



# Agriculture (Scotland) Act 1948

## 1948 CHAPTER 45

### 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.
- (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 in writing 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;

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- (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 (he 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

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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

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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—

“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.