum in excess of the damage actually suffered by him) the proviso shall cease to have effect.

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- 16 Section thirty-five (which confers on the tenant of a holding freedom of cropping and of disposal of the produce of his holding notwithstanding any custom or agreement) shall be amended in accordance with the provisions of this paragraph, that is to say—
- (a) in subsection (1) references to the produce of the holding shall not include references to manure produced on the holding ;
  - (b) in subsection (2) for the words from " without prejudice " to the end of the subsection there shall be substituted the words
 

“have the following remedies, but no ether, that is to say—

    - (a) should the case so require, he shall be entitled to obtain an interdict restraining the exercise of the tenant's rights under this section in that manner ;
    - (b) in any case, on the tenant quitting the holding on the termination of the tenancy, the landlord shall be entitled to recover damages for any injury to or deterioration of the holding attributable to the exercise by the tenant of his rights under this section,

and section forty-six of this Act shall have effect subject to the provisions of this section.”;
  - (c) for the purposes of any proceedings for an interdict brought under the said subsection (2) the question whether a tenant is exercising, or has exercised, his rights under the said section thirty-five in such a manner as to injure or deteriorate his holding, or to be likely to injure or deteriorate his holding, shall be determined by the Secretary of State after affording to the landlord and to the tenant an opportunity to make representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State ; and a certificate of the Secretary of State as to his determination of any such question as aforesaid shall for the purposes of any proceedings (including an arbitration) brought under the said section thirty-five be conclusive proof of the facts stated in the certificate , "
  - (d) in subsection (4) any reference to the terms of any lease shall be construed as a reference to the terms of that lease as modified in pursuance of section twelve of this Act.
- 17 In section thirty-seven (which relates to the making of a record of a holding)—
- (a) for the words " to be appointed in default of agreement by the Board " there shall be substituted the words " to be nominated by the Board ";
  - (b) at the end of the section there shall be added the following subsections—
    - “(2) Subject to the provisions of section thirteen of the Agriculture (Scotland) Act, 1948, a record may, if the landlord or the tenant so requires, be made under this section relating to a part only of the holding or to the fixed equipment only.
    - (3) Any record made under this section shall show any consideration or allowances which have been made by the landlord to the tenant or by the tenant to the landlord.
    - (4) A record made under this section shall be in such form as may be prescribed.

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- (5) Any question or difference between the landlord and the tenant arising out of the making of a record under this section shall, on the application of the landlord or the tenant, as the case may be, be referred to the Land Court, and the Land Court shall determine such question or difference accordingly.
- (6) The remuneration of the person nominated by the Board to make a record under this section shall be such amount as the Board may fix, and any other expenses of and incidental to the making of the record shall be subject to taxation by the auditor of the sheriff court, but that taxation shall be subject to review by the sheriff.
- (7) The remuneration of the person nominated by the Board to make a record under this section shall be recoverable by that person from either the landlord or the tenant, but any amount paid by either of those parties in respect of that remuneration, or of any other expenses of and incidental to the making of the record, in excess of the share payable by him as aforesaid of the cost of making the record shall be recoverable from the other party.”
- 18 In section thirty-nine (which makes provision for the exercise by limited owners of certain powers) the words "in relation to improvements in respect of which compensation is payable " shall be omitted.
- 19 In section forty (which provides for the application of the Act of 1923 to Crown lands), after subsection (2) there shall be inserted the following subsection :—
- “(3) Section fifteen of the Crown Lands Act, 1927 (which enables the Commissioners of Crown Lands to pay out of capital the cost of carrying out certain improvements and other works) shall apply to any compensation payable by them under this Act in respect of. an improvement comprised in Part I or Part II of the First Schedule to this Act as it applies to the cost specified in the said section fifteen.”
- 20 Section forty-one (which relates to the application of the Act to glebe and charity land) shall cease to have effect.
- 21 Section forty-four (which empowers the Court of Session to prescribe a scale of expenses for sheriff court proceedings under the Act of 1923) shall cease to have effect.
- 22 In section forty-nine (which relates to the interpretation of the Act of 1923)—
- (a) in subsection (1) for the definitions of " holding ", " manuring " and " rules of good husbandry " there shall be substituted respectively the following definitions—
- “holding ' means the aggregate of the agricultural land, as denned in Part VII of the Agriculture (Scotland) Act, 1948, comprised in a lease, not being a lease under which the said land is let to the tenant during his continuance in any office, appointment or employment held under the landlord ;”
- “manuring ' means any of the improvements referred to in paragraphs 31 and 32 of Part III of the First Schedule to this Act;”
- “rules of good husbandry ' means the provisions set forth in the Sixth Schedule to the Agriculture (Scotland) Act, 1948”;
- (b) in subsection (1) the following definitions shall be inserted—

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“building ’ includes any part of a building;”

“Whitsunday ’ and ’ Martinmas ’ in relation to any lease entered into after the commencement of Part I of the Agriculture (Scotland) Act, 1948, mean respectively the twenty-eighth day of May and the twenty-eighth day of November”;

- (c) in subsection (1), in the paragraph relating to the interpretation of the expression "landlord," or "tenant," after the word "assignees," there shall be inserted the word "heir-at-law ";
- (d) in subsection (4) after the word "landlord ", in both places where it occurs, there shall be inserted the words " or the tenant " , and the words " duly authorised in that behalf " shall be omitted.

23 In the Second Schedule (which relates to arbitration proceedings)—

- (a) after paragraph 6 there shall be inserted the following paragraph—

*“Particulars of claim.*

6A Each of the parties to the arbitration shall within fourteen days from the appointment of the arbiter deliver to him a statement of that party's case with all necessary particulars; and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiration of the said fourteen days except with the consent of the arbiter;
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars so delivered and any amendment thereof or addition thereto duly made”;
- (b) in paragraph 9 for the words " in the form of a special case for the opinion of the sheriff " there shall be substituted the words " a case for the opinion of the sheriff on ".

24 In the Third Schedule (which specifies improvements which -are subject to special provisions in the case of market gardens), in paragraph (5), for the words "Erection or enlargement of buildings " there shall be substituted the words "Erection, alteration or enlargement of buildings ".

*The Local Government (Scotland) Act, 1929.*

25 In section forty-eight (which requires the relief given by the Act to occupiers of agricultural land to be disregarded for certain purposes) for the words "for the purposes of section twelve of the Agricultural Holdings (Scotland) Act, 1923," there shall be substituted the words "under section eleven of the Agriculture (Scotland) Act, 1948. "

*The Agricultural Marketing Act, 1931.*

26 In paragraph (6) of section nineteen (which requires any benefit accruing to the occupiers of certain agricultural lands from the operation of the Act to be disregarded for certain purposes) for the words "for the purposes of section twelve of the Agricultural Holdings (Scotland) Act, 1923," there shall be substituted the words "under section eleven of the Agriculture (Scotland) Act, 1948. "

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*The Small Landholders and Agricultural Holdings (Scotland) Act, 1931.*

- 27 In section twenty-nine for the words " paragraph (29) " there shall be substituted the words " paragraph 33 ".
- 28 In section thirty-four for the words " this Act" there shall be substituted the words " this Part of this Act or Part I of the Agriculture (Scotland) Act, 1948 ".
- 29 In section thirty-five—
- (a) in subsection (1) for the words " of this Act " there shall be substituted the words " of this Part of this Act or of Part I of the Agriculture (Scotland) Act, 1948 " and the words from " in the case of a holding " to " fifty pounds " and the words " and in the case of any other holding an arbiter " shall be omitted;
  - (b) in subsection (2) for the words " this Act" there shall be substituted the words " this Part of this Act or by Part I of the Agriculture (Scotland) Act, 1948, " the words " in pursuance of the foregoing subsection or " shall be omitted, and for the words " the sheriff " there shall be substituted the words " the Land Court ";
  - (c) after the words " the landlord ", in both places where they occur in the section, there shall be inserted the words " or the tenant ".

*The Hill Farming Act, 1946.*

- 30 Section nine of the Hill Farming Act, 1946 (which modifies the Act of 1923 in relation to schemes under the said Act of 1946) shall in its application to Scotland be amended as follows:—
- (a) in subsection (2) at the end of paragraph (b) there shall be added the words " and the landlord shall be deemed to have received the notice and to have raised no objection to the making of the improvement or to the manner in which the tenant proposes to do the intended work ";
  - (b) for subsection (3) there shall be substituted the following subsection :—
    - “(3) If on the ground of work being badly done the appropriate Minister withholds or reduces the improvement grant in respect of an improvement, he may direct that any right conferred by subsection (4) of section eleven of the Agriculture (Scotland) Act, 1948, to have the rent of a holding increased shall not be exercisable in respect of the improvement, or shall be exercisable only to such extent as may be specified in the direction, and any such direction given after that right has been exercised shall be retrospective and any excess rent paid shall be repaid accordingly”:
  - (c) subsections (4) to (6) of the said section nine shall cease to have effect.
- Provided that nothing in this sub-paragraph shall affect any right to recover money under the said subsection (3) accrued before the commencement of Part I of this Act ;

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TENTH SCHEDULE

Section 87.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
43 & 44 Vict. c. 47.	The Ground Game Act, 1880.	Section six.
6 Edw. 7. c. 21.	The Ground Game . (Amendment) Act, 1906.	The whole Act.
1 & 2 Geo. 5. c. 49.	The Small Landholders (Scotland) Act, 1911.	In section five, the words from the beginning of the section to " commencement of this Act, and".
13 & 14 Geo. 5. c. 10.	The Agricultural Holdings (Scotland) Act, 1923.	In section one, in subsection (2) , in paragraph (a), the words from " whether expressly stated" to " allowed or not", and paragraph (b) ; in section three, subsection (3); section four; in section five, the proviso to subsection (1) and subsections (3) and (4); in section six, subsection (r) ; section seven ; section ten ; in section eleven, subsection (3) ; sections twelve to fourteen ; in section fifteen, subsection (2) ; in section seventeen, subsection (4); in section nineteen, subsection (2) ; section twenty - two ; section twenty - four ; in section twenty-five, the words from " In any case " to " ceased and determined " ; section twenty-seven ; in section twenty-eight, paragraph (f) ; in section thirty-three, subsection (2) ; in section thirty-four, the proviso ; in section thirty-nine, the words from "in relation to improvements" to " payable " ; section forty-one ; section forty-four; section forty-five; and in subsection (4) of section forty-nine, the words " duly authorised in that behalf ".



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Session and Chapter.	Short Title.	Extent of Repeal.
19 & 20 Geo. c. 25.	The Local Government (Scotland) Act, 1929.	Subsection (3) of section fifty-two and the Sixth Schedule in so far as they relate to the payment of moneys into the Agriculture (Scotland) Fund
21 & 22 Geo. 5. c. 41.	The Agricultural Land (Utilisation) Act, 1931.	Sections one to four ; in section twenty-four, paragraphs (b), (d) and (e); and the First Schedule.
21 & 22 Geo. 5. c. 44.	The Small Landholders and Agricultural Holdings (Scotland) Act, 1931.	Section twenty-seven; in section twenty-eight, in subsection (1), the words " of six months for three months and", and subsection (2) ; sections thirty and thirty-one and in section thirty-six, in subsection (1), the words from "in the case of a holding" to " fifty pounds " and the words " and in the case of any other holding an arbiter ", and in subsection (2), the words " in pursuance of the foregoing subsection or ".
22 & 23 Geo. 5. c. 12.	The Destructive Imported Animals Act, 1932.	Section four.
3 & 4 Geo. 6. c. 14.	The Agriculture (Miscellaneous War Provisions) Act, 1940.	In section twenty-nine, in subsection (1), the words from " on consideration " to " any area in Scotland," the words "in the area of that Committee," and the words "in the area of the Committee "; and in subsection (10), the words from " and the expression " to the end of the subsection.
6 & 7 Geo. 6. c. 16.	The Agriculture (Miscellaneous Provisions) Act, 1943.	Section nine, and in section nineteen, paragraph (b).
6 & 7 Geo. 6. c. 22.	The Housing (Agricultural Population) (Scotland) Act, 1943.	In section one, subsection (2).
9 & 10 Geo. 6. c. 73	The Hill Farming Act, 1946.	In section nine, subsections (4) to (6).

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

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Session and Chapter.	Short Title.	Extent of Repeal.
10 & 11 Geo. 6. c. 48.	The Agriculture Act, 1947.	In section one hundred and three, subsection (5).