



# Agricultural Holdings (Scotland) Act 1991

## 1991 CHAPTER 55

### PART I

#### AGRICULTURAL HOLDINGS

#### 1 Meaning of “agricultural holding” and “agricultural land”.

- (1) In this Act (except sections 68 to 72) “agricultural holding” means the aggregate of the agricultural land comprised in a lease, not being a lease under which the land is let to the tenant during his continuance in any office, appointment or employment held under the landlord.
- (2) In this section and in section 2 of this Act, “agricultural land” means land used for agriculture for the purposes of a trade or business, and includes any other land which, by virtue of a designation of the Secretary of State under section 86(1) of the <sup>M1</sup>Agriculture (Scotland) Act 1948, is agricultural land within the meaning of that Act.

#### Marginal Citations

M1 1948 c. 45.

#### <sup>F1</sup>2 Leases for less than year to year.

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#### Textual Amendments

F1 S. 2 repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 1(3), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(a) (with Sch.)

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### 3 Leases to be continued by tacit relocation.

Notwithstanding any agreement or any provision in the lease to the contrary, the tenancy of an agricultural holding shall not come to an end on the termination of the stipulated endurance of the lease, but shall be continued in force by tacit relocation for another year and thereafter from year to year, unless notice to quit has been given by the landlord or notice of intention to quit has been given by the tenant.

## PART II

### TERMS OF LEASES AND VARIATIONS THEREOF

### 4 Written leases and the revision of certain leases.

- (1) Where in respect of the tenancy of an agricultural holding—
- (a) there is not in force a lease in writing; or
  - (b) there is in force a lease in writing, being either—
    - (i) a lease entered into on or after 1st November 1948, or
    - (ii) 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 such lease contains no provision for one or more of the matters specified in Schedule 1 to this Act or contains a provision inconsistent with that Schedule or with section 5 of this Act,
- either party may give notice in writing to the other requesting him to enter into a lease in writing containing, as the case may be, provision for all of the matters specified in Schedule 1 to this Act, or a provision which is consistent with that Schedule or with section 5 of this Act; and if within the period of 6 months after the giving of such notice no such lease has been concluded, the terms of the tenancy shall be referred to [F2the Land Court].
- (2) On a reference under subsection (1) above, the [F3Land Court shall in its determination] specify the terms of the existing tenancy and, in so far as those terms do not make provision for all the matters specified in Schedule 1 to this Act or make provision inconsistent with that Schedule or with section 5 of this Act, make such provision for those matters as appears to the [F4Land Court] to be reasonable.
- (3) On a reference under subsection (1) above, the [F5Land Court may include in its determination] any further provisions relating to the tenancy which may be agreed between the landlord and the tenant, and which are not inconsistent with this Act.
- (4) The [F6determination of the Land Court] under this section or section 5 of this Act shall have effect as if the terms and provisions specified and made therein were contained in an agreement in writing between the landlord and the tenant, having effect as from the making of the [F7determination] or from such later date as the [F7determination] may specify.

#### Textual Amendments

- F2** Word in s. 4(1) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 12\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F3** Words in s. 4(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 12\(b\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

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- F4** Words in s. 4(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 12\(b\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F5** Words in s. 4(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 12\(c\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F6** Words in s. 4(4) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 12\(d\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F7** Words in s. 4(4) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 12\(d\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## 5 Fixed equipment and insurance premiums.

- (1) When a lease of an agricultural holding to which this section applies is entered into, 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 section 8 of this Act shall apply to the making of such a record and to the cost thereof as it applies to a record made under that section.
- (2) There shall be deemed to be incorporated in every lease of an agricultural holding to which this section applies—
  - (a) an undertaking by the landlord that, at the commencement of the tenancy or as soon as is reasonably practicable 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—
    - (i) the kind of produce specified in the lease, or (failing such specification) in use to be produced on the holding, and
    - (ii) the quality and quantity thereof,and that he 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—
    - (i) immediately after it was put in repair as aforesaid, or
    - (ii) in the case of equipment provided, improved, replaced or renewed during the tenancy, immediately after it was so provided, improved, replaced or renewed.

<sup>F8</sup>(3) .....

- (4) Any provision in a lease to which this section applies 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.

<sup>F9</sup>(4A) Any agreement between the landlord and tenant made before the coming into force of this subsection which purports to provide for the tenant to execute on behalf of the landlord (whether wholly at his expense or wholly or partly at the expense of the landlord) any work effecting such replacement or renewal of the building or other fixed equipment on the holding as is rendered necessary by natural decay or by fair wear and tear shall be nullified provided that subsection (4B) below is complied with.

<sup>F10</sup>(4B) This subsection is complied with if—

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- (a) subject to subsection (4BA), no later than 6 months before the date from which any variation of rent will take effect, the tenant gave written notice to the landlord stating that the agreement is to be nullified on that date;
- (b) the rent is reviewed in accordance with the terms of the tenancy or is determined by the Land Court in accordance with section 13 of this Act; and
- (c) on the date referred to in paragraph (a)—
  - (i) the buildings and other fixed equipment are in a reasonable state of repair; or
  - (ii) if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then.

(4BA) Where a rent review is initiated less than 6 months before any variation of rent would take effect, subsection (4B)(a) is complied with if notice is given when it is initiated, or as soon as reasonably practicable thereafter. ]

(4C) Any agreement between the landlord and tenant made before the coming into force of this subsection which purports to provide for the tenant to bear any expense of any work effecting such replacement or renewal of the building or other fixed equipment on the holding as is rendered necessary by natural decay or by fair wear and tear shall be subject to subsections (4A) and (4B) above.

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

<sup>F11</sup>(5) .....

- (6) This section applies to any lease of an agricultural holding entered into on or after 1st November 1948.

#### **Textual Amendments**

- F8** S. 5(3) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 60(a)**, 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F9** S. 5(4A)-(4D) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 60(b)**, 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F10** S. 5(4B)(4BA) substituted for s. 5(4B) (22.3.2011) by [The Public Services Reform \(Agricultural Holdings\) \(Scotland\) Order 2011 \(S.S.I. 2011/232\)](#), arts. 1(1), 4 (with art. 10)
- F11** S. 5(5) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 13** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## **6 Sums recovered under fire insurance policy.**

Where the tenant of an agricultural holding is responsible for payment of the whole or part of the premium due under a fire insurance policy in the name of the landlord over any buildings or other subjects included in the lease of the holding and the landlord recovers any sum under such policy in respect of the destruction of, or damage to, the buildings or other subjects by fire, the landlord shall be bound, unless the tenant otherwise agrees, to expend such sum on the rebuilding, repair, or restoration of the buildings or subjects so destroyed or damaged in such manner as may be agreed or, failing agreement, as may be determined by the Secretary of State.

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## 7 Freedom of cropping and disposal of produce.

- (1) Subject to subsections (2) and (5) below, the tenant of an agricultural holding shall, notwithstanding any custom of the country or the provisions of any lease or of any agreement respecting the disposal of crops or the method of cropping of arable lands, have full right, without incurring any penalty, forfeiture or liability,—
    - (a) to dispose of the produce of the holding, other than manure produced thereon;
    - (b) to practise any system of cropping of the arable land on the holding.
  - (2) Subsection (1) above shall not have effect unless, before exercising his rights thereunder or as soon as is practicable after exercising them, the tenant makes suitable and adequate provision—
    - (a) in the case of an exercise of the right to dispose of crops, to return to the holding the full equivalent manorial value to the holding of all crops sold off or removed from the holding in contravention of any such custom, lease or agreement; and
    - (b) in the case of an exercise of the right to practise any system of cropping, to protect the holding from injury or deterioration.
  - (3) If the tenant of an agricultural holding exercises his rights under subsection (1) above so as to injure or deteriorate, or to be likely to injure or deteriorate, the holding, the landlord shall have the following remedies<sup>F12</sup> ...—
    - (a) should the case so require, he shall be entitled to obtain an interdict restraining the exercise of the tenant's rights under that subsection 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 that subsection.
- [<sup>F13</sup>(3A) Such interdict as is, or damages as are, mentioned in subsection (3) above shall be obtainable only in the Land Court; and, notwithstanding the terms of section 84 of the Agricultural Holdings (Scotland) Act 2003 (asp 11), no other remedy shall be available in respect of the circumstances mentioned in that subsection.]
- [<sup>F14</sup>(4) For the purposes of any proceedings for an interdict brought under paragraph (a) of subsection (3) above, where the question whether the tenant is exercising or has exercised his rights under subsection (1) above in such a manner as is referred to in subsection (3) above has, by virtue of section 61(1) of this Act, been determined by arbitration, a certificate of the arbiter as to his determination of the question shall, for the purposes of any proceedings brought under this section, be conclusive proof of the facts stated in the certificate.]
- (5) Subsection (1) above shall not apply—
    - (a) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has received notice to quit or given notice of intention to quit which results in his quitting the holding; or
    - (b) in any other case, as respects the year before the expiry of the lease.
  - (6)
    - (a) In this section “arable land” does not include land in grass which, by the terms of a lease, is to be retained in the same condition throughout the tenancy;
    - (b) the reference in paragraph (a) above to the terms of a lease shall, where the Secretary of State has directed under section 9 of the 1949 Act or an arbiter has directed under that section or [<sup>F15</sup>it has been determined] under section 9 of

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this Act that the lease shall have effect subject to modifications, be construed as a reference to the terms of the lease as so modified.

#### Textual Amendments

- F12** Words in s. 7(3) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 62(a), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F13** S. 7(3A) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 62(b), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F14** S. 7(4) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 62(c), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F15** Words in s. 7(6)(b) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 62(d), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)

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

- C1** S. 7 applied (with modifications) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 14, 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(a) (with Sch.)

## 8 Record of condition, etc., of holding.

- (1) The landlord or the tenant of an agricultural holding may, at any time during the tenancy, require the making of a record of the condition of the fixed equipment on, and of the cultivation of, the holding.
- (2) The tenant may, at any time during the tenancy, require the making of a record of—
  - (a) existing improvements carried out by him or in respect of the carrying out of which he has, with the consent in writing of his landlord, paid compensation to an outgoing tenant;
  - (b) any fixtures or buildings which, under section 18 of this Act, he is entitled to remove.
- [<sup>F16</sup>(3) A record under this section shall be made by a person to be appointed by agreement between the parties; but, in the absence of such agreement, the Scottish Ministers shall on the application of either party appoint a person to make the record.
- (3A) The Scottish Ministers may charge such reasonable fee as they may determine for making an appointment under subsection (3) above.
- (3B) The record shall be in such form as the parties agree or, in the absence of such agreement, as the recorder considers appropriate.]
- (4) A record made under this section shall show any consideration or allowances which have been given by either party to the other.
- (5) Subject to section 5 of this Act, 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.
- (6) Any question or difference between the landlord and the tenant arising out of the making of a record under this section shall<sup>F17</sup>... be referred to the Land Court for determination by them.
- (7) The cost of making a record under this section shall, in default of agreement between the landlord and the tenant, be borne by them in equal shares.

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- (8) The remuneration of [F18any] person appointed by the Secretary of State to make a record under this section shall be such amount as the Secretary of State 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, and that taxation shall be subject to review by the sheriff.
- (9) The remuneration of [F18any] person appointed by the Secretary of State 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—
- (a) that remuneration, or
  - (b) any other expenses of and incidental to the making of the record,
- in excess of the share payable by him under subsection (7) above of the cost of making the record, shall be recoverable by him from the other party.

#### Textual Amendments

- F16** S. 8(3)-(3B) substituted for s. 8(3) (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 61(1)(a), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F17** Words in s. 8(6) repealed (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 61(1)(b), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F18** Words in s. 8(8)(9) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 61(1)(c), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.); S.S.I. 2003/548, art. 2(e) (with Sch.)

## 9 Arbitration as to permanent pasture.

- (1) Where under the lease of an agricultural holding, whether entered into before or after the commencement of this Act, provision is made for the maintenance of specified land, or a specified proportion of the holding, as permanent pasture, the [F19Land Court may determine] the holding that the amount of land required to be maintained as permanent pasture should be reduced.
- (2) [F20The Land Court may in its determination] direct that the lease shall have effect subject to such modifications of its provisions as to land which is to be maintained as permanent pasture or is to be treated as arable land, and as to cropping, as may be specified in the direction.
- (3) If the [F21Land Court] gives a direction under subsection (2) above reducing the area of land which is to be maintained as permanent pasture, [F22it may also] direct 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 seeds mixture of such kind as may be specified in that direction,
- (in addition to the area of land required by the lease, as modified by the direction, to be maintained as permanent pasture) a specified area of land not exceeding the area by which the land required to be maintained as permanent pasture has been reduced by the direction under subsection (2) above.

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### Textual Amendments

- F19** Words in s. 9(1) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 14\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F20** Words in s. 9(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 14\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F21** Words in s. 9(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 14\(c\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F22** Words in s. 9(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 14\(c\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

### Modifications etc. (not altering text)

- C2** S. 9 applied (with modifications) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 15](#), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(a) (with Sch.)

## 10 Power of landlord to enter on holding.

The landlord of an agricultural holding or any person authorised by him may at all reasonable times enter on the holding for any of the following purposes—

- (a) viewing the state of the holding;
- (b) fulfilling the landlord's responsibilities to manage the holding in accordance with the rules of good estate management;
- (c) providing, improving, replacing or renewing fixed equipment on the holding otherwise than in fulfilment of such responsibilities.

### [<sup>F23</sup>10A [<sup>F24</sup>Assignment of tenancy]

- (1) A lease of an agricultural holding may be assigned by the tenant to [<sup>F25</sup>any one of the persons mentioned in subsection (1A)] if, following notice under subsection (2), the landlord consents to a proposed assignment.

[ The persons referred to in subsection (1) are—

- <sup>F26</sup>(1A) (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964,
- (b) a spouse or civil partner of a child of the tenant,
  - (c) a spouse or civil partner of a grandchild of the tenant,
  - (d) a spouse or civil partner of a brother or sister of the tenant,
  - (e) a brother or sister of the tenant's spouse or civil partner,
  - (f) a spouse or civil partner of such a brother or sister,
  - (g) a child (including a step-child) of such a brother or sister,
  - (h) a grandchild (including a step-grandchild) of such a brother or sister,
  - (i) a step-child of the tenant,
  - (j) a spouse or civil partner of such a step-child,
  - (k) a descendant of such a step-child,
  - (l) a step-brother or step-sister of the tenant,
  - (m) a spouse or civil partner of such a step-brother or step-sister,
  - (n) a descendant of such a step-brother or step-sister.]



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- (2) The tenant must give the landlord a notice in writing of any intention of the tenant to assign the lease; and the notice must include the particulars of the proposed assignee, the terms upon which the assignation is to be made and the date on which it is to take effect.
- (3) [<sup>F27</sup>Subject to subsection (3A), the] landlord may withhold consent to the proposed assignation if there are reasonable grounds for doing so; and, in particular the landlord may withhold consent if not satisfied that the proposed assignee—
- (a) would have the ability to pay—
    - (i) the rent due under the lease; or
    - (ii) for adequate maintenance of the land; or
  - (b) has the skills or experience that would be required properly to manage and maintain the land in accordance with the rules of good husbandry.
- [<sup>F28</sup>(3A) Where the tenant proposes to assign the lease to a person who is a near relative of the tenant, the only grounds on which the landlord can withhold consent to the proposed assignation are the following—
- (a) that the person is not of good character,
  - (b) that the person does not have sufficient resources to enable the person to farm the holding with reasonable efficiency,
  - (c) subject to subsection (3B), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the holding with reasonable efficiency.
- (3B) The ground of objection in subsection (3A)(c) does not apply where the person—
- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.]
- (4) Any such withholding of consent (and the grounds for withholding it) is to be intimated in writing to the tenant within 30 days of the giving of the notice under subsection (2); and, if no such intimation is made, the landlord is deemed to have consented to the proposed assignation.
- (5) Any term of a lease or of an agreement between the landlord and tenant which purports to provide that the lease of an agricultural holding may not be assigned under this section shall, in so far as it so purports, be null and void.]
- [<sup>F29</sup>(6) In this section and in sections 12A and 12B, “near relative”, in relation to a tenant of an agricultural holding, means—
- (a) a parent of the tenant,
  - (b) a spouse or civil partner of the tenant,
  - (c) a child of the tenant,
  - (d) a spouse or civil partner of such a child,
  - (e) a grandchild of the tenant,
  - (f) a brother or sister of the tenant,
  - (g) a spouse or civil partner of such a brother or sister,
  - (h) a child of a brother or sister of the tenant,

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- (i) a grandchild of a brother or sister of the tenant,
- (j) a brother or sister of the tenant's spouse or civil partner,
- (k) a spouse or civil partner of such a brother or sister,
- (l) a child of such a brother or sister,
- (m) a grandchild of such a brother or sister.]

#### Textual Amendments

- F23** S. 10A inserted (27.11.2003) by *Agricultural Holdings (Scotland) Act 2003* (asp 11), **ss. 66, 95(3), 95(4)** (with s. 95(2)); *S.S.I. 2003/548*, art. 2(e) (with Sch.)
- F24** S. 10A heading substituted (23.12.2016) by *Land Reform (Scotland) Act 2016* (asp 18), s. 130(1), **sch. 2 para. 18(2)** (with s. 128); *S.S.I. 2016/365*, reg. 2, sch.
- F25** Words in s. 10A(1) substituted (23.12.2016) by *Land Reform (Scotland) Act 2016* (asp 18), **ss. 103(2), 130(1)** (with s. 128); *S.S.I. 2016/365*, reg. 2, sch. (with reg. 3)
- F26** S. 10A(1A) inserted (23.12.2016) by *Land Reform (Scotland) Act 2016* (asp 18), **ss. 103(3), 130(1)** (with s. 128); *S.S.I. 2016/365*, reg. 2, sch. (with reg. 3)
- F27** Words in s. 10A(3) substituted (23.12.2016) by *Land Reform (Scotland) Act 2016* (asp 18), **ss. 103(4), 130(1)** (with s. 128); *S.S.I. 2016/365*, reg. 2, sch. (with reg. 3)
- F28** S. 10A(3A)(3B) inserted (23.12.2016) by *Land Reform (Scotland) Act 2016* (asp 18), **ss. 103(5), 130(1)** (with s. 128); *S.S.I. 2016/365*, reg. 2, sch. (with reg. 3)
- F29** S. 10A(6) inserted (23.12.2016) by *Land Reform (Scotland) Act 2016* (asp 18), **ss. 103(6), 130(1)** (with s. 128); *S.S.I. 2016/365*, reg. 2, sch. (with reg. 3)

## 11 Bequest of lease.

- (1) Subject to <sup>F30</sup>subsections (2) and (3) and to sections 12A to 12C], the tenant of an agricultural holding may, by will or other testamentary writing, bequeath his lease of the holding to <sup>F31</sup>any one of the persons mentioned in subsection (1A) ] .

<sup>F32</sup>(1A) The persons referred to in subsection (1) are—

- (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the *Succession (Scotland) Act 1964*,
  - (b) a spouse or civil partner of a child of the tenant,
  - (c) a spouse or civil partner of a grandchild of the tenant,
  - (d) a spouse or civil partner of a brother or sister of the tenant,
  - (e) a brother or sister of the tenant's spouse or civil partner,
  - (f) a spouse or civil partner of such a brother or sister,
  - (g) a child (including a step-child) of such a brother or sister,
  - (h) a grandchild (including a step-grandchild) of such a brother or sister,
  - (i) a step-child of the tenant,
  - (j) a spouse or civil partner of such a step-child,
  - (k) a descendant of such a step-child,
  - (l) a step-brother or step-sister of the tenant,
  - (m) a spouse or civil partner of such a step-brother or step-sister,
  - (n) a descendant of such a step-brother or step-sister.]
- (2) A person to whom the lease of a holding is so bequeathed (in this section <sup>F33</sup>and in sections 12A to 12C] referred to as “the legatee”) shall, if he accepts the bequest, give

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notice of the bequest to the landlord of the holding within 21 days after the death of the tenant, or, if he is prevented by some unavoidable cause from giving such notice within that period, as soon as practicable thereafter.

- (3) The giving of a notice under subsection (2) above shall import acceptance of the lease and, unless the landlord gives a counter-notice under [F34 section 12A(2) or 12B(2)] , the lease shall be binding on the landlord and on the legatee, as landlord and tenant respectively, as from the date of the death of the deceased tenant.

F35(4) .....

F35(5) .....

F35(6) .....

F35(7) .....

- (8) If the legatee does not accept the bequest<sup>F36</sup>... the right to the lease shall be treated as intestate estate of the deceased tenant in accordance with Part I of the Succession (Scotland) Act 1964.

#### Textual Amendments

- F30** Words in s. 11(1) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 109(2)(a), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F31** Words in s. 11(1) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 107(a), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F32** S. 11(1A) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 107(b), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F33** Words in s. 11(2) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 109(2)(b), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F34** Words in s. 11(3) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 109(2)(c), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F35** S. 11(4)-(7) repealed (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 109(2)(d), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F36** Words in s. 11(8) repealed (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 109(2)(e), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

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

- C3** S. 11(2)-(7) applied (with modifications) (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 21(2), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(a) (with Sch.)
- C4** S. 11(2)(3) applied (with modifications) by 2003 asp 11, s. 21(2) (as substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), sch. 2 para. 16(2) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8))

## 12 [F37 Transfer of lease on intestacy]

- (1) A person to whom the lease of an agricultural holding is transferred under section 16 of the Succession (Scotland) Act 1964 (referred to in this section [F38 and in sections 12A to 12C] as “the acquirer”) shall give notice of the acquisition to the landlord of the holding within 21 days after the date of the acquisition, or, if he is prevented by some unavoidable cause from giving such notice within that period, as soon as is practicable thereafter and, unless the landlord gives a counter-notice under [F39 section 12A(2) or

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12B(2)] , the lease shall be binding on the landlord and on the acquirer, as landlord and tenant respectively, as from the date of the acquisition.

- F<sup>40</sup>(2) .....
- F<sup>40</sup>(3) .....
- F<sup>40</sup>(4) .....
- F<sup>40</sup>(5) .....

#### Textual Amendments

- F37** S. 12 heading substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. **109(3)(c)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F38** Words in s. 12(1) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. **109(3)(a)(i)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F39** Words in s. 12(1) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. **109(3)(a)(ii)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F40** S. 12(2)-(5) repealed (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. **109(3)(b)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

#### [<sup>F41</sup>12A Landlord's objection to legatee or acquirer on intestacy: near relative

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is a near relative of the deceased.
- (2) The landlord may, within 1 month after the notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease.
- (3) The only grounds on which the landlord can object to receiving the person as tenant under the lease are the following—
  - (a) that the person is not of good character,
  - (b) that the person does not have sufficient resources to enable the person to farm the holding with reasonable efficiency,
  - (c) subject to subsection (4), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the holding with reasonable efficiency.
- (4) The ground of objection in subsection (3)(c) does not apply where the person—
  - (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under section 11(2) or 12(1), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.
- (5) If the landlord gives a counter-notice under subsection (2), the landlord may, within 1 month after the counter-notice is given, apply to the Land Court for an order—
  - (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease.

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- (6) If, on the hearing of such an application, any ground of objection stated by the landlord is established to the satisfaction of the Land Court, it must make an order—
- (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the court specifies.
- (7) In any other case, the Land Court must make an order declaring the legatee or, as the case may be, the acquirer to be the tenant under the lease and the lease to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.
- (8) Where the landlord does not apply to the Land Court under subsection (5)—
- (a) the counter-notice ceases to have effect on the expiry of the period of 1 month mentioned in that subsection, and
  - (b) the lease is to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.

#### Textual Amendments

**F41** Ss. 12A-12C inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 109(4)**, 130(1) (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [regs. 5-8](#))

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

- C5** [S. 12B](#) applied (with modifications) by 2003 asp 11, s. 21(2) (as substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 16(2)** (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [regs. 5-8](#)))
- C6** [S. 12B](#) applied (with modifications) by 2003 asp 11, s. 22(2) (as substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 16(3)** (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [regs. 5-8](#)))

## 12B Landlord's objection to legatee or acquirer on intestacy: other persons

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is not a near relative of the deceased.
- (2) The landlord may, within 1 month after notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease and—
- (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the landlord specifies, being a term at least 1 year but no more than 2 years from the date of the counter-notice.
- (3) If the landlord gives a counter-notice under subsection (2), the person may, within 1 month after the counter-notice is given, appeal to the Land Court.
- (4) If, on the hearing of such an appeal, any reasonable ground stated by the person—
- (a) in the case of a legatee, for not declaring the bequest to be null and void,
  - (b) in the case of an acquirer, for not terminating the lease,

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is established to the satisfaction of the Land Court, it must make an order quashing the counter-notice.

(5) In any other case, the Land Court must make an order confirming the counter-notice.

#### **Textual Amendments**

**F41** Ss. 12A-12C inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 109(4)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

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

**C5** [S. 12B](#) applied (with modifications) by 2003 asp 11, s. 21(2) (as substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 16(2)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8))

**C6** [S. 12B](#) applied (with modifications) by 2003 asp 11, s. 22(2) (as substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 16(3)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8))

### **12C Landlord's objection to legatee or acquirer on intestacy: supplementary provision**

(1) Pending any proceedings under section 12A or 12B, the legatee or acquirer is to have possession of the holding provided the executor in whom the lease is vested under section 14 of the Succession (Scotland) Act 1964 consents.

(2) Subsection (1) does not apply where the Land Court, on the application of the landlord and on cause shown, directs otherwise.

(3) In the case of a legatee, if the bequest is declared null and void—

- (a) under section 12A(6)(a),
- (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or
- (c) by virtue of the Land Court confirming such a counter-notice on such an appeal,

the right to the lease is to be treated as intestate estate of the deceased tenant in accordance with Part 1 of the Succession (Scotland) Act 1964.

(4) In the case of an acquirer, if the lease is terminated—

- (a) under section 12A(6)(b),
- (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or
- (c) by virtue of the Land Court confirming such a counter-notice on such an appeal,

that termination is to be treated, for the purposes of Parts 4 and 5 of this Act (compensation), as termination of the acquirer's tenancy of the holding.

(5) But nothing in this section is to entitle the acquirer to compensation for disturbance.]

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### Textual Amendments

**F41** Ss. 12A-12C inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 109(4)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

### Modifications etc. (not altering text)

- C7** S. 12C(1)(2) applied (with modifications) by 2003 asp 11, s. 21(2) (as substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 16(2)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8))
- C8** S. 12C(1)(2) applied (with modifications) by 2003 asp 11, s. 22(2) (as substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 16(3)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8))
- C9** S. 12C(5) applied (with modifications) by 2003 asp 11, s. 22(2) (as substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 16(3)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8))

## <sup>X1</sup><sup>F42</sup> Rent review

### Editorial Information

**X1** Editorial note: The substitution of s. 13 and its cross-heading and the insertion of sch. 1A by the [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **s. 101(2)(3)** (version dated 23.12.2016 on the timeline) has been brought into force only for the purpose of making regulations under paras. 2(4), 9(1) and 10(6) of sch. 1A. For s. 13 and its cross-heading as it otherwise remains in force, see the version dated 22.3.2011.

### Textual Amendments

**F42** S. 13 and cross-heading substituted (23.12.2016 for the purpose of making regulations under sch. 1A paras. 2(4), 9(1), 10(6) and otherwise prosp.) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 101(2)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.

## <sup>X1</sup>13 Rent review

Schedule 1A makes provision for review of the rent payable in respect of an agricultural holding.]

## <sup>F43</sup>14 Determination by the Land Court under sections 4 and 5

Where it appears to the Land Court—

- (a) that, by reason of any provision which it is required by section 4 of this Act to include in its determination; or
- (b) that, by reason of any provision included in its determination on any question as to the liability of a landlord or tenant under section 5 of this Act,

it is equitable that the rent of the holding should be varied, it may vary the rent accordingly.]

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#### Textual Amendments

**F43** S. 14 substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 16](#) (with s. 95(2)); [S.S.I. 2003/548](#), art. 2(i) (with Sch.)

### [<sup>F44</sup>14A Landlord improvement notices

- (1) This section applies where the landlord of an agricultural holding intends to carry out a relevant improvement.
- (2) A “relevant improvement” is an improvement specified in schedule 5 which is not intended to be carried out—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by landlord under section 39(3), or
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment.
- (3) The landlord must give notice in writing to the tenant before carrying out the relevant improvement, unless section 14F applies.
- (4) A notice served in accordance with this section is a “landlord improvement notice”.
- (5) A landlord improvement notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the holding or such other description of the holding as will identify it,
  - (c) details of the intended improvement, including the manner of the improvement,
  - (d) the landlord's reasons as to why the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

#### Textual Amendments

**F44** Ss. 14A-14F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 119\(2\)](#), [130\(1\)](#) (with s. 128); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [reg. 9](#))

### 14B Objection by tenant

- (1) Where the landlord has given a landlord improvement notice under section 14A, the tenant may object to the improvement or to part of it by giving notice in writing to the landlord before the end of the period of 2 months beginning with the day on which the tenant received the landlord improvement notice.
- (2) A notice under subsection (1) must be dated and must state the tenant's reasons as to why the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.



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#### Textual Amendments

**F44** Ss. 14A-14F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(2), 130(1)** (with s. 128); [S.S.I. 2016/365, reg. 2, sch.](#) (with reg. 9)

### 14C Referral to Land Court

- (1) Where the tenant has given notice of objection under section 14B the landlord may, before the end of the period of 2 months beginning with the day on which the landlord received the notice of objection, apply to the Land Court for approval of the relevant improvement.
- (2) The Land Court may—
  - (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms as appear to it to be appropriate, or
  - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

#### Textual Amendments

**F44** Ss. 14A-14F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(2), 130(1)** (with s. 128); [S.S.I. 2016/365, reg. 2, sch.](#) (with reg. 9)

### 14D Notice of dates of improvement

- (1) This section applies where an improvement is to be carried out by the landlord—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by the landlord under section 39(3),
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment, or
  - (d) after the landlord has given a landlord improvement notice in accordance with section 14A and—
    - (i) the tenant has not given notice of objection in accordance with section 14B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 14C(2)(a).
- (2) The landlord must give notice in writing to the tenant stating the period during which the landlord intends to carry out the improvement.
- (3) Unless the landlord and tenant agree otherwise, that period must not commence earlier than the expiry of 2 weeks beginning with the day on which the landlord gives notice under subsection (2).

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- (4) Where the landlord has not begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for postponing the carrying out of the improvement, the landlord may give a new notice under subsection (2).
- (5) Subsection (6) applies where the landlord has begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for extending the period during which the improvement is to be carried out.
- (6) The landlord may, at any time before the expiry of the period stated in the notice under subsection (2), extend the period by giving notice in writing to the tenant stating the extended period during which the landlord intends to carry out the improvement.
- (7) See section 14F on emergency improvements.

#### Textual Amendments

**F44** Ss. 14A-14F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(2)**, 130(1) (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [reg. 9](#))

### 14E Improvement by landlord without notice etc.

- (1) Subsection (2) applies where a landlord has carried out an improvement and—
  - (a) the landlord did not give notice of the improvement to the tenant in accordance with section 14A,
  - (b) the tenant objected to the improvement under section 14B and the Land Court has not approved the improvement under section 14C(2)(a),
  - (c) the improvement is in breach of any decision of the Land Court under section 14C,
  - (d) the improvement was not an emergency improvement as defined in section 14F.
- (2) Any such improvement is to be disregarded for the purposes of—
  - (a) assessing the tenant's responsibilities—
    - (i) in relation to farming the holding in accordance with the rules of good husbandry,
    - (ii) in relation to fixed equipment under section 5(2)(b)(ii).
  - (b) any subsequent rent review under schedule 1A.

#### Textual Amendments

**F44** Ss. 14A-14F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(2)**, 130(1) (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [reg. 9](#))

### 14F Emergency improvements

- (1) Where a landlord or a tenant considers that an emergency improvement is required, sections 14A(3) and 14D(2), (3), (5) and (6) do not apply.
- (2) In this section an “emergency improvement” means a relevant improvement that is necessary for the purposes of—

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- (a) protecting public health from infectious diseases, contamination or other hazards which constitute a danger to human health,
- (b) preventing a danger or potential danger to public safety,
- (c) enabling the tenant to comply with the requirements of the Animal Health and Welfare (Scotland) Act 2006,
- (d) securing the provision of essential services including electricity and water supply services, or
- (e) remedying an accident or natural cause or force majeure which was exceptional and could not reasonably have been foreseen.]

#### Textual Amendments

**F44** Ss. 14A-14F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(2)**, 130(1) (with s. 128); [S.S.I. 2016/365, reg. 2, sch.](#) (with reg. 9)

### 15 Increase of rent for certain improvements by landlord.

(1) Where the landlord of an agricultural holding has, whether before or after the commencement of this Act, carried out on the holding an improvement (whether or not one for the carrying out of which compensation is provided for under Part IV of this Act)—

- (a) at the request of, or in agreement with, the tenant,
- (b) in pursuance of an undertaking given by the landlord under section 39(3) of this Act, <sup>F45</sup>...
- (c) in compliance with a direction given by the Secretary of State under powers conferred on him by or under any enactment, [<sup>F46</sup>, or
- (d) after giving a landlord improvement notice in accordance with section 14A and—
  - (i) the tenant has not given notice of objection in accordance with section 14B, or
  - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 14C.]

subject to subsections (2) and (3) below, the rent of the holding shall, if the landlord by notice in writing served on the tenant within 6 months from the completion of the improvement so requires, be increased as from the completion of the improvement by an amount equal to the increase in the rental value of the holding attributable to the carrying out of the improvement.

(2) Where any grant has been made to the landlord out of moneys provided by Parliament, in respect of an improvement to which subsection (1) above applies, the increase in rent provided for by that subsection shall be reduced proportionately.

<sup>F47</sup>(3) .....

#### Textual Amendments

**F45** Word in s. 15(1) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 120(2)**, 130(1) (with s. 128); [S.S.I. 2016/365, reg. 2, sch.](#)

**F46** S. 15(1)(d) and word inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 120(3)**, 130(1) (with s. 128); [S.S.I. 2016/365, reg. 2, sch.](#)

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**F47** S. 15(3) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 17](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

*<sup>F48</sup>Tenant's right to withhold rent*

**Textual Amendments**

**F48** S. 15A and cross-heading inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 64, 95\(3\), 95\(4\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)

**15A Tenant's right to withhold rent**

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

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have been or are to be satisfied by the release to the tenant of any amount consigned under subsection (3)(b) above.

- (8) Any right of the landlord—
- (a) to irritate the lease on the grounds of non-payment of rent; or
  - (b) under section 20 or 22 of this Act in relation to non-payment of rent,
- shall be unenforceable if the non-payment is in consequence of an authorisation under subsection (3)(b) above to withhold rent.
- (9) Any term of the lease or of any agreement between the landlord and tenant that purports to deprive the tenant of any right conferred by virtue of this section shall, in so far as it so purports, be null and void.]

#### *Termination of tenancy*

### **16 Leases not terminated by variation of terms, etc..**

The lease of an agricultural holding shall not be brought to an end, and accordingly neither party 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 terms of the lease (including the rent payable) have been varied or revised in pursuance of this Act.

#### **[<sup>F49</sup>16A Leases not terminated on grounds of non-residence**

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

#### **Textual Amendments**

**F49** S. 16A inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 65, 95(3)**, **95(4)** (with [s. 95\(2\)](#)); [S.S.I. 2003/548](#), **art. 2(e)** (with [Sch.](#))

### **17 Prohibition of removal of manure, etc., after notice to quit, etc..**

Where, in respect of an agricultural holding, notice to quit is given by the landlord or notice of intention to quit is given by the tenant, the tenant shall not, subject to any agreement to the contrary, at any time after the date of the notice, sell or remove from the holding any manure or compost, or any hay, straw or roots grown in the last year of the tenancy, unless and until he has given the landlord or the incoming tenant a reasonable opportunity of agreeing to purchase them on the termination of the tenancy at their fair market value, or at such other value as is provided by the lease.

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## **18 Tenant’s right to remove fixtures and buildings.**

- (1) Subject to subsections (2) to (4) below, and to section 40(4)(a) of this Act—
  - (a) any engine, machinery, fencing or other fixture affixed to an agricultural holding by the tenant thereof; and
  - (b) any building (other than one in respect of which the tenant is entitled to compensation under this Act or otherwise) erected by him on the holding, not being a fixture affixed or a building erected in pursuance of some obligation in that behalf, or instead of some fixture or building belonging to the landlord, shall be removable by the tenant at any time during the continuance of the tenancy or before the expiry of 6 months, or such longer period as may be agreed, after the termination of the tenancy and shall remain his property so long as he may remove it by virtue of this subsection.
- (2) The right conferred by subsection (1) above shall not be exercisable in relation to a fixture or building unless the tenant—
  - (a) has paid all rent owing by him and has performed or satisfied all his other obligations to the landlord in respect of the holding; and
  - (b) has, at least one month before whichever is the earlier of the exercise of the right and the termination of the tenancy, given to the landlord notice in writing of his intention to remove the fixture or building.
- (3) If, before the expiry of the period of notice specified in subsection (2)(b) above, the landlord gives to the tenant a counter-notice in writing electing to purchase a fixture or building comprised in the notice, subsection (1) above shall cease to apply to that fixture or building, but the landlord shall be liable to pay to the tenant the fair value thereof to an incoming tenant of the holding.
- (4) In the removal of a fixture or building by virtue of subsection (1) above, the tenant shall not do to any other building or other part of the holding any avoidable damage, and immediately after the removal shall make good all damage so occasioned.

## **19 Payment for implements, etc., sold on quitting holding.**

- (1) Where a tenant of an agricultural holding 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, notwithstanding anything in the agreement or lease to the contrary, it shall be deemed to be a term 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.

<sup>F50</sup>(3) . . . . .

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**Textual Amendments**

**F50** S. 19(3) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 18](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**20 Removal of tenant for non-payment of rent.**

- (1) When 6 months’ rent of an agricultural holding is due and unpaid, the landlord shall be entitled to raise an action of removing in the [<sup>F51</sup>Land Court] against the tenant, concluding for his removal from the holding at the term of Whitsunday or Martinmas next ensuing after the action is raised.
- (2) In an action raised under subsection (1) above, the [<sup>F52</sup>Land Court] may, unless the arrears of rent then due are paid or caution is found to [<sup>F53</sup>its] satisfaction for them, and for one year’s rent further, decern the tenant to remove, and may eject him at the said term in like manner as if the lease were determined and the tenant had been legally warned to remove.
- (3) A tenant of a holding removed under this section shall have the rights of an outgoing tenant to which he would have been entitled if his tenancy had terminated by operation of notice to quit or notice of intention to quit at the term when he is removed.

<sup>F54</sup>(4) . . . . .

**Textual Amendments**

- F51** Words in s. 20(1) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 19\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F52** Words in s. 20(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 19\(b\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F53** Words in s. 20(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 19\(b\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F54** S. 20(4) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 19\(c\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**PART III**

NOTICE TO QUIT AND NOTICE OF INTENTION TO QUIT

**21 Notice to quit and notice of intention to quit.**

- (1) Subject to section 20 [<sup>F55</sup>and Part 3A] of this Act and to subsections (6) and (7) below [<sup>F56</sup>and to sections [<sup>F57</sup>2A] and 73 of the Agricultural Holdings (Scotland) Act 2003 (asp 11)] a tenancy of an agricultural holding shall not come to an end except by operation of a notice which complies with this subsection notwithstanding any agreement or any provision in the lease to the contrary.
- (2) In this Act, a notice which complies with subsection (1) above is referred to as a “notice to quit” if it is given by the landlord to the tenant and as a “notice of intention to quit” if it is given by the tenant to the landlord.

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- (3) A notice complies with subsection (1) above if—
- (a) it is in writing;
  - (b) it is a notice of intention to bring the tenancy to an end;
  - (c) where the notice is to take effect at the termination of the stipulated endurance of the lease, it is given not less than one year nor more than 2 years before that date;
  - (d) in the case of a lease continued in force by tacit relocation, it gives not less than one year nor more than 2 years' notice.
- (4) The provisions of the <sup>M2</sup>Sheriff Courts (Scotland) Act 1907 relating to removings shall, in the case of an agricultural holding, have effect subject to this section.
- (5) Notice to quit shall be given either—
- (a) in the same manner as notice of removal under section 6 of the <sup>M3</sup>Removal Terms (Scotland) Act 1886; or
  - (b) in the form and manner prescribed by the <sup>M4</sup>Sheriff Courts (Scotland) Act 1907,
- and such notice shall come in place of the notice required by the said Act of 1907.
- (6) Nothing in this section shall affect the right of the landlord of an agricultural holding to remove a tenant whose estate has been sequestrated under the <sup>F58</sup>Bankruptcy (Scotland) Act 2016, the <sup>M5</sup>Bankruptcy (Scotland) Act 1985 or the <sup>M6</sup>Bankruptcy (Scotland) Act 1913, or who by failure to pay rent or otherwise has incurred irritancy of his lease or other liability to be removed.
- (7) This section shall not apply—
- (a) to a notice given in pursuance of a stipulation in a lease entitling the landlord to resume land for building, planting, feuing or other purposes (not being agricultural purposes); or
  - (b) in relation to subjects let under a lease for any period less than a year, not being a lease which by virtue of section 2 of this Act takes effect as a lease from year to year.

#### Textual Amendments

- F55** Words in s. 21(1) inserted (28.2.2021) by Land Reform (Scotland) Act 2016 (asp 18), **ss. 111(1), 130(1)** (with s. 128); S.S.I. 2020/428, reg. 2
- F56** Words in s. 21(1) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 20** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F57** Word in s. 21(1) substituted (30.11.2017) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), **sch. 2 para. 3(2)** (with s. 128); S.S.I. 2017/299, reg. 2, sch.
- F58** Words in s. 21(6) inserted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 12(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

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

- C10** S. 21 excluded (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), **ss. 2(5), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(a) (with Sch.)
- C11** S. 21(1)-(3) excluded (1.7.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), **ss. 73(1), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/305, art. 2
- C12** S. 21(4)(6)(7) applied (1.7.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), **ss. 73(2), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/305, art. 2



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**C13** S. 21(5) excluded (1.7.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 73(1), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/305, art. 2

#### Marginal Citations

**M2** 1907 c. 51.

**M3** 1886 c. 50.

**M4** 1907 c. 51.

**M5** 1985 c. 66.

**M6** 1913 c. 20.

## 22 Restrictions on operation of notices to quit.

(1) Where not later than one month from the giving of a notice to quit an agricultural holding (or, in a case where section 23(3) of this Act applies, within the extended period therein mentioned) the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit, subject to subsection (2) below <sup>F59</sup>..., the notice to quit shall not have effect unless the Land Court consent to the operation thereof.

(2) Subsection (1) above shall not apply where—

- (a) the notice to quit relates to land being 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 the tenant for a definite and limited period for cultivation as arable land on the condition that he shall, along with the last or waygoing crop, sow permanent grass seeds;
- (b) the notice to quit is given on the ground that the land is required for use, other than agriculture, for which permission [<sup>F60</sup>requires to be obtained, and has been obtained, under the enactments relating to town and country planning ];
- (c) the Land Court, on an application in that behalf made not more than 9 months before the giving of the notice to quit, were satisfied that the tenant was not fulfilling his responsibilities to farm the holding in accordance with the rules of good husbandry, and certified that they were so satisfied;
- (d) 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 2 months from the service thereof 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 responsibilities to farm in accordance with the rules of good husbandry;
- (e) at the date of the giving of the notice to quit the interest of the landlord in the holding had been materially prejudiced by a breach by the tenant, 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 with the fulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry;
- (f) at the date of the giving of the notice to quit the tenant's apparent insolvency had been constituted in accordance with section [<sup>F61</sup>16 of the Bankruptcy (Scotland) Act 2016];

<sup>F62</sup>(g) .....

and, where any of paragraphs (a) to (f) above applies, the ground under the appropriate paragraph on which the notice to quit proceeds is stated in the notice.

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### Textual Amendments

- F59** Words in s. 22(1) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(2\)\(a\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F60** Words in s. 22(2)(b) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 67\(1\), 95\(3\), 95\(4\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F61** Words in s. 22(2)(f) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 12\(3\)](#) (with [ss. 232, 234\(3\), 235, 236](#)); S.S.I. 2016/294, reg. 2
- F62** Words in s. 22(2)(g) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(2\)\(b\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

### Modifications etc. (not altering text)

- C14** Ss. 22-24 modified by 2003 asp 11, s. 38N(2)-(6) (as inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 100\(2\), 130\(1\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch.)

## 23 Consent by Land Court or arbitration on notices to quit.

- (1) An application by a landlord for the consent of the Land Court under section 22 of this Act to the operation of a notice to quit shall be made within one month after service on the landlord by the tenant of a counter-notice requiring that subsection (1) of that section shall apply to the notice to quit.
- (2) A tenant who has been given a notice to quit in connection with which any question arises under section 22(2) of this Act shall, if he requires such question to be determined by [<sup>F63</sup>the Land Court] under this Act, give notice to the landlord to that effect within one month after the notice to quit has been served on him.
- (3) Where [<sup>F64</sup>the determination of the Land Court] required under subsection (2) above is such that section 22(1) of this Act would have applied to the notice to quit if a counter-notice had been served within the period provided for in that subsection, that period shall be extended up to the expiry of one month from the issue of the [<sup>F65</sup>Land Court's determination].
- (4) Where such [<sup>F66</sup>a determination] as is referred to in subsection (2) above has been required by the tenant, or where an application has been made to the Land Court for their consent to the operation of a notice to quit, the operation of the notice to quit shall be suspended until the issue of the [<sup>F67</sup>Land Court's determination].
- (5) Where the decision of the Land Court giving their consent to the operation of a notice to quit, or the [<sup>F68</sup>determination] as is referred to in subsection (2) above, is issued at a date later than 6 months before the date on which the notice to quit is expressed to take effect, the Land Court, on application made to them in that behalf at any time not later than one month after the issue of the decision or award aforesaid, may postpone the operation of the notice to quit for a period not exceeding 12 months.
- (6) If the tenant of an agricultural holding receives from the landlord notice to quit the holding or a part thereof and in consequence thereof gives to a sub-tenant notice to quit that holding or part, section 22(1) of this Act shall not apply to the notice given to the sub-tenant; but if the notice to quit given to the tenant by the landlord does not have effect, then the notice to quit given by the tenant to the sub-tenant shall not have effect.

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- (7) For the purposes of subsection (6) above, a notice to quit part of the holding which under section 30 of this Act is accepted by the tenant as notice to quit the entire holding shall be treated as a notice to quit the holding.
- (8) Where notice is served on the tenant of an agricultural holding to quit the holding or a part thereof, being a holding or part which is subject to a sub-tenancy, and the tenant serves on the landlord a counter-notice in accordance with section 22(1) of this Act, the tenant shall also serve on the sub-tenant notice in writing that he has served such counter-notice on the landlord and the sub-tenant shall be entitled to be a party to any proceedings before the Land Court for their consent to the notice to quit.

#### Textual Amendments

- F63** Word in s. 23(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 21\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F64** Words in s. 23(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 21\(b\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F65** Words in s. 23(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 21\(b\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F66** Words in s. 23(4) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 21\(c\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F67** Words in s. 23(4) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 21\(c\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F68** Words in s. 23(5) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 21\(d\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

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

- C14** Ss. 22-24 modified by 2003 asp 11, s. 38N(2)-(6) (as inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 100\(2\)](#), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.)

## 24 Consents for purposes of section 22.

- (1) Subject to subsection (2) below <sup>F69</sup>..., the Land Court shall consent under section 22 of this Act to the operation of a notice to quit an agricultural holding or part of an agricultural holding if, but only if, they are satisfied as to one or more of the following matters, being a matter or matters specified by the landlord in his application for their consent—
- that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of good husbandry as respects the land to which the notice relates, treated as a separate unit;
  - that the carrying out thereof is desirable in the interests of sound management of the estate of which that land consists or forms part;
  - that the carrying out thereof is desirable for the purposes of agricultural research, education, experiment or demonstration, or for the purposes of the enactments relating to allotments, smallholdings or such holdings as are referred to in section 64 of the <sup>M7</sup>Agriculture (Scotland) Act 1948;
  - that greater hardship would be caused by withholding than by giving consent to the operation of the notice;

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- (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 section 22(2)(b) of this Act.
- (2) Notwithstanding that they are satisfied as aforesaid, the Land Court shall withhold consent to the operation of the notice to quit if in all the circumstances it appears to them that
- [<sup>F70</sup>(a) a fair and reasonable landlord would not insist on possession][<sup>F71</sup>; or
  - (b) where the notice is to quit the whole of the holding, that use of the land for the purpose for which the landlord proposes to terminate the tenancy would not create greater economic and social benefits to the community than would exist were the tenancy not terminated.]
- (3) Where the Land Court consent to the operation of a notice to quit they may <sup>F72</sup>... impose such conditions as appear to them 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.
- (4) Where, on an application by the landlord in that behalf the Land Court are satisfied that by reason of any change of circumstances or otherwise any condition imposed under subsection (3) above ought to be varied or revoked, they shall vary or revoke the condition accordingly.
- [<sup>F73</sup>(5) For the purposes of subsection (2)(b) above—
- (a) “ the community ”—
    - (i) shall be defined by reference to the postcode unit (or postcode units) pertaining to the holding and the vicinity of the holding; and
    - (ii) comprises the persons from time to time resident in that postcode unit (or any of those postcode units);
  - (b) “ economic benefits ” shall be defined by reference to an increase, or the potential for increase, in employment or income;
  - (c) “ social benefits ” shall be defined by reference to the likely—
    - (i) sustaining of, or increase in, the population; and
    - (ii) improvement of amenities and services.
- (6) In subsection (5)(a) above, “ postcode unit ” means an area, determined by the Registrar General for Scotland, in relation to which a single postcode is used to facilitate the identification of postal service delivery points in the area.
- (7) The Land Court shall, for the purposes of its determining the matters referred to in subsection (2)(b) above, have regard to such representations as it considers may assist in its consideration of those matters.]

#### Textual Amendments

- F69** Words in s. 24(1) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(3\)\(a\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, [sch.](#) (with regs. 5-8)
- F70** Words in s. 24(2) renumbered as s. 24(2)(a) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 67\(2\)\(a\)\(i\)](#), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with [Sch.](#))
- F71** S. 24(2)(b) and preceding word added (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 67\(2\)\(a\)\(ii\)](#), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with [Sch.](#))
- F72** Words in s. 24(3) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(3\)\(b\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, [sch.](#) (with regs. 5-8)

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**F73** S. 24(5)-(7) added (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 67(2)(b), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)

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

**C14** Ss. 22-24 modified by 2003 asp 11, s. 38N(2)-(6) (as inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 100(2), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch.)

**Marginal Citations**

**M7** 1948 c. 45.

**F74** **25 Termination of tenancies acquired by succession.**

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**Textual Amendments**

**F74** S. 25 repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 109(5), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

**26 Certificates of bad husbandry.**

(1) For the purposes of section 22(2)(c) of this Act, the landlord of an agricultural holding may apply to the Land Court for a certificate that the tenant is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry, and the Land Court, if satisfied that the tenant is not fulfilling his said responsibilities, shall grant such a certificate.

**F75**(2) .....

**Textual Amendments**

**F75** S. 26(2) repealed (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **Sch. 3 para. 25**; S.S.I. 2014/160, art. 2(1)(2), Sch.

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

**C15** S. 26 modified by 2003 asp 11, s. 38N(2)-(6) (as inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 100(2), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch.)

**27 Penalty for breach of condition.**

(1) Where, on giving consent under section 22 of this Act to the operation of a notice to quit an agricultural holding or part of an agricultural holding, the Land Court imposes a condition under section 24(3) of this Act, and it is proved, on an application to the Land Court on behalf of the Crown that the landlord—

- (a) has failed to comply with the condition within the period allowed, or
- (b) has acted in breach of the condition,

the Land Court may impose on the landlord a penalty of an amount not exceeding 2 years' rent of the holding at the rate at which rent was payable immediately before the termination of the tenancy, or, where the notice to quit related to a part only of the

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holding, of an amount not exceeding the proportion of the said 2 years' rent which it appears to the Land Court is attributable to that part.

- (2) A penalty imposed under this section shall be a debt due to the Crown and shall, when recovered, be paid into the Consolidated Fund.

## **28 Effect on notice to quit of sale of holding.**

- (1) This section shall apply where a contract for the sale of the landlord's interest in land which comprises or forms part of an agricultural holding is made after the giving of a notice to quit and before its expiry.

- (2) Unless, within the period of 3 months ending with the date on which a contract to which this section applies is made, the landlord and the tenant have agreed in writing whether or not the notice to quit shall continue to have effect—

- (a) the landlord shall,—  
 (i) within 14 days after the making of the contract; or  
 (ii) before the expiry of the notice to quit,

whichever is the earlier, give notice to the tenant of the making of the contract; and

- (b) the tenant may, before the expiry of the notice to quit and not later than one month after he has received notice under paragraph (a) above, give notice in writing to the landlord that he elects that the notice to quit shall continue to have effect.

- (3) Where this section applies, unless—

- (a) the landlord and tenant have agreed that the notice to quit shall continue to have effect;  
 (b) the tenant has so elected, under subsection (2)(b) above; or  
 (c) the landlord having failed to give notice of the making of the contract in accordance with subsection (2)(a) above, the tenant quits the holding in consequence of the notice to quit,

the notice to quit shall cease to have effect.

- (4) Where this section applies and there is an agreement between the landlord and the tenant that the notice to quit shall continue to have effect, the notice shall not be invalid by reason only that the agreement is conditional.

## **29 Notice to quit part of holding to be valid in certain cases.**

- (1) A notice to quit part of an agricultural holding held on a tenancy from year to year shall not be invalid on the ground that it relates to part only of the holding if it is given—

- (a) for the purpose of adjusting the boundaries between agricultural units or of amalgamating agricultural units or parts thereof, or  
 (b) with a view to the use of the land to which the notice relates for any of the purposes mentioned in subsection (2) below,

and the notice states that it is given for that purpose or with a view to such use, as the case may be.

- (2) The purposes referred to in subsection (1)(b) above are—

- (a) the erection of farm labourers' cottages or other houses with or without gardens;  
 (b) the provision of gardens for farm labourers' cottages or other houses;

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- (c) the provision of allotments;
- (d) the provision of small holdings under the Small Landholders (Scotland) Acts 1886 to 1931, or of such holdings as are referred to in section 64 of the <sup>M8</sup>Agriculture (Scotland) Act 1948;
- (e) the planting of trees;
- (f) the opening or working of coal, ironstone, limestone, brick-earth, or other minerals, or of a stone quarry, clay, sand, or gravel pit, or the construction of works or buildings to be used in connection therewith;
- (g) the making of a watercourse or reservoir;
- (h) the making of a road, railway, tramroad, siding, canal or basin, wharf, or pier, or work connected therewith.

#### Marginal Citations

M8 1948 c. 45.

### [<sup>F76</sup>29A Holding to be restored in certain circumstances

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

#### Textual Amendments

**F76** S. 29A inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 68, 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)

### 30 Tenant's right to treat notice to quit part as notice to quit entire holding.

Where a notice to quit part of an agricultural holding is given to a tenant, being a notice which is rendered valid by section 29 of this Act, and the tenant within 28 days after—

- (a) the giving of the notice, or
- (b) where the operation of the notice depends on any proceedings under the foregoing provisions of this Act, the time when it is determined that the notice has effect,

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whichever is later, gives to the landlord a counter-notice in writing that he accepts the notice as a notice to quit the entire holding, to take effect at the same time as the original notice, the notice to quit shall have effect accordingly.

### 31 Reduction of rent where tenant dispossessed of part of holding.

(1) Where—

- (a) the tenancy of part of an agricultural holding terminates by reason of a notice to quit which is rendered valid by section 29 of this Act; or
- (b) the landlord of an agricultural holding resumes possession of part of the holding in pursuance of a provision in that behalf contained in the lease,

the tenant shall be entitled to a reduction of rent of an amount, to be determined by [<sup>F77</sup>the Land Court], proportionate to that part of the holding, together with an amount in respect of any depreciation of the value to him of the residue of the holding caused by the severance or by the use to be made of the part severed.

(2) Where subsection (1)(b) above applies, the [<sup>F78</sup>Land Court], in determining the amount of the reduction, shall take into account any benefit or relief allowed to the tenant under the lease in respect of the part whose possession is being resumed.

#### Textual Amendments

**F77** Word in s. 31(1) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 22\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F78** Words in s. 31(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 22\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

### 32 Further restrictions on operation of certain notices to quit.

(1) Subsections (2) to (5) below shall apply where—

- (a) notice to quit an agricultural holding or part of an agricultural holding is given to a tenant; and
- (b) the notice includes a statement in accordance with section 22(2) of this Act and paragraph (d) thereof to the effect that it is given by reason of the tenant's failure to remedy a breach of a kind referred to in section 66(1) of this Act.

(2) If not later than one month from the giving of the notice to quit the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit, subject to subsection (3) below, the notice to quit shall not have effect (whether as a notice to which section 22(1) of this Act does or does not apply) unless the Land Court consent to the operation thereof.

(3) A counter-notice under subsection (2) above shall be of no effect if within one month after the giving of the notice to quit the tenant serves on the landlord an effective notice under section 23(2) of this Act requiring the validity of the reason stated in the notice to quit to be determined by [<sup>F79</sup>the Land Court].

(4) Where—

- (a) the tenant has served on the landlord a notice of the kind referred to in subsection (3) above;



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- (b) the notice to quit would, apart from this subsection, have effect in consequence of the [F80Land Court's determination]; and
- (c) not later than one month from the date on which the [F81Land Court's determination] is delivered to the tenant the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit;

the notice to quit shall not have effect (whether as a notice to which section 22(1) of this Act does or does not apply) unless the Land Court consent to the operation thereof.

- (5) On an application made in that behalf by the landlord, the Land Court shall consent under subsection (2) or (4) above or (6) below to the operation of the notice to quit unless in all the circumstances it appears to them that a fair and reasonable landlord would not insist on possession.
- (6) Where a notice to quit is given in accordance with section 66(3) of this Act in a case where the [F82Land Court's determination] under that section followed an earlier notice to quit to which subsection (1) above applied, if the tenant serves on the landlord a counter-notice in writing within one month after the giving of the subsequent notice to quit (or, if the date specified in that notice for the termination of the tenancy is earlier, before that date), the notice to quit given under section 66(3) of this Act shall not have effect unless the Land Court consent to the operation thereof.

#### Textual Amendments

- F79** Word in s. 32(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 23\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F80** Word in s. 32(4)(b) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 23\(b\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F81** Words in s. 32(4)(c) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 23\(b\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F82** Word in s. 32(6) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 23\(c\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## [F83PART 3A

### RELINQUISHING AND ASSIGNATION OF HOLDINGS

#### Textual Amendments

- F83** Pt. 3A inserted (23.12.2016 for specified purposes, 28.2.2021 in so far as not already in force) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 110\(2\)](#), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2; S.S.I. 2020/428, reg. 2

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

- C16** Pt. 3A modified (28.2.2021) by [The Agricultural Holdings \(Relinquishment and Assignation\) \(Application to Relevant Partnerships\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/106\)](#), regs. 1(1), 3

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## CHAPTER 1

### TENANT'S OFFER TO RELINQUISH HOLDING

#### *Application of Part and key terms*

#### **32A Application of Part**

- (1) This Part applies where the tenant of an agricultural holding to which subsection (2) applies wishes to quit the tenancy before the date on which the tenancy could otherwise be brought to an end by notice of intention to quit or, failing which, assign the lease to an individual who is a new entrant to, or who is progressing in, farming.
- (2) This subsection applies to an agricultural holding in respect of which—
  - (a) the lease was entered into before 27 November 2003, or
  - (b) the lease—
    - (i) was entered into in writing on or after that date but prior to the commencement of the tenancy, and
    - (ii) expressly states that this Act is to apply to the tenancy.

#### **32B New entrants to farming and persons progressing in farming**

- (1) The Scottish Ministers may by regulations make further provision about the individuals who are new entrants to, or who are progressing in, farming for the purposes of this Part.
- (2) Regulations under subsection (1) are subject to the negative procedure. Notice of intention to relinquish

#### **32C Tenant's offer to relinquish tenancy**

- (1) The tenant may serve notice in writing on the landlord of the holding indicating that the tenant will quit the tenancy provided the landlord pays to the tenant an amount, calculated in accordance with section 32L, as compensation for so doing.
- (2) A notice served under subsection (1) is a “notice of intention to relinquish”.
- (3) The tenant must, at the same time as serving a notice of intention to relinquish, send a copy of the notice to the Tenant Farming Commissioner.

#### **32D Form and content of notice of intention to relinquish**

- (1) The Scottish Ministers may by regulations prescribe the form and content of notices of intention to relinquish.
- (2) Regulations under subsection (1) may, in particular, include provision for—
  - (a) such notices to be dated,
  - (b) such notices to state—
    - (i) the names and designations of the landlord and the tenant of the agricultural holding,
    - (ii) the name (if any) and the address of the holding or such other description of the holding as will identify it,

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- (iii) the rent currently payable in respect of the holding,
  - (iv) the date on which the rent for the holding was last varied or, as the case may be, continued unchanged (whether by agreement or by determination of the Land Court),
  - (v) the improvements (if any) carried out to the holding by the tenant,
  - (c) the information that must or may accompany such notices (which may include maps or plans of the holding).
- (3) Regulations under subsection (1) are subject to the negative procedure.

### **32E Restrictions on serving notice of intention to relinquish**

- (1) A tenant may not serve a notice of intention to relinquish if, at the date of service, any of subsections (2) to (7) apply.
- (2) This subsection applies where the tenant has served notice of intention to quit.
- (3) This subsection applies where the tenant has failed to comply with a written demand, served on the tenant by the landlord, requiring the tenant—
- (a) to pay rent due in respect of the holding within 2 months from the date of service of the demand, or
  - (b) to remedy a relevant breach within a reasonable time.
- (4) In subsection (3)(b), a “relevant breach” is a breach by the tenant of a condition of the tenancy which—
- (a) is capable of being remedied, and
  - (b) is not inconsistent with the fulfilment of the tenant's responsibilities to farm in accordance with the rules of good husbandry.
- (5) This subsection applies where the landlord has served notice to quit to which section 22(2) applies.
- (6) This subsection applies where the landlord has served notice to quit to which section 22(2) does not apply and—
- (a) the period mentioned in section 23(1) within which the landlord may apply to the Land Court for consent to the operation of the notice has not expired,
  - (b) the landlord has applied in accordance with that section and the Land Court has yet to reach a decision, or
  - (c) the Land Court has, on such an application, consented to the notice and—
    - (i) any period within which an appeal may be made against that decision has not expired,
    - (ii) such a period has expired without an appeal having been made, or
    - (iii) an appeal having been made, the decision of the Land Court to consent to the notice has been upheld.
- (7) This subsection applies where, in relation to a notice to quit to which section 22(2) does not apply, the Land Court has, following an application under section 23(1), refused consent to its operation and—
- (a) any period within which an appeal may be made against that decision has not expired,
  - (b) an appeal has been made but not determined, or

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- (c) the decision of the Land Court to refuse consent to the notice has been quashed.

### **32F Restriction on notice to quit etc. where notice of intention to relinquish served**

- (1) This section applies where a tenant serves a notice of intention to relinquish.
- (2) During the relevant period, sections 22 to 24 and 43 have effect in relation to the tenancy subject to the following modifications.
- (3) The relevant period is the period beginning with the date of service of the notice of intention to relinquish and ending with—
  - (a) the date the tenancy is terminated under section 32T(2), or
  - (b) the date on which the period of 1 year mentioned in section 32U(2) expires.
- (4) Section 22(2) has effect as if—
  - (a) paragraphs (a) and (b) were omitted, and
  - (b) for “any of paragraphs (a) to (f)” there were substituted “ any of paragraphs (c) to (f) ”.
- (5) Section 24(1) has effect as if paragraph (e) were omitted.
- (6) Section 43 has effect as if, for subsection (2), there were substituted—
 

“(2) Compensation is not payable under this section where—

  - (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in the landlord's own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on condition that the tenant must, along with the last or waygoing crop, sow permanent grass seeds, or
  - (b) the application of section 22(1) to the notice to quit is excluded by any of paragraphs (c) to (f) of subsection (2) of that section.”.

### *Appointment of valuer*

### **32G Appointment of valuer by Tenant Farming Commissioner**

- (1) This section applies where the Tenant Farming Commissioner receives a copy of a notice of intention to relinquish.
- (2) The Commissioner must, before the expiry of the period mentioned in subsection (3), appoint a person, who meets the requirements mentioned in subsection (4), to—
  - (a) carry out the assessment mentioned in section 32J(1), and
  - (b) calculate the amount to be payable by the landlord to the tenant as compensation for the tenant quitting the tenancy were the landlord to accept the notice of intention to relinquish.
- (3) The period is—
  - (a) the period of 14 days beginning with the date on which the notice is served, or
  - (b) such other period specified by the Scottish Ministers by regulations.

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- (4) The requirements referred to in subsection (2) are that the person appears to the Commissioner—
  - (a) to be independent of the landlord and the tenant, and
  - (b) to possess qualifications, knowledge and experience suitable for assessing the—
    - (i) value of agricultural land, both with vacant possession and where subject to agricultural holdings, and
    - (ii) compensation that may be payable to tenants and landlords of such holdings.
- (5) A person appointed under subsection (2) is the “valuer”.
- (6) The Tenant Farming Commissioner must give notice in writing to the tenant and the landlord of the name and address of the valuer appointed under subsection (2).
- (7) Regulations under subsection (3)(b) are subject to the negative procedure.

### **32H Objection to valuer appointed by Tenant Farming Commissioner**

- (1) This section applies where the tenant or the landlord objects to the person appointed under section 32G(2) by the Tenant Farming Commissioner on one or more of the grounds mentioned in subsection (2).
- (2) Those grounds are that the person—
  - (a) is not independent of the landlord or, as the case may be, the tenant, or
  - (b) does not possess the qualifications, knowledge and experience mentioned in section 32G(4)(b).
- (3) The tenant or, as the case may be, the landlord may apply to the Land Court to appoint a person as the valuer in place of the person appointed by the Tenant Farming Commissioner.
- (4) An application under subsection (3)—
  - (a) must—
    - (i) be made before the expiry of the period of 14 days beginning with the date of the notice under section 32G(6), and
    - (ii) state the ground of objection to the person appointed by the Tenant Farming Commissioner, and
  - (b) may propose a person to be appointed as the valuer in place of that person.
- (5) The Land Court may, on an application under subsection (3)—
  - (a) reject the objection, or
  - (b) appoint a person as the valuer (whether a person proposed in the application or not).
- (6) The decision of the Land Court on an application under subsection (3) is final.

### **32I Valuer's expenses**

- (1) The tenant is responsible for meeting the expenses, incurred in carrying out functions under this Part, of a valuer appointed—
  - (a) by the Tenant Farming Commissioner under section 32G(2), or

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(b) by the Land Court under section 32H(5)(b).

(2) Where, in the case of a valuer appointed under section 32G(2), those expenses have been met by the Tenant Farming Commissioner, the Commissioner is entitled to recover them from the tenant.

### *Valuer's assessment*

#### **32J Assessment of value of land etc.**

- (1) The valuer is to assess—
- (a) the value of the land to which the holding relates—
    - (i) if sold with vacant possession,
    - (ii) if sold with the tenant still in occupation, and
  - (b) the amount of compensation—
    - (i) to which the tenant would be entitled, by virtue of Part 4, sections 40 and 41 or any agreement applying in place of that Part or those sections, in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44, and
    - (iii) to which the landlord would be entitled under sections 45 and 45A.
- (2) In assessing the value of the land under subsection (1)(a)(i) or (ii), the valuer—
- (a) is to have regard to the value that would be likely to be agreed between a reasonable seller and buyer of such land assuming the seller and buyer are, as respects the transaction, willing,
  - (b) is to take account—
    - (i) of when the landlord would in the normal course of events have been likely to recover vacant possession of the land from the tenant,
    - (ii) of the terms and conditions of any lease, other than the lease of the holding, affecting the land,
  - (c) is to take no account of—
    - (i) the existence of any person to whom the tenant could assign the lease of the holding under section 10A or to whom the lease could be bequeathed under section 11,
    - (ii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale,
    - (iii) any factor attributable to any use of the land which is or would be unlawful,
    - (iv) any increase in the value of the land resulting from improvements in relation to which the tenant would be entitled to compensation as mentioned in subsection (1)(b)(i) and (ii),
    - (v) any increase in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding,
    - (vi) any reduction in the value of the land resulting from any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant in relation to which the landlord would be entitled to compensation as mentioned in subsection (1)(b)(iii),

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- (vii) any reduction in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding.
- (3) For the purposes of subsection (2)(c)(iv)—
- (a) subject to paragraph (b), “improvements” is to be construed by reference to schedule 5, and
  - (b) the continuous adoption by the tenant of a standard of farming more beneficial to the land than the standard or system required by the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant's expense.
- (4) The valuer is to calculate, in accordance with section 32L, the amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish.
- (5) The Scottish Ministers may by regulations amend subsections (2) and (3) so as to—
- (a) add,
  - (b) remove,
  - (c) vary the description of,
- a matter which the valuer must have regard to, take account of or take no account of in assessing the value of the land under subsection (1)(a)(i) or (ii).
- (6) Regulations under subsection (5) are subject to the affirmative procedure.

### **32K Valuation: further provision**

- (1) The valuer is—
- (a) to invite the landlord and the tenant to make written representations about the assessment under section 32J(1), and
  - (b) to have regard to any such representations.
- (2) The valuer may—
- (a) enter onto land, and
  - (b) make any reasonable request of the landlord and tenant,
- for the purposes of any assessment under section 32J(1).

#### *Calculation of compensation*

### **32L Compensation payable by landlord to tenant**

The amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish is to be calculated as follows:

*Step 1* Deduct from the value of the land to which the holding relates if sold with vacant possession the value of the land if sold with the tenant still in occupation (both as assessed under section 32J(1) or, as the case may be, 32N(3)(a)).

*Step 2* Divide the amount calculated under Step 1 by 2.

*Step 3* Add to the amount of compensation to which the tenant would be entitled in relation to improvements the amount of compensation to which the tenant would be entitled under section 44 (as so assessed).

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*Step 4* Deduct from the amount calculated under Step 3 the amount of compensation to which the landlord would be entitled under sections 45 and 45A (as so assessed).

*Step 5* Add to the amount calculated under Step 2 the amount calculated under Step 4.

### *Notice of assessment*

#### **32M Notice of assessment**

- (1) The valuer must, before the expiry of the period mentioned in subsection (2), serve a notice in writing, specifying the matters mentioned in subsection (3), on—
  - (a) the tenant, and
  - (b) the landlord.
- (2) The period is the period of 8 weeks beginning with—
  - (a) the date on which the period, within which an application under section 32H(3) may be made, expires, or
  - (b) where such an application is made, the date of the Land Court's decision on it.
- (3) The matters are—
  - (a) the value, assessed under section 32J(1)(a), of the land to which the holding relates—
    - (i) if sold with vacant possession, and
    - (ii) if sold with the tenant still in occupation,
  - (b) the amount, assessed under section 32J(1)(b), of compensation—
    - (i) to which the tenant would be entitled in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44,
    - (iii) to which the landlord would be entitled under section 45 and 45A, and
  - (c) the amount, calculated in accordance with section 32L, to be payable by the landlord to the tenant as compensation were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The notice must also—
  - (a) be dated,
  - (b) state the date of valuation of each of the values and amounts mentioned in subsection (3), and
  - (c) set out how the valuer arrived at each of those values and amounts.
- (5) The notice may also contain or be accompanied by any other information that the valuer considers appropriate.
- (6) A notice served under subsection (1) is a “notice of assessment”.
- (7) The valuer must, at the same time as serving a notice of assessment, send a copy of the notice to the Tenant Farming Commissioner.



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### *Appeal against valuer's assessment*

#### **32N Appeal to Lands Tribunal against valuer's assessment**

- (1) The tenant or the landlord may appeal to the Lands Tribunal against a notice of assessment.
- (2) An appeal under this section must—
  - (a) state the grounds on which it is being made, and
  - (b) be lodged before the expiry of the period of 21 days beginning with the date the notice of assessment was served.
- (3) The Lands Tribunal may—
  - (a) reassess any value or amount of compensation mentioned in section 32J(1) (and any factor affecting the value or amount),
  - (b) determine the amount to be payable by the landlord to the tenant as compensation, calculated in accordance with section 32L, were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The valuer whose assessment is appealed against may be a witness in the appeal proceedings.
- (5) In the appeal proceedings, in addition to the landlord and the tenant, the following persons are entitled to be heard—
  - (a) where the landlord is a creditor in a standard security, the owner of the land,
  - (b) where the landlord is the owner of the land, any creditor in a standard security over the land or any part of it.
- (6) The Lands Tribunal is to give written reasons for its decision on an appeal under this section.
- (7) The decision of the Lands Tribunal in an appeal under this section is final.

#### **32O Referral of certain matters by Lands Tribunal to Land Court**

Where, in an appeal before the Lands Tribunal under section 32N, an issue of law arises which may competently be determined by the Land Court by virtue of this Act or the 2003 Act, the Tribunal is to refer the issue to the Land Court for determination unless the Tribunal considers that it is not appropriate to do so.

### *Withdrawal of notice of intention to relinquish*

#### **32P Withdrawal of notice of intention to relinquish**

- (1) The tenant may, before the expiry of the period mentioned in subsection (2), withdraw a notice of intention to relinquish by serving notice on the landlord.
- (2) The period is—
  - (a) the period of 35 days beginning with the day the notice of assessment is served, or
  - (b) if an appeal is made to the Lands Tribunal under section 32N, the period of 14 days beginning with the date of the Tribunal's decision.

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- (3) The tenant must, at the same time as serving notice under subsection (1), send a copy of the notice to—
  - (a) the Tenant Farming Commissioner,
  - (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).
- (4) Where the tenant serves notice under subsection (1)—
  - (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
  - (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

*Landlord's response to tenant's offer to quit tenancy*

**32Q Landlord's acceptance of notice of intention to relinquish**

- (1) The section applies where the landlord wishes to accept the tenant's notice of intention to relinquish.
- (2) The landlord must—
  - (a) serve notice on the tenant which complies with subsection (3), and
  - (b) pay the amount of compensation calculated under section 32L before the expiry of the period mentioned in subsection (5).
- (3) A notice complies with this subsection if it—
  - (a) is served before the expiry of the period mentioned in subsection (4), and
  - (b) states that the landlord will, in exchange for the tenant quitting the tenancy, pay to the tenant—
    - (i) the amount of compensation assessed by the valuer and specified in the notice of assessment, or
    - (ii) where the Lands Tribunal has determined under section 32N(3)(b) that the compensation should be a different amount, that amount.
- (4) The period referred to in subsection (3)(a) is the period of 28 days beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (5) The period referred to in subsection (2)(b) is the period of 6 months beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (6) A notice served under subsection (2)(a) is a “notice of acceptance”.
- (7) The landlord must, at the same time as serving a notice of acceptance, send a copy of the notice to the Tenant Farming Commissioner.
- (8) The Scottish Ministers may by regulations specify the form and content of notices of acceptance.
- (9) Regulations under subsection (8) are subject to the negative procedure.

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### **32R Notice of declinature**

- (1) The landlord may, at any time before the expiry of the period of 28 days mentioned in section 32Q(4), serve notice on the tenant stating that the landlord does not wish to accept the notice of intention to relinquish.
- (2) A notice served under subsection (1) is a “notice of declinature”.
- (3) The landlord must, at the same time as serving a notice of declinature, send a copy of the notice to—
  - (a) the Tenant Farming Commissioner,
  - (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).
- (4) Where the landlord serves notice of declinature—
  - (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
  - (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

### **32S Withdrawal of notice of acceptance**

- (1) A landlord may, at any time before the expiry of the period of 6 months mentioned in section 32Q(5), withdraw a notice of acceptance by serving notice in writing on the tenant.
- (2) A notice served under subsection (1) is a “notice of withdrawal”.
- (3) The landlord must, at the same time as serving notice of withdrawal, send a copy of the notice to the Tenant Farming Commissioner.
- (4) The tenant is entitled to recover from the landlord any loss or expense incurred in reliance on the landlord's notice of acceptance.

#### *Payment of compensation ends tenancy*

### **32T Consequences of landlord paying compensation to tenant**

- (1) This section applies where, on or before the expiry of the period mentioned in section 32Q(5), the landlord pays to the tenant the amount of compensation in accordance with section 32Q(2)(b).
- (2) The tenancy comes to an end—
  - (a) on the expiry of that period, or
  - (b) on such earlier date as the tenant and landlord may agree.
- (3) Where a tenancy is terminated under subsection (2), section 21 does not apply in respect of the tenancy.
- (4) Any claim or entitlement to compensation or any other payment, other than to the compensation mentioned in section 32J(1)(b), is preserved despite the payment of compensation in accordance with section 32Q(2)(b).

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## CHAPTER 2

### ASSIGNATION WHERE LANDLORD DOES NOT ACCEPT TENANT'S OFFER

#### **32U Assignation where landlord does not accept notice of intention to relinquish**

- (1) This section applies where the tenant serves notice of intention to relinquish and the landlord—
  - (a) serves notice of declinature,
  - (b) fails to serve notice of acceptance before the expiry of the period of 28 days mentioned in section 32Q(4), or
  - (c) serves notice of acceptance but—
    - (i) serves notice of withdrawal before the expiry of the period of 6 months mentioned in section 32Q(5), or
    - (ii) fails to pay the amount of compensation required before the expiry of that period in accordance with section 32Q(2)(b).
- (2) The tenant may, before the expiry of the period of 1 year beginning with the date mentioned in subsection (3), assign the lease of the holding to an individual who is a new entrant to, or who is progressing in, farming.
- (3) That date is—
  - (a) the date notice of declinature is served,
  - (b) where the landlord fails to serve notice of acceptance before the expiry of the period of 28 days mentioned in section 32Q(4), the date falling at the end of that period,
  - (c) the date notice of withdrawal is served, or
  - (d) where the landlord fails to pay the amount of compensation required before the expiry of the period of 6 months mentioned in section 32Q(5), the date falling at the end of that period.

#### **32V Application of section 10A to assignation under this Part**

Section 10A has effect in relation to an assignation by virtue of section 32U(2)—

- (a) as if subsections (1), (1A) and (6) were omitted,
- (b) as if, for subsections (3), (3A) and (3B) there were substituted—
  - “(3) The landlord may withhold consent to the proposed assignation if—
    - (a) the proposed assignee is not an individual who is a new entrant to farming or who is progressing in farming, or
    - (b) there are reasonable grounds for doing so.
  - (3A) In subsection (3)(b), reasonable grounds include, in particular, that the landlord is not satisfied that the proposed assignee—
    - (a) would have the ability to pay—
      - (i) the rent due under the lease, or
      - (ii) for adequate maintenance of the land, or
    - (b) has the skills or experience that would be required properly to manage and maintain the land in accordance with the rules of good husbandry.

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(3B) The ground of objection in subsection (3A)(b) does not apply where the proposed assignee is a new entrant to farming and—

- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
- (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.”.

## CHAPTER 3

### INTERPRETATION

#### 32W Interpretation of Part

In this Part—

“new entrant to farming” and “person progressing in farming” are to be construed in accordance with section 32B,

“notice of acceptance” has the meaning given by section 32Q(6),

“notice of assessment” has the meaning given by section 32M(6),

“notice of declinature” has the meaning given by section 32R(2),

“notice of intention to relinquish” has the meaning given by section 32C(2),

“notice of withdrawal” has the meaning given by section 32S(2),

“Tenant Farming Commissioner” means the person appointed under section 10(1) of the Land Reform (Scotland) Act 2016,

“valuer” means the person appointed under section 32G(2) or, as the case may be, 32H(5)(b).]

## PART IV

### COMPENSATION FOR IMPROVEMENTS

#### 33 Improvements.

In this Part the following are referred to as “improvements”—

“1923 Act improvement” means an improvement carried out on an agricultural holding, being an improvement specified in Schedule 3 to this Act, and begun before 31st July 1931;

“1931 Act improvement” means an improvement so carried out, being an improvement specified in Schedule 4 to this Act and begun on or after 31st July 1931 and before 1st November 1948;

“old improvement” means a 1923 Act improvement or a 1931 Act improvement;

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“new improvement” means an improvement carried out on an agricultural holding, being an improvement specified in Schedule 5 to this Act begun on or after 1st November 1948.

### [<sup>F84</sup>33A Agreements as to compensation for improvements

Where the tenant has carried out an improvement—

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

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

#### Textual Amendments

**F84** S. 33A inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. **43(1)**, 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

### 34 Right to compensation for improvements.

- (1) Subject to subsections (2) to (4), (7) and (8) below, and to sections 36 and 39 to 42 of this Act, a tenant of an agricultural holding shall be entitled, on quitting the holding at the termination of the tenancy, to compensation from the landlord in respect of improvements carried out by the tenant.
- (2) A tenant whose lease was entered into before 1st January 1921 shall not be entitled to compensation under this section for an improvement which he was required to carry out by the terms of his tenancy.
- (3) A tenant shall not be entitled to compensation under this section for an old improvement carried out on land which, at the time the improvement was begun, was not a holding within the meaning of the <sup>M9</sup>Agricultural Holdings (Scotland) Act 1923 as originally enacted, or land to which provisions of that Act relating to compensation for improvements and disturbance were applied by section 33 of that Act.
- (4) Nothing in this section shall prejudice the right of a tenant to any compensation to which he is entitled—
  - (a) in the case of an old improvement, under custom, agreement or otherwise;
  - <sup>F85</sup>(b) .....
 in lieu of any compensation provided by this section.
- (5) Where a tenant has remained in an agricultural holding during two or more tenancies, he shall not be deprived of his right to compensation under subsection (1) above by reason only that the improvements were not carried out during the tenancy on the termination of which he quits the holding.

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- (6) Subject to section 36(4) of this Act, a tenant shall be entitled to compensation under this section in respect of the 1931 Act improvement specified in paragraph 28 of Schedule 4 to this Act, or the new improvement specified in paragraph 32 of Schedule 5 to this Act (laying down of temporary pasture), notwithstanding that the laying down or the leaving at the termination of the tenancy of temporary pasture was in contravention of the terms of the lease or of any agreement made by the tenant respecting the method of cropping the arable lands; but, in ascertaining the amount of the compensation, the [<sup>F86</sup>Land Court] shall take into account any injury to or deterioration of the holding due to the contravention (except insofar as the landlord may have recovered damages therefor).
- (7) Where under an agreement in writing entered into before 1st January 1921 a tenant is entitled to compensation which is fair and reasonable having regard to the circumstances existing at the time of the making of the agreement, for an old improvement specified in Part III of Schedule 3 to this Act or in Part III of Schedule 4 to this Act, such compensation shall, as respects that improvement, be substituted for compensation under subsection (1) above.
- (8) Compensation shall not be payable under this Part of this Act in respect of repairs of the kind specified in paragraph 29 of Schedule 3 to this Act or in paragraph 29 of Schedule 4 to this Act unless, before beginning to execute any such repairs, the tenant gave to the landlord notice in writing under paragraph (29) of Schedule 1 to the <sup>M10</sup>Agricultural Holdings (Scotland) Act 1923, or under paragraph (30) of Schedule 1 to the <sup>M11</sup>Small Landholders and Agricultural Holdings (Scotland) Act 1931, of his intention to execute the repairs, together with particulars thereof, and the landlord failed to exercise the right conferred on him by the said paragraph (29) or, as the case may be, the said paragraph (30) to execute the repairs himself within a reasonable time after receiving the notice.

#### Textual Amendments

- F85** S. 34(4)(b) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 43(2)(a)**, 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)
- F86** Word in s. 34(6) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 24** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

#### Marginal Citations

- M9** 1923 c. 10.  
**M10** 1923 c. 10.  
**M11** 1931 c. 44.

### [<sup>F87</sup> 34A Amnesty under the Land Reform (Scotland) Act 2016

A tenant of an agricultural holding is entitled to compensation under section 34 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.]

#### Textual Amendments

- F87** S. 34A inserted (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 113(1)**, 130(1) (with s. 128); S.S.I. 2017/20, reg. 2, sch.

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

**C17** S. 34A restricted (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 115(1), 130(1)** (with s. 128); S.S.I. 2017/20, reg. 2, sch.

**35 Payment of compensation by incoming tenant.**

- (1) This section applies to compensation which is payable or has been paid to an outgoing tenant of an agricultural holding by the landlord under or in pursuance of this Act or the Agricultural Holdings (Scotland) Act 1923, the Small Landholders and Agricultural Holdings (Scotland) Act 1931, the<sup>M12</sup> Agriculture (Scotland) Act 1948 or the 1949 Act.
- (2) Subject to subsection (3) below, any agreement made after 1st November 1948 between an incoming tenant and his landlord whereby the tenant undertakes to pay to the outgoing tenant or to refund to the landlord any compensation to which this section applies shall be null and void.
- (3) Subsection (2) above shall not apply in the case of an improvement of a kind referred to in Part III of Schedule 5 to this Act, where the agreement is in writing and states a maximum amount which may be payable thereunder by the incoming tenant.
- (4) Where, on entering into occupation of an agricultural holding, a tenant, with the consent in writing of the landlord pays to the outgoing tenant compensation to which this section applies—
  - (a) in respect of an old improvement, in pursuance of an agreement in writing made before 1st November 1948; or
  - (b) where subsection (3) above applies,
 the incoming tenant shall be entitled, on quitting the holding, to claim compensation for the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if the outgoing tenant had remained tenant of the holding and quitted it at the time at which the tenant quits it.
- (5) Where, in a case not falling within subsection (2) or (3) above, a tenant, on entering into occupation of an agricultural holding, paid to his landlord any amount in respect of the whole or part of a new 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 thereof had been carried out by him.

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

**C18** S. 35(2)-(5) applied (with modifications) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 46, 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

**Marginal Citations**

**M12** 1948 c. 45.



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### 36 Amount of compensation under this Part.

- (1) Subject to subsections (2) to (4) below, the amount of any compensation payable to a tenant under this Part of this Act shall be such sum as fairly represents the value of the improvement to an incoming tenant.
- (2) In the ascertainment of the amount of compensation payable in respect of an old improvement, there shall be taken into account any benefit which the landlord has given or allowed to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement.
- (3) In the ascertainment of the amount of compensation payable under this section for a new <sup>F88</sup>improvement—
  - (a) there shall be taken into account any benefit which the landlord has agreed in writing to give the tenant in consideration of the tenant carrying out the improvement; and
  - (b) where a grant has been or will be made to the tenant in respect of the improvement, subject to the conditions of the grant—
    - (i) if either the landlord or tenant has not made or will not make a contribution towards the cost of the improvement, or neither of them has made or will make such a contribution, the grant shall not be taken into account;
    - (ii) in any other case, there shall be taken into account such proportion of the grant as equals the proportion of the contribution by the tenant towards the cost of the improvement as a proportion of the total of his contribution added to that of the landlord.]
- (4) In ascertaining the amount of any compensation payable under section 34(6) of this Act, the [<sup>F89</sup>Land Court] shall take into account any injury to or deterioration of the holding due to the contravention of the lease or agreement referred to in that subsection, except in so far as the landlord has recovered damages in respect of such injury or deterioration.

#### Textual Amendments

**F88** S. 36(3)(a)(b) and word substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 44, 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with sch.)

**F89** Words in s. 36(4) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 25** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)

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

**C19** S. 36 applied (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 117(3), 130(1)** (with s. 128); S.S.I. 2017/20, reg. 2, sch.

### 37 Consents necessary for compensation for some improvements.

- (1) Compensation under this Part of this Act shall not be payable for—
  - (a) a 1923 Act improvement specified in Part I of Schedule 3 to this Act;
  - (b) a 1931 Act improvement specified in Part I of Schedule 4 to this Act; or
  - (c) a new improvement specified in Part I of Schedule 5 to this Act;
 unless, before the improvement was carried out, the landlord consented to it in writing (whether unconditionally or upon terms <sup>F90</sup>... agreed on between the parties).

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<sup>F91</sup>(2) .....

#### Textual Amendments

- F90** Words in s. 37(1) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 26](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F91** S. 37(2) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 43\(2\)\(b\)](#), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

### 38 Notice required of certain improvements.

- (1) Subject to subsections (2) to (6) below, compensation under this Act shall not be payable for—
- a 1923 Act improvement specified in Part II of Schedule 3 to this Act;
  - a 1931 Act improvement specified in Part II of Schedule 4 to this Act;
  - a new improvement specified in Part II of Schedule 5 to this Act;
- unless the tenant gave notice to the landlord in accordance with subsection (3) below of his intention to carry it out and of the manner in which he proposed to do so.
- (2) Subsection (1) above shall not apply in the case of an improvement mentioned in subsection (1)(a) or (b) above, if the parties agreed by the lease or otherwise to dispense with the requirement for notice under subsection (3).
- [<sup>F92</sup>(2A) Subsection (1) above shall not apply in the case of an improvement mentioned in subsection (1)(c) above if the improvement was carried out by executing work which the landlord was required, at the time the lease was entered into and by virtue of section 5(2)(a) of this Act, to execute in order to fulfil his obligations under the lease.]
- (3) Notice shall be in accordance with this subsection if it is in writing and—
- in the case of an improvement mentioned in subsection (1)(a) above, it was notice under section 3 of the <sup>M13</sup>Agricultural Holdings (Scotland) Act 1923, given not more than 3 nor less than 2 months,
  - in the case of an improvement mentioned in subsection (1)(b) above, it was notice under the said section 3, given not more than 6 nor less than 3 months,
  - in the case of an improvement mentioned in subsection (1)(c) above, it was given not less than 3 months,
- before the tenant began to carry out the improvement.
- (4) In the case of an improvement mentioned in subsection (1)(a) or (b) above, compensation shall not be payable unless—
- the parties agreed on the terms as to compensation or otherwise on which the improvement was to be carried out;
  - where no such agreement was made and the tenant did not withdraw the notice, the landlord failed to exercise his right under the said section 3 to carry out the improvement himself within a reasonable time; or
  - in the case of an improvement mentioned in subsection (1)(b) above, where the landlord gave notice of objection and the matter was referred under section 28(2) of the <sup>M14</sup>Small Landholders and Agricultural Holdings (Scotland) Act 1931 for determination by the appropriate authority, that authority was satisfied that the improvement should be carried out and the

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improvement was carried out in accordance with any directions given by that authority as to the manner of so doing.

<sup>F93</sup>(5) .....

- (6) In subsection (4) above, “the appropriate authority” means—
- (a) in relation to the period before 4th September 1939, the Department of Agriculture for Scotland;
  - (b) in relation to the period starting on that day, the Secretary of State.

#### Textual Amendments

- F92** S. 38(2A) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 43(3), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)
- F93** S. 38(5) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 43(2)(c), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

#### Marginal Citations

- M13** 1923 c. 10.  
**M14** 1931 c. 44.

### 39 Compensation for Sch. 5, Pt.II, improvements conditional on approval of Land Court in certain cases.

- (1) Subject to subsections (2) to (4) below, compensation under this Part of this Act shall not be payable in respect of a new improvement specified in Part II of Schedule 5 to this Act if, within one month after receiving notice under section 38(3) of this Act from the tenant of his intention to carry out the improvement, the landlord gives notice in writing to the tenant that he objects to the carrying out of the improvement or to the manner in which the tenant proposes to carry it out.
- (2) Where notice of objection has been given under subsection (1) above, the tenant may apply to the Land Court for approval of the carrying out of the improvement, and on such application the Land Court may approve the carrying out of the improvement either—
- (a) unconditionally, or
  - (b) upon such terms, as to reduction of the compensation which would otherwise be payable or as to other matters, as appears to them to be just,
- or may withhold their approval.
- (3) If, on an application under subsection (2) above, the Land Court grant their approval, the landlord may, within one month after receiving notice of the decision of the Land Court, serve notice in writing on the tenant undertaking to carry out the improvement himself.
- (4) Where, on an application under subsection (2) above the Land Court grant their approval, then if either—
- (a) no notice is served by the landlord under subsection (3) above, or
  - (b) such a notice is served but, on an application made by the tenant in that behalf, the Land Court determines that the landlord has failed to carry out the improvement within a reasonable time,

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the tenant may carry out the improvement and shall be entitled to compensation under this Part of 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.

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

**C20** S. 39(1)-(4) applied (with modifications) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003](#) (asp 11), **ss. 49(2), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

## PART V

### OTHER PROVISIONS REGARDING COMPENSATION

#### *Market gardens*

#### **40 Market gardens.**

- (1) This section applies to any agricultural holding which, by virtue of an agreement in writing made on or after 1st January 1898, is let or is to be treated as a market garden.
- (2) This section also applies where—
  - (a) a holding was, on 1st January 1898 under a lease then current, in use or cultivation as a market garden with the knowledge of the landlord; and
  - (b) an improvement of a kind specified in Schedule 6 to this Act (other than such an alteration of a building as did not constitute an enlargement thereof) has been carried out on the holding; and
  - (c) the landlord did not, before the improvement was carried out, serve on the tenant a written notice dissenting from the carrying out of the improvement;
 in relation to improvements whether carried out before or after 1st January 1898.
- (3) In the application of Part IV of this Act to an agricultural holding to which this section applies, subject to subsections (5) and (7) below, the improvements specified in Schedule 6 to this Act shall be included in the improvements specified in Part III of each of Schedules 3, 4 and 5 to this Act.
- (4) In the case of an agricultural holding to which this section applies—
  - (a) section 18 of this Act shall apply to every fixture or building affixed or erected by the tenant to or upon the holding or acquired by him since 31st December 1900 for the purposes of his trade or business as a market gardener;
  - (b) it shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out, but if the tenant does not remove such fruit trees and fruit bushes before the termination of his tenancy they shall remain the property of the landlord and the tenant shall not be entitled to any compensation in respect thereof; and
  - (c) the right of an incoming tenant to claim compensation in respect of the whole or part of an improvement which he has purchased may be exercised although the landlord has not consented in writing to the purchase.

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- (5) Where a tenancy of a kind described in subsection (2) above was a tenancy from year to year, the compensation payable in respect of an improvement of a kind referred to in that subsection shall be such (if any) as could have been claimed if the 1949 Act had not been passed.
- (6) Where the land to which this section applies consists of part only of an agricultural holding this section shall apply as if that part were a separate holding.
- (7) Nothing in this section shall confer a right to compensation for the alteration of a building (not being an alteration constituting an enlargement of the building) where the alteration was begun before 1st November 1948.

#### **41 Direction by Land Court that holding be treated as market garden.**

- (1) Where—
  - (a) the tenant of an agricultural holding intimates to the landlord in writing his desire to carry out on the holding or any part thereof an improvement specified in Schedule 6 to this Act;
  - (b) the landlord refuses, or within a reasonable time fails, to agree in writing that the holding, or that part thereof, shall be treated as a market garden;
  - (c) the tenant applies to the Land Court for a direction under this subsection; and
  - (d) the Land Court is satisfied that the holding or that part thereof is suitable for the purposes of market gardening;

the Land Court may direct that section 40 of this Act shall apply to the holding or, as the case may be, part of a holding, either—

- (i) in respect of all the improvements specified in Schedule 6 to this Act, or
- (ii) in respect of some only of those improvements,

and that section shall apply accordingly as respects any improvement carried out after the date on which the direction is given.

- (2) A direction under subsection (1) above may be given subject to such conditions, if any, for the protection of the landlord as the Land Court may think fit and, in particular, where the direction relates to part only of the holding, the direction may, on the application of the landlord, be given subject to the condition that the tenant shall consent to the division of the holding into two parts (one such part being the part to which the direction relates) to be held at rents agreed by the landlord and tenant or in default of agreement determined by [<sup>F94</sup>the Land Court], but otherwise on the same terms and conditions (so far as applicable) as those on which the holding is held.

- (3) Where a direction is given under subsection (1) above, if the tenancy is terminated—
  - (a) by notice of intention to quit given by the tenant, or
  - (b) by reason of the tenant's apparent insolvency being constituted under section [<sup>F95</sup>16 of the Bankruptcy (Scotland) Act 2016],

the tenant shall not be entitled to compensation in respect of improvements specified in the direction unless he produces an offer which complies with subsection (4) below and the landlord fails to accept the offer within 3 months after the production thereof.

- (4) An offer complies with this subsection if—
  - (a) it is in writing;
  - (b) it is made by a substantial and otherwise suitable person;

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- (c) it is produced by the tenant to the landlord not later than one month after the date of the notice of intention to quit or constitution of apparent insolvency as the case may be, or at such later date as may be agreed;
  - (d) it is an offer to accept a tenancy of the holding from the termination of the existing tenancy on the terms and conditions of the existing tenancy so far as applicable;
  - (e) it includes an offer, subject to subsection (5) below, to pay to the outgoing tenant all compensation payable under this Act or under the lease;
  - (f) it is open for acceptance for a period of 3 months from the date on which it is produced.
- (5) If the landlord accepts an offer which complies with subsection (4) above the incoming tenant shall pay to the landlord on demand all sums payable to him by the outgoing tenant on the termination of the tenancy in respect of rent or breach of contract or otherwise in respect of the holding.
- (6) Any amount paid by the incoming tenant under subsection (5) above may, subject to any agreement between the outgoing tenant and incoming tenant, be deducted by the incoming tenant from any compensation payable by him to the outgoing tenant.
- (7) A tenancy created by the acceptance of an offer which complies with subsection (4) above shall be deemed for the purposes of section 13 of this Act not to be a new tenancy.

#### Textual Amendments

- F94** Words in s. 41(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 27](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F95** Words in s. 41(3)(b) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 12\(4\)](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

## 42 Agreements as to compensation relating to market gardens.

- (1) Where under an agreement in writing a tenant of an agricultural holding is entitled to compensation which is fair and reasonable having regard to the circumstances existing at the time of making the agreement, for an improvement for which compensation is payable by virtue of section 40 of this Act, such compensation shall, as respects that improvement, be substituted for compensation under this Act.
- (2) The landlord and the tenant of an agricultural holding who have agreed that the holding shall be let or treated as a market garden may by agreement in writing substitute, for the provisions as to compensation which would otherwise be applicable to the holding, the provisions as to compensation in section 41(3) to (6) of this Act.

### *Miscellaneous*

## 43 Compensation for disturbance.

- (1) Where the tenancy of an agricultural holding terminates by reason of—
- (a) a notice to quit given by the landlord; or
  - (b) a counter-notice given by the tenant under section 30 of this Act,

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and in consequence the tenant quits the holding, subject to subsections (2) to (8) below, compensation for the disturbance shall be payable by the landlord to the tenant.

- (2) Compensation shall not be payable under this section where the application of section 22(1) of this Act to the notice to quit is excluded by any of paragraphs (a) or (c) to (f) of subsection (2) of that section.
- (3) Subject to subsection (4) below, 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 [<sup>F96</sup>arising from the determination of] any question arising under this section).
- (4) Where compensation is payable under this section—
  - (a) the compensation 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;
  - <sup>F97</sup>(c) .....
- (5) In subsection (4) above “rent” means the rent after deduction of such an amount as, failing agreement, the [<sup>F98</sup>Land Court determines as] the amount payable by the landlord in respect of the holding for the year in which the tenancy was terminated by way of any 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 Part II of the <sup>M15</sup>Income and Corporation Taxes Act 1988.
- (6) Where the tenant of an agricultural 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 part of the holding, on the termination of his tenancy he does not quit the holding or that part.
- (7) Where the tenancy of an agricultural holding terminates by virtue of a counter-notice given by the tenant under section 30 of this Act and—
  - (a) the part of the holding affected by the notice to quit given by the landlord, together with any part of the holding affected by any previous notice to quit given by the landlord which is rendered valid by section 29 of this Act, is either less than a quarter of the area of the original holding or of a rental value less than one quarter 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.

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- (8) Compensation under this section shall be in addition to any compensation to which the tenant may be entitled apart from this section.

#### Textual Amendments

- F96** Words in s. 43(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 28(a)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F97** S. 43(4)(c) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 50(1), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)
- F98** Words in s. 43(5) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 28(b)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

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

- C21** S. 43 modified by 2003 asp 11, s. 38N(2)-(6) (as inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 100(2), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch.)
- C22** S. 43(3)-(6) applied (with modifications) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 52(2), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

#### Marginal Citations

- M15** 1988 c. 1.

## 44 Compensation for continuous adoption of special standard of farming.

- (1) Where the tenant of an agricultural holding proves that the value of the holding to an incoming tenant has been increased during the tenancy by the continuous adoption of a standard of farming or a system of farming which has been more beneficial to the holding than—
- (a) the standard or system required by the lease, or
  - (b) in so far as no system of farming is so required, the system of farming normally practised on comparable holdings in the district,
- the tenant shall be entitled, on quitting the holding, to obtain from the landlord such compensation as represents the value to an incoming tenant of the adoption of that more beneficial standard or system.
- (2) Compensation shall not be recoverable under subsection (1) above unless—
- (a) the tenant has, not later than one month before the termination of the tenancy, given to the landlord notice in writing of his intention to claim such compensation; and
  - (b) a record of the condition of the fixed equipment on, and the cultivation of, the holding has been made under section 8 of this Act;
- and shall not be so recoverable 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 the tenancy, before the date of the first such record.
- (3) In assessing the compensation to be paid under subsection (1) above, due allowance shall be made for any compensation agreed or awarded to be paid to the tenant under Part IV of this Act for any improvement which has caused or contributed to the benefit.
- (4) Nothing in this section shall entitle a tenant to recover, in respect of any improvement, any compensation which he would not be entitled to recover apart from this section.



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

**C23** S. 44 applied (with modifications) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 53\(1\), 95\(3\), 95\(4\)](#) (with s. 95(2)); [S.S.I. 2003/548](#), [art. 2\(d\)](#) (with [Sch.](#))

**45 Compensation to landlord for deterioration etc. of holding.**

- (1) The landlord of an agricultural holding shall be entitled to recover from the tenant, on his quitting the holding on termination of the tenancy, compensation—
- (a) where the landlord shows that the value of the holding has been reduced by dilapidation, deterioration or damage caused by;
  - (b) where dilapidation, deterioration or damage has been caused to any part of the holding or to anything in or on the holding by;

non-fulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry.

- (2) The amount of compensation payable under subsection (1) above shall be—
- (a) where paragraph (a) of that subsection applies, (insofar as the landlord is not compensated for the dilapidation, deterioration or damage under paragraph (b) thereof) an amount equal to the reduction in the value of the holding;
  - (b) when paragraph (b) of that subsection applies, 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 this Act, the landlord may, in lieu of claiming compensation under subsection (1)(b) above, 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) subject to section 46(4) of this Act compensation shall not be claimed in respect of any one holding both under such a lease and under subsection (1) above;

and compensation under this subsection shall be treated, for the purposes of subsection (2)(a) above and of section 46 (2) of this Act as compensation under subsection (1)(b) above.

**[<sup>F99</sup>45A Compensation arising as a result of diversification and cropping of trees**

- (1) Subject to subsection (2) below, the landlord of an agricultural holding shall be entitled to recover from the tenant, on his quitting the holding on termination of the tenancy, compensation where the landlord shows that the value of the holding has been reduced during the tenancy by the use, on or after the coming into force of this section, of the holding for a purpose which is not an agricultural purpose; and the amount of compensation payable shall be an amount equal to the reduction in the value of the holding.
- (2) Where there are trees on the holding which were planted—
- (a) by the tenant on or after the coming into force of this section; and
  - (b) for future cropping,

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the landlord or tenant shall be entitled to recover from the other, on the tenant quitting the holding on the termination of the tenancy, compensation calculated in accordance with subsections (3) and (4) below.

- (3) For the purposes of subsection (2) above, at the termination of the tenancy—
- (a) the trees shall be valued on the basis of their worth to a willing purchaser for future cropping; and
  - (b) there shall be evaluated any loss of rent to the landlord which would be incurred by his retaining the trees until the likely date of cropping added to the cost to him of returning the land to agricultural use after cropping.
- (4) If the value reached under paragraph (a) of subsection (3) above is—
- (a) greater than that reached under paragraph (b) of that subsection, the tenant shall be entitled to the difference between the values as compensation;
  - (b) less than that reached under paragraph (b) of that subsection, the landlord shall be entitled to the difference between the values as compensation.
- (5) Where the value of an agricultural holding has been increased during the tenancy by such use of the land or part of the land, or such change to the land, for a purpose that is not an agricultural purpose—
- (a) as occurred on or after the coming into force of this section; and
  - (b) as had been permitted under section 40 or 41 of the Agricultural Holdings (Scotland) Act 2003 (asp 11),

the tenant shall, subject to subsections (6) and (7) below, be entitled, on quitting the holding on termination of the tenancy, to recover from the landlord such compensation as fairly represents the value of the use, change or carrying out of the activities to an incoming tenant.

- (6) In ascertaining the amount of compensation payable under subsection (5) above—
- (a) there shall be taken into account any benefit which the landlord has agreed in writing to give the tenant in consideration of the matters referred to in that subsection; and
  - (b) where a grant has been or will be made to the tenant in respect of those matters, subject to the conditions of the grant—
    - (i) if either the landlord or tenant has not made or will not make a contribution towards the cost of the improvement, or neither of them has made or will make such a contribution, the grant shall not be taken into account;
    - (ii) in any other case, there shall be taken into account such proportion of the grant as equals the proportion of the contribution by the tenant towards the cost of the improvement as a proportion of the total of his contribution added to that of the landlord.
- (7) No compensation is payable under subsection (5) above if, owing to—
- (a) any of the matters referred to in that subsection, the land is unsuitable for use for agriculture by an incoming tenant; or
  - (b) any use of fixed equipment in connection with any of those matters, the landlord would, at the commencement of an incoming tenant's tenancy, be unable to fulfil his obligations under the lease as to fixed equipment,
- in so far as those matters or, as the case may be, that use is attributable to those facts.

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- (8) Where the tenant has remained in occupation of the holding during two or more tenancies, he shall not be deprived of his right to compensation under this section by reason only that the use of the land or change to the land did not occur during the tenancy on the termination of which he quits the holding.]

#### Textual Amendments

**F99** S. 45A inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 51(1)**, 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

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

**C24** S. 45A applied (with modifications) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 53(2)**, 95(3), (4) (with s. 95(2)); S.S.I. 2003/548, art. 2(d) (with Sch.)

## 46 Compensation for failure to repair or maintain fixed equipment.

- (1) This section applies where, by virtue of section 4 of this Act, the liability for the maintenance or repair of an item of fixed equipment is transferred from the tenant to the landlord.
- (2) Where this section applies, the landlord may within the period of one month beginning with the date on which the transfer takes effect require that there shall be determined by [<sup>F100</sup>the Land Court], and paid by the tenant, the amount of any compensation which would have been payable under section 45(1)(b) of this Act 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.
- (3) Where this section applies, 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 period of one month referred to in subsection (2) above so requires, be determined by [<sup>F101</sup>the Land Court], and any amount directed by the [<sup>F102</sup>determination] to be paid by the landlord shall be paid by him to the tenant.
- (4) For the purposes of section 45(3)(b) of this Act any compensation under this section shall be disregarded.

#### Textual Amendments

**F100** Word in s. 46(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 29(a)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F101** Words in s. 46(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 29(b)(i)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F102** Words in s. 46(3) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 29(b)(ii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## 47 Provisions supplementary to ss. 45 and 46.

- (1) Compensation shall not be recoverable [<sup>F103</sup>by the landlord under section 45 or 45A] of this Act, unless the landlord has, not later than 3 months before the termination of the tenancy, given notice in writing to the tenant of his intention to claim compensation thereunder.

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- (2) Subsection (3) below shall apply to compensation—
- (a) under section 45 of this Act, where the lease was entered into after 31st July 1931; or
  - (b) where the lease was entered into on or after 1st November 1948.
- (3) When this subsection applies, no compensation shall be recoverable—
- (a) unless during the occupancy of the tenant a record of the condition of the fixed equipment on, and cultivation of, the holding has been made under section 8 of this Act;
  - (b) in respect of any matter arising before the date of the record referred to in paragraph (a) above; or
  - (c) where more than one such record has been made during the tenant's occupancy, in respect of any matter arising before the date of the first such record.
- (4) If the landlord and the tenant so agree in writing 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 subsection (3) above, 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.
- (5) Where the tenant has remained in his holding during 2 or more tenancies, his landlord shall not be deprived of his right to compensation under section 45 of this Act in respect of any dilapidation, deterioration or damage by reason only that the tenancy during which the relevant act or omission occurred was a tenancy other than the tenancy at the termination of which the tenant quit the holding.

#### **Textual Amendments**

**F103** Words in s. 47(1) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. [51\(2\)](#), [95\(3\)](#), [95\(4\)](#) (with s. [95\(2\)](#)); S.S.I. 2003/548, art. [2\(d\)](#) (with Sch.)

#### **48 Landlord not to have right to penal rent or liquidated damages.**

Notwithstanding any provision to the contrary in a lease of an agricultural holding, the landlord shall not be entitled to recover any sum, by way of higher rent, liquidated damages or otherwise, in consequence of any breach or non-fulfilment of a term or condition of the lease, which is in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment.

#### **49 Compensation provisions to apply to parts of holdings in certain cases.**

- (1) Where—
- (a) the tenancy of part of an agricultural holding terminates by reason of a notice to quit which is rendered valid by section 29 of this Act; or
  - (b) the landlord of an agricultural holding resumes possession of part of the holding in pursuance of a provision in that behalf contained in the lease;
- the provisions of this Act with respect to compensation shall apply as if that part of the holding were a separate holding which the tenant had quitted in consequence of a notice to quit.

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- (2) In a case falling within subsection (1)(b) above, the [<sup>F104</sup>Land Court, in determining] the amount of compensation payable to the tenant, shall take into account any benefit or relief allowed to the tenant under the lease in respect of the land possession of which is resumed by the landlord.
- (3) Where any land comprised in a lease is not an agricultural holding within the meaning of this Act by reason only that the land so comprised includes land to which subsection (4) below applies, the provisions of this Act with respect to compensation for improvements and for disturbance shall, unless it is otherwise agreed in writing, apply to the part of the land exclusive of the land to which subsection (4) below applies as if that part were a separate agricultural holding.
- (4) This subsection applies to land which, owing to the nature of the building thereon or the use to which it is put, would not, if it had been separately let, be an agricultural holding.

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**Textual Amendments**

**F104** Words in s. 49(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 30](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## 50 Determination of claims for compensation where holding is divided.

Where the interest of the landlord in an agricultural holding has become vested in several parts in more than one person and the rent payable by the tenant of the holding has not been apportioned with his consent or under any statute, the tenant shall be entitled to require that any compensation payable to him under this Act shall be determined as if the holding had not been divided; and the [<sup>F105</sup>Land Court] shall, where necessary, apportion the amount awarded between the persons who for the purposes of this Act together constitute the landlord of the holding, and any additional expenses of the [<sup>F106</sup>determination] caused by the apportionment shall be directed by the [<sup>F105</sup>Land Court] to be paid by those persons in such proportions as [<sup>F107</sup>it] shall determine.

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**Textual Amendments**

**F105** Word in s. 50 substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 31\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F106** Word in s. 50 substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 31\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F107** Word in s. 50 substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 31\(c\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## 51 Compensation not to be payable for things done in compliance with this Act.

- (1) Notwithstanding anything in the foregoing provisions of this Act or any custom or agreement—
  - (a) no compensation shall be payable to the tenant of an agricultural holding in respect of anything done in pursuance of a direction under section 9(2) of this Act;

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- (b) in assessing compensation to an outgoing tenant of an agricultural holding where land has been ploughed up in pursuance of a direction under section 9(2) of this Act, the value per hectare of any tenant’s pasture comprised in the holding shall be taken not to exceed the average value per hectare of the whole of the tenant’s pasture comprised in the holding on the termination of the tenancy.
- (2) In subsection (1)(b) above “tenant’s pasture” means pasture laid down at the expense of the tenant or paid for by the tenant on entering the holding.
- (3) The tenant of an agricultural holding shall not be entitled to compensation for an improvement specified in Part III of any of Schedules 3 to 5 to this Act, being an improvement carried out for the purposes of—
- (a) the proviso to section 35(1) of the <sup>M16</sup>Agricultural Holdings (Scotland) Act 1923;
  - (b) the proviso to section 12(1) of the 1949 Act; or
  - (c) section 9 of this Act.

**Marginal Citations**

**M16** 1923 c. 10.

**52 Compensation for damage by game.**

- (1) Subject to subsection (2) below, where the tenant of an agricultural holding has sustained damage to his crops from game, the right to kill and take which is vested neither in him nor in anyone claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall be entitled to compensation from his landlord for the damage if it exceeds in amount the sum of 12 pence per hectare of the area over which it extends.
- (2) Compensation shall not be recoverable under subsection (1) above, unless—
- (a) notice in writing is given to the landlord as soon as is practicable after the damage was first observed by the tenant, and a reasonable opportunity is given to the landlord to inspect the damage—
    - (i) in the case of damage to a growing crop, before the crop is begun to be reaped, raised or consumed;
    - (ii) in the case of damage to a crop reaped or raised, before the crop is begun to be removed from the land; and
  - (b) notice in writing of the claim, together with the particulars thereof, is given to the landlord within [<sup>F108</sup>6 months of the giving of notice under paragraph (a) above].
- (3) The amount of compensation payable under subsection (1) above shall, in default of agreement made after the damage has been suffered, be determined by [<sup>F109</sup>the Land Court].
- (4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by that other person against all claims for compensation under this section; and any question arising under this subsection shall be determined by [<sup>F109</sup>the Land Court].

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(5) In this section “game” means deer, pheasants, partridges, grouse and black game.

#### Textual Amendments

**F108** Words in s. 52(2)(b) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 50\(2\)](#), [95\(3\)](#), [95\(4\)](#) (with [s. 95\(2\)](#)); [S.S.I. 2003/548](#), [art. 2\(d\)](#) (with [Sch.](#))

**F109** Word in s. 52 substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [s. 95\(3\)\(4\)](#), [Sch. para. 32](#) (with [s. 95\(2\)](#)); [S.S.I. 2003/548](#), [art. 2\(i\)](#) (with [Sch.](#))

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

**C25** S. 52 applied (with modifications) (5.1.1994) by [1993 c. 44](#), [ss. 5](#), [64\(2\)](#), [Sch. 2 para.11](#) (with [s. 64\(3\)](#), [Sch. 6 para. 4](#)).

**C26** S. 52 applied (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 53\(3\)](#), [95\(3\)](#), [95\(4\)](#) (with [s. 95\(2\)](#)); [S.S.I. 2003/548](#), [art. 2\(d\)](#) (with [Sch.](#))

### 53 Extent to which compensation recoverable under agreements.

- (1) Unless this Act makes express provision to the contrary, where provision is made in this Act for compensation to be paid to a landlord or tenant—
- (a) he shall be so entitled notwithstanding any agreement, and
  - (b) he shall not be entitled to compensation except under that provision.
- (2) Where the landlord and the tenant of an agricultural holding enter into an agreement in writing for such a variation of the terms of the lease as could be made by direction under section 9 of this Act, the agreement may provide for the exclusion of compensation in the same manner as under section 51(1) of this Act.
- (3) A claim for compensation by a landlord or tenant of an agricultural holding in a case for which this Act does not provide for compensation shall not be enforceable except under an agreement in writing.

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

**C27** S. 53 excluded (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 117\(2\)](#), [130\(1\)](#) (with [s. 128](#)); [S.S.I. 2017/20](#), [reg. 2](#), [sch.](#)

## PART VI

### ADDITIONAL PAYMENTS

### 54 Additional payments to tenants quitting holdings.

- (1) Where compensation for disturbance in respect of an agricultural holding or part of such a holding becomes payable—
- (a) to a tenant, under this Act; or
  - (b) to a statutory small tenant, under section 13 of the 1931 Act;
- subject to this Part of this Act, there shall be payable by the landlord to the tenant, in addition to the compensation, a sum to assist in the reorganisation of the tenant's affairs of the amount referred to in subsection (2) below.

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- (2) The sum payable under subsection (1) above shall be equal to 4 times the annual rent of the holding or, in the case of part of a holding, 4 times the appropriate portion of that rent, at the rate at which the rent was payable immediately before the termination of the tenancy.

## 55 Provisions supplementary to s. 54.

- (1) Subject to subsection (2) below no sum shall be payable under section 54 of this Act in consequence of the termination of the tenancy of an agricultural holding or part of such a holding by virtue of a notice to quit where—

- (a) the notice contains a statement that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable on any grounds referred to in section 24(1)(a) to (c) of this Act and, if an application for consent in respect of the notice is made to the Land Court in pursuance of section 22(1) of this Act, the Court consent to its operation and state in the reasons for their decision that they are satisfied that termination of the tenancy is desirable on that ground;
- (b) the notice contains a statement that the landlord will suffer hardship unless the notice has effect and, if an application for consent in respect of the notice is made to the Land Court in pursuance of section 22(1) of this Act, the Court consent to its operation and state in the reasons for their decision that they are satisfied that greater hardship would be caused by withholding consent than by giving it;
- <sup>F110</sup>(c) .....
- (d) section 22(1) of this Act does not apply to the notice by virtue of section 29(4) of the <sup>M17</sup>Agriculture Act 1967 (which relates to notices to quit given by the Secretary of State or a Rural Development Board with a view to boundary adjustments or an amalgamation).

- (2) Subsection (1) above shall not apply in relation to a notice to quit where—

- (a) the reasons given by the Land Court for their decision to consent to the operation of the notice include the reason that they are satisfied as to the matter referred to in section 24(1)(e) of this Act; or
- (b) the reasons so given include the reason that the Court are satisfied as to the matter referred to in section 24(1)(b) of this Act <sup>F111</sup>...; but the Court state in their decision that they would have been satisfied also as to the matter referred to in section 24(1)(e) of this Act if it had been specified in the application for consent.

- (3) In assessing the compensation payable to the tenant of an agricultural holding in consequence of the compulsory acquisition of his interest in the holding or part of it or the compulsory taking of possession of the holding or part of it, no account shall be taken of any benefit which might accrue to the tenant by virtue of section 54 of this Act.

- (4) Any sum payable in pursuance of section 54 of this Act shall be so payable notwithstanding any agreement to the contrary.

- (5) The following provisions of this Act shall apply to sums claimed or payable in pursuance of section 54 of this Act as they apply to compensation claimed or payable under section 43 of this Act—

sections 43(6);



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section 50;

section 74;

(6) No sum shall be payable in pursuance of section 54 of this Act in consequence of the termination of the tenancy of an agricultural holding or part of such a holding [F112 under section 12B] where—

F113(a) .....

(b) the landlord is terminating the tenancy for the purpose of using the land for agriculture only; and

(c) the [F114 counter-notice under section 12B(2)] contains a statement that the tenancy is being terminated for the said purpose.

(7) If any question arises between the landlord and the tenant as to the purpose for which a tenancy is being terminated, [F115 it shall be determined by the Land Court].

(8) In this section—

(a) references to section 54 of this Act do not include references to it as applied by section 56 of this Act; and

(b) for the purposes of subsection (1)(a) above, the reference in section 24(1)(c) of this Act to the purposes of the enactments relating to allotments shall be ignored.

#### Textual Amendments

**F110** S. 55(1)(c) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(4\)\(a\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

**F111** Words in s. 55(2)(b) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(4\)\(b\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

**F112** Words in s. 55(6) substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(4\)\(c\)\(i\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

**F113** S. 55(6)(a) repealed (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(4\)\(c\)\(ii\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

**F114** Words in s. 55(6)(c) substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 15\(4\)\(c\)\(iii\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

**F115** Words in s. 55(7) substituted (27.11.2003) by virtue of [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 33](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

#### Marginal Citations

**M17** 1967 c. 22.

## 56 Additional payments in consequence of compulsory acquisition etc. of agricultural holdings.

(1) This section applies where, in pursuance of any enactment providing for the acquisition or taking of possession of land compulsorily, any person (referred to in this section and in sections 57 and 58 of and Schedule 8 to this Act as “an acquiring authority”) acquires the interest of the tenant in, or takes possession of, an agricultural holding or any part of an agricultural holding or the holding of a statutory small tenant.

(2) Subject to subsection (3) below and sections 57 and 58 of this Act, where this section applies section 54 of this Act shall apply as if the acquiring authority were the landlord of the holding and compensation for disturbance in respect of the holding or part in

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question had become payable to the tenant on the date of the acquisition or taking of possession.

- (3) No compensation shall be payable by virtue of this section in respect of an agricultural holding held under a tenancy for a term of 2 years or more unless the amount of such compensation is less than the aggregate of the amounts which would have been payable by virtue of this section if the tenancy had been from year to year: and in such a case the amount of compensation payable by virtue of this section shall (subject to section 57(4) of this Act) be equal to the difference.

## 57 Provisions supplementary to s. 56.

- (1) For the purposes of section 56 of this Act, a tenant of an agricultural holding shall be deemed not to be a tenant of it in so far as, immediately before the acquiring of the interest or taking of possession referred to in that section, he was neither in possession, nor entitled to take possession, of any land comprised in the holding: and in determining, for those purposes, whether a tenant was so entitled, any lease relating to the land of a kind referred to in section 2(1) of this Act which has not taken effect as a lease of the land from year to year shall be ignored.
- (2) Section 56(1) of this Act shall not apply—
- (a) where the acquiring authority require the land comprised in the holding or part in question for the purposes of agricultural research or experiment or of demonstrating agricultural methods or for the purposes of the enactments relating to small holdings;
  - (b) where the Secretary of State acquires the land under section 57(1)(c) or 64 of the <sup>M18</sup>Agricultural (Scotland) Act 1948.
- (3) Where an acquiring authority exercise, in relation to any land, power to acquire or take possession of land compulsorily which is conferred on the authority by virtue of <sup>F116</sup>section 189 of the Town and Country Planning (Scotland) Act 1997] or section 7 of the <sup>M19</sup>New Towns (Scotland) Act 1968, the authority shall be deemed for the purposes of subsection (2) above not to require the land for any of the purposes mentioned in that subsection.
- (4) Schedule 8 to this Act shall have effect in relation to payments under section 56 of this Act.

### Textual Amendments

**F116** Words in s. 57(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 51**.

### Marginal Citations

**M18** 1948 c. 45.

**M19** 1968 c. 16.

## 58 Effect of early resumption clauses on compensation.

- (1) Where—
- (a) the landlord of an agricultural holding resumes land under a provision in the lease entitling him to resume land for building, planting, feuing or other purposes (not being agricultural purposes); or

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- (b) the landlord of the holding of a statutory small tenant resumes the holding or part thereof on being authorised to do so by the Land Court under section 32(15) of the 1911 Act; and
- (c) in either case, the tenant has not elected that section 55(2) of the <sup>M20</sup>Land Compensation (Scotland) Act 1973 (right to opt for notice of entry compensation) should apply to the notice;

compensation shall be payable by the landlord to the tenant (in addition to any other compensation so payable apart from this subsection) in respect of the land.

- (2) The amount of compensation payable under subsection (1) above shall be equal to the value of the additional benefit (if any) which would have accrued to the tenant if the land had, instead of being resumed at the date of resumption, been resumed at the expiry of 12 months from the end of the current year of the tenancy.
- (3) Section 55(4) and (5) of this Act shall apply to compensation claimed or payable under subsection (1) above with the substitution for references to section 54 of this Act of references to this section.
- (4) In the assessment of the compensation payable by an acquiring authority to a statutory small tenant in the circumstances referred to in section 56(1) of this Act, any authorisation of resumption of the holding or part thereof by the Land Court under section 32(15) of the 1911 Act for any purpose (not being an agricultural purpose) specified therein shall—
  - (a) in the case of an acquisition, be treated as if it became operative only on the expiry of 12 months from the end of the year of the tenancy current when notice to treat in respect of the acquisition was served or treated as served on the tenant; and
  - (b) in the case of a taking of possession, be disregarded;
 unless compensation assessed in accordance with paragraph (a) or (b) above would be less than would be payable but for this subsection.
- (5) For the purposes of subsection (1) above, the current year of a tenancy for a term of 2 years or more is the year beginning with such day in the period of 12 months ending with a date 2 months before the resumption mentioned in that subsection as corresponds to the day on which the term would expire by the effluxion of time.

#### Marginal Citations

M20 1973 c. 56.

## 59 Interpretation etc. of Part VI.

In sections 54 to 58 of and Schedule 8 to this Act—

“acquiring authority” has the meaning assigned to it by section 56(1) of this Act;

“statutory small tenant” and “holding” in relation to a statutory small tenant have the meanings given in section 32(1) of the 1911 Act; and

references to the acquisition of any property are references to the vesting of the property in the person acquiring it.

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## PART VII

### ARBITRATION AND OTHER PROCEEDINGS

#### [<sup>F117</sup>60 Resolution of disputes by Land Court

- (1) The Land Court shall have jurisdiction to hear and determine any of the matters referred to in subsection (2) below.
- (2) Those matters are—
  - (a) whether a tenancy of an agricultural holding in relation to which this Act applies exists or has been terminated;
  - (b) any question or difference between the landlord and tenant of such a holding arising out of the tenancy or in connection with the holding, whether such question or difference arises during the currency of or on or after the termination of the tenancy;
  - (c) any claim by the landlord or tenant of such a holding against the other which arises, under this Act or under any rule of law, custom or agreement, on or out of the termination of the tenancy (or part thereof);
  - (d) any other issue of fact or law relating to—
    - (i) a tenancy of such a holding or any other type of agricultural tenancy; or
    - (ii) agriculture,
 which the landlord or tenant reasonably require to have resolved.
- (3) Such matters include, in particular (and without prejudice to the generality of subsection (2) above), any question or difference between the landlord and tenant arising in relation to Part 2 of the Agricultural Holdings (Scotland) Act 2003 (asp 11) except any question or difference of fact relating to the determination of the price payable by the tenant for the purposes of that Part of that Act.
- (4) Such matters do not include any question as to—
  - (a) who is entitled to succeed to the estate of a deceased person on intestacy by virtue of the Succession (Scotland) Act 1964 (c. 41);
  - (b) the validity of—
    - (i) any bequest; or
    - (ii) any transfer,
 of an interest under the lease; or
  - (c) whether any such transfer is in the best interests of the estate of a deceased person.
- (5) The Land Court shall also have jurisdiction to hear and determine any question or difference, between the tenant and any person with whom he has in pursuance of section 10A(1) of this Act entered into a contract assigning his interest under the lease, which arises out of or in connection with the assignment.
- (6) Any application to the Land Court for a matter to be determined by the Court under this Act may be made by either party or by them jointly.
- (7) In the application of this section to any question or difference arising in relation to Part 2 of the Agricultural Holdings (Scotland) Act 2003 (asp 11), “landlord” shall be construed as including a creditor in a standard security with a right to sell land (that

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expression being construed by reference to that Part of that Act) which comprises or forms part of an agricultural holding.

- (8) Any reference in this section to a landlord or tenant of an agricultural holding shall be construed as including a person who was formerly the landlord or tenant thereof.
- (9) Any other provision of an enactment which provides for the determination of a matter by the Land Court is without prejudice to this section.]

#### Textual Amendments

**F117** S. 60 substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 75, 95(3), 95(4)** (with [s. 95\(2\)](#)); [S.S.I. 2003/548](#), [art. 2\(g\)](#) (with [Sch.](#))

### [<sup>F118</sup>61 Agreement to refer matters to arbitration

- (1) Subject to subsection (2) below, where this Act [<sup>F119</sup>or section 116 of the Land Reform (Scotland) Act 2016] makes provision for any matter to be determined by the Land Court, the matter may, if the landlord and tenant so agree at or after the time when the matter arises, instead of being so determined, be determined by arbitration.
- (2) Subsection (1) above does not apply in relation to any matter which may be determined by the Land Court—
  - (a) in pursuance of section <sup>F120</sup>... 11, 12, 22, 26, 32, <sup>F121</sup>... 41(1), 55(7) or 66(2) or (2A) of this Act; or
  - (b) on appeal.
- (3) In this Act, other than in section 61A, “arbitration” includes any other method of resolving the matter; and “arbiter” shall be construed accordingly.

#### Textual Amendments

**F118** Ss. 61-61B substituted for s. 61 (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), **ss. 76, 95(3), 95(4)** (with [s. 95\(2\)](#)); [S.S.I. 2003/548](#), [art. 2\(g\)](#) (with [sch.](#))

**F119** Words in s. 61(1) inserted (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 118(1)(a)(i), 130(1)** (with [s. 128](#)); [S.S.I. 2017/20](#), [reg. 2](#), [sch.](#)

**F120** Word in s. 61(2) repealed (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **s. 118(1)(a)(ii)(A)130(1)** (with [s. 128](#)); [S.S.I. 2017/20](#), [reg. 2](#), [sch.](#)

**F121** Word in s. 61(2) repealed (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **s. 118(1)(a)(ii)(B)130(1)** (with [s. 128](#)); [S.S.I. 2017/20](#), [reg. 2](#), [sch.](#)

### 61A Arbitration: procedure etc.

- (1) This section applies to any arbitration to which a matter is referred by the landlord and tenant under section 61(1) of this Act.
- (2) The agreement of the parties to refer the matter to arbitration shall have the effect of depriving each party of his right to—
  - (a) have the matter heard (or any issue in relation to the matter determined) by the Land Court (other than on appeal); and
  - (b) agree under section 61(1) of this Act to another method of resolving the matter.

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- (3) It shall be for the landlord and tenant to agree whether the arbitration is conducted by—
- (a) a single arbiter; or
  - (b) two arbiters (with or without an oversman),
- and the arbiter or, as the case may be, each arbiter, may be appointed by the parties or by a person nominated by them.
- (4) The procedure to be followed at arbitration (including any matters to be taken into account by the arbiter and the matters to be contained in his award) shall, subject to subsection (5) below, be as the parties agree or, in the absence of such agreement, as the arbiter considers appropriate.
- (5) Any provision of this Act [<sup>F122</sup>or of section 116 of the Land Reform (Scotland) Act 2016] that would apply to the Land Court as respects its consideration or determination of any matter had the matter not been referred to arbitration shall apply as respects the consideration or determination of the matter by arbitration.
- (6) Any party to the arbitration may appeal to the Land Court against the arbiter's award on a question of law within 28 days of the award; and in an appeal under this subsection the Court may—
- (a) quash, confirm or vary the award or any part of it; and
  - (b) where the Court quashes the award or any part of it—
    - (i) remit the case to the arbiter for further procedure; and
    - (ii) direct the arbiter on any question of law relevant to the case.

#### Textual Amendments

**F118** Ss. 61-61B substituted for s. 61 (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 76, 95\(3\), 95\(4\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(g) (with sch.)

**F122** Words in s. 61A(5) inserted (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 118\(1\)\(b\), 130\(1\)](#) (with s. 128); S.S.I. 2017/20, reg. 2, sch.

## 61B Clauses in leases as to resolution of disputes

Any term of—

- (a) a lease of an agricultural holding in relation to which this Act applies; or
- (b) any agreement in connection with such a lease (other than an agreement under section 61(1) of this Act),

that makes provision restricting any right of a landlord or tenant to apply to the Land Court under this Act [<sup>F123</sup>or under section 116 of the Land Reform (Scotland) Act 2016] to have a matter determined by the Court shall, in so far as it makes that provision, be null and void.]

#### Textual Amendments

**F118** Ss. 61-61B substituted for s. 61 (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 76, 95\(3\), 95\(4\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(g) (with sch.)

**F123** Words in s. 61B inserted (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 118\(1\)\(c\), 130\(1\)](#) (with s. 128); S.S.I. 2017/20, reg. 2, sch.

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## 62 Claims on termination of tenancy.

- [<sup>F124</sup>(1) This section applies to any claim referred to in section 60(2)(c) of this Act.]
- (2) Without prejudice to any other provision of this Act, no claim to which this section applies shall be enforceable unless before the expiry of 2 months after the termination of the tenancy the claimant has given notice in writing to his landlord or his tenant, as the case may be, of his intention to make the claim.
- (3) A notice under subsection (2) above 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.
- (4) The landlord and the tenant may within 4 months after the termination of the tenancy by agreement in writing settle any such claim and the Secretary of State may upon the application of the landlord or the tenant made within that period extend the said period by 2 months and, on a second such application made during these 2 months, by a further 2 months.
- (5) Where before the expiry of the period referred to in subsection (4) above and any extension thereof under that subsection any such claim has not been settled, the claim shall cease to be enforceable unless before the expiry of one month after the end of the said period and any such extension, or such longer time as the Secretary of State may in special circumstances allow
- [<sup>F125</sup>(a) an application has been made to the Land Court; or  
(b) an arbiter has been appointed or any application has been made for the appointment of an arbiter,  
to determine the claim]
- (6) Where a tenant lawfully remains in occupation of part of an agricultural holding after the termination of a tenancy, references in subsections (2) and (4) above to the termination of the tenancy thereof shall be construed as references to the termination of the occupation.

### Textual Amendments

**F124** S. 62(1) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 34\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F125** S. 62(5)(a)(b) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 34\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

### Modifications etc. (not altering text)

**C28** S. 62 applied (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 80\(1\)](#), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(g) (with Sch.)

## <sup>F126</sup>63 Panel of arbiters, and remuneration of arbiter.

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#### Textual Amendments

**F126** S. 64 repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 35](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

### <sup>F126</sup>64 Appointment of arbiter in cases where Secretary of State is a party.

.....

#### Textual Amendments

**F126** S. 64 repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 35](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

### 65 Recovery of compensation and other sums due.

Any award or agreement under this Act as to compensation, expenses or otherwise may, if any sum payable thereunder is not paid within one month after the date on which it becomes payable, be recorded for execution in the Books of Council and Session or in the sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral.

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

**C29** S. 65 applied (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 80\(2\)](#), [95\(3\)](#), [95\(4\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(g) (with Sch.)

### 66 Power to enable demand to remedy a breach to be modified on arbitration.

- (1) Where a question or difference required by section 60 of this Act to be determined by [<sup>F127</sup>the Land Court] relates to a demand in writing served on a tenant by a landlord requiring the tenant to remedy a breach of any term or condition of his tenancy by the doing of any work of provision, repair, maintenance or replacement of fixed equipment, the [<sup>F128</sup>Land Court] may
- (a) in relation to all or any of the items specified in the demand, whether or not any period is specified as the period within which the breach should be remedied, specify such period for that purpose as appears in all the circumstances to the [<sup>F128</sup>Land Court] to be reasonable;
  - (b) delete from the demand any item or part of an item which, having due regard to the interests of good husbandry as respects the holding and of sound management of the estate of which the holding forms part or which the holding constitutes, the [<sup>F128</sup>Land Court] is satisfied is unnecessary or unjustified;
  - (c) substitute, in the case of any item or part of an item specified in the demand, a different method or material for the method or material which the demand would otherwise require to be followed or used where, having regard to the purpose which that item or part is intended to achieve, the [<sup>F128</sup>Land Court] is satisfied that—
    - (i) the latter method or material would involve undue difficulty or expense,



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- (ii) the first-mentioned method or material would be substantially as effective for the purpose, and
  - (iii) in all the circumstances the substitution is justified.
- (2) Where under subsection (1)(a) above [<sup>F129</sup>the Land Court] specifies a period within which a breach should be remedied or the period for remedying a breach is extended by virtue of subsection (4) below, the Land Court may, on the application of <sup>F130</sup>... the landlord, specify a date for the termination of the tenancy by notice to quit in the event of the tenant's failure to remedy the breach within that period, being a date not earlier than whichever of the two following dates is the later, that is to say—
- (a) the date on which the tenancy could have been terminated by notice to quit served on the expiry of the period originally specified in the demand, or if no such period is so specified, on the date of the giving of the demand, or
  - (b) 6 months after the expiry of the period specified <sup>F130</sup>... or, as the case may be, of the extended period.
- [<sup>F131</sup>(2A) Where, by virtue of section 61(1) of this Act, an arbiter specifies under subsection (1) (a) above a period within which a breach should be remedied or the period for remedying a breach is extended by virtue of subsection (4) below, the Land Court may, on the application of the arbiter or the landlord, specify a date for the termination of the tenancy by notice to quit in the event of the tenant's failure to remedy the breach within that period, being a date not earlier than whichever of the two dates referred to in subsection (2) above is the later.]
- (3) A notice to quit on a date specified in accordance with subsection (2)[<sup>F132</sup>or (2A)] above shall be served on the tenant within one month after the expiry of the period specified by the [<sup>F133</sup>Land Court] or the extended time, and shall be valid notwithstanding that it is served less than 12 months before the date on which the tenancy is to be terminated or that that date is not the end of a year of the tenancy.
- (4) Where—
- (a) notice to quit to which 22(2)(d) of this Act applies is stated to be given by reason of the tenant's failure to remedy within the period specified in the demand a breach of any term or condition of his tenancy by the doing of any work of provision, repair, maintenance or replacement of fixed equipment, or within that period as extended by the landlord or the [<sup>F134</sup>Land Court]; and
  - (b) it appears to the [<sup>F135</sup>Land Court in a determination required] under section 23(2) of this Act that, notwithstanding that the period originally specified or extended was reasonable, it would, in consequence of any happening before the expiry of that period, have been unreasonable to require the tenant to remedy the breach within that period;
- the [<sup>F134</sup>Land Court] may treat the period as having been extended or further extended and make [<sup>F136</sup>its determination] as if the period had not expired; and where the breach has not been remedied at the date of the [<sup>F137</sup>determination], the [<sup>F134</sup>Land Court] may extend the period as [<sup>F138</sup>it] considers reasonable, having regard to the length of period which has elapsed since the service of the demand.

#### Textual Amendments

**F127** Words in s. 66(1) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), Sch. para. 36(a)(i) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F128** Words in s. 66(1) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), Sch. para. 36(a)(ii) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

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- F129** Words in s. 66(2) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(b)(i)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F130** Words in s. 66(2) repealed (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(b)(ii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F131** S. 66(2A) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(c)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F132** Words in s. 66(3) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(d)(i)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F133** Words in s. 66(3) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(d)(ii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F134** Words in s. 66(4) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(e)(i)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F135** Words in s. 66(4) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(e)(ii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F136** Words in s. 66(4) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(e)(iii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F137** Word in s. 66(4) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(e)(iv)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F138** Word in s. 66(4) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 36(e)(v)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

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

- C30** S. 66 applied (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), **ss. 80(3), 95(3), 95(4)** (with s. 95(2)); S.S.I. 2003/548, art. 2(g) (with Sch.)

## 67 Prohibition of appeal to sheriff principal.

Where jurisdiction is conferred by this Act on the sheriff, there shall be no appeal to the sheriff principal.

### *Sheep stock valuation*

## 68 Sheep stock valuation.

- (1) This section and sections [F139]71 and] 72 of this Act shall apply where, under a lease of an agricultural holding, the tenant is required at the termination of the tenancy to leave the stock of sheep on the holding to be taken over by the landlord or by the incoming tenant at a price or valuation to be fixed by [F140]any method], referred to in this section [F141]... as a “sheep stock valuation”.
- [F142](1A) Where this section applies, the sheep stock valuation shall be determined by the Land Court in the manner provided for by virtue of this section.]
- (2) In a sheep stock valuation where the lease was entered into before or on 6th November 1946, the [F143]Land Court shall in its determination] show the basis of valuation of each class of stock and state separately any amounts included in respect of acclimatisation or hefting or of any other consideration or factor for which [F144]it] has made special allowance.
- (3) In a sheep stock valuation where the lease was entered into after 6th November 1946, the [F145]Land Court] shall fix the value of the sheep stock in accordance—

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- (a) in the case of a valuation made in respect of a tenancy terminating at Whitsunday in any year, with Part I of Schedule 9 to this Act if the lease was entered into before 1st December 1986, otherwise with Part I of Schedule 10 to this Act; or
- (b) in the case of a valuation made in respect of a tenancy terminating at Martinmas in any year, with the provisions of Part II of Schedule 9 to this Act, if the lease was entered into before 1st December 1986, otherwise with Part II of Schedule 10 to this Act,

and subsection (2) above shall apply in such a case as if for the words from “show the basis” to the end of the subsection there were substituted the words “ state separately the particulars set forth in Part III of Schedule 9 (or, as the case may be, Schedule 10) to this Act ”.

<sup>F146</sup>(4) .....

- (5) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, vary the provisions of Schedule 10 to this Act, in relation to sheep stock valuations under leases entered into on or after the date of commencement of the order.

**Textual Amendments**

- F139** Words in s. 68(1) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(a)(i)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F140** Words in s. 68(1) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(a)(ii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F141** Words in s. 68(1) repealed (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(a)(iii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F142** S. 68(1A) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(b)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F143** Words in s. 68(2) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(c)(i)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F144** Word in s. 68(2) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(c)(ii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F145** Word in s. 68(3) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(d)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F146** S. 68(4) repealed (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 37(e)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

<sup>F147</sup>**69 Submission of questions of law for decision of sheriff.**

.....

**Textual Amendments**

- F147** Ss. 69, 70 repealed (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 38** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with Sch.)

<sup>F148</sup>**70 Determination by Land Court of questions as to value of sheep stock.**

.....

**Changes to legislation:** *Agricultural Holdings (Scotland) Act 1991 is up to date with all changes known to be in force on or before 24 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

### Textual Amendments

**F148** Ss. 69, 70 repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 38](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## 71 Statement of sales of stock.

- (1) Where any question as to the value of any sheep stock has been submitted for determination to the Land Court or<sup>F149</sup>, by virtue of section 61(1) of this Act,] to an arbiter, the outgoing tenant shall, not less than 28 days before the determination of the question, submit to the Court or to the arbiter, as the case may be—
- (a) a statement of the sales of sheep from such stock—
    - (i) in the case of a valuation made in respect of a tenancy terminating at Whitsunday during the preceding three years; or
    - (ii) in the case of a valuation made in respect of a tenancy terminating at Martinmas during the current year and in each of the two preceding years; and
  - (b) such sale-notes and other evidence as may be required by the Court or the arbiter to vouch the accuracy of such statement.
- (2) Any document submitted by the outgoing tenant in pursuance of this section shall be open to inspection by the other party to the valuation proceedings.

### Textual Amendments

**F149** Words in s. 71 inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 39](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

## 72 Interpretation of sections 68 to 71.

In sections 68 to 71 of this Act—

- (a) “agricultural holding” means a piece of land held by a tenant which is wholly or in part pastoral, and which is not let to the tenant during and in connection with his continuance in any office, appointment, or employment held under the landlord;
- <sup>F150</sup>(b) .....
- <sup>F150</sup>(c) .....

### Textual Amendments

**F150** S. 72(b)(c) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 40](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

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## PART VIII

### MISCELLANEOUS

#### 73 Power of Secretary of State to vary Schedules 5 and 6.

- (1) 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 Schedules 5 and 6 to this Act.
- (2) An order under this section may make such provision as to the operation of this Act 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 Schedules effected by the order.
- (3) Nothing in any order made under this section shall affect the right of a tenant to claim, in respect of an improvement made or begun before the date on which such order comes into force, any compensation to which, but for the making of the order, he would have been entitled.
- (4) Orders under this section shall be made by statutory instrument which shall be of no effect unless approved by resolution of each House of Parliament.

#### 74 Power of limited owners to give consents, etc..

The landlord of an agricultural holding, whatever may be his <sup>F151</sup>... interest in the holding, may for the purposes of this Act give any consent, make any agreement, or do or have done to him any act which he might give or make or do or have done to him if he were the owner of the <sup>F151</sup>... holding.

#### Textual Amendments

**F151** Words in s. 74 repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### 75 Power of tenant and landlord to obtain charge on holding.

- (1) Where any sum has become payable to the tenant of an agricultural holding in respect of compensation by the landlord and the landlord has failed to discharge his liability therefor within one month after 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 14 days' notice of his intention so to do to the landlord, create, where the landlord is the owner of the <sup>F152</sup>... holding, a charge on the holding, or where the landlord is the lessee of the holding under a lease recorded [<sup>F153</sup>or registered] under the <sup>M21</sup>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 of a kind referred to in subsection (1) above, 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 General Register of Sasines or registering it in the Land Register of Scotland.

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- (3) Where the landlord of an agricultural holding, not being the owner of the <sup>F152</sup>... 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 or in respect of compensation for disturbance, or has himself defrayed the cost of an improvement proposed to be executed by the tenant, the Secretary of State may, on the application of the landlord and after giving not less than 14 days notice to the <sup>F152</sup>... 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 General Register of Sasines or registering it in the Land Register of Scotland.
- (4) Section 65(2), (4) and (6) to (10) of the <sup>M22</sup>Water (Scotland) Act 1980 shall, with the following and any other necessary modifications, apply to any such charging order as is mentioned in subsection (2) or (3) above, that is to say—
- (a) for any reference to an islands or district council there shall be substituted a reference to the Secretary of State;
  - (b) for any reference to the period of 30 years there shall be substituted—
    - (i) where subsection (1) above applies, a reference to such period (not exceeding 30 years) as the Secretary of State may determine;
    - (ii) 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 Secretary of State, have become exhausted;
  - (c) for references to Part V of the said Act of 1980 there shall be substituted references to this Act.
- (5) Where subsection (3) above applies, an annuity constituted a charge by a charging order recorded in the General Register of Sasines or registered in the Land Register of Scotland shall be a charge on the holding specified in the order and shall rank after all prior charges heritably secured thereon.
- (6) 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.

#### Textual Amendments

**F152** Words in s. 75(1)(3) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), ss. 71, 77(2), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2; S.S.I. 2003/456, art. 2

**F153** Words in s. 75(1) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012](#) (asp 5), ss. 122, 123, **Sch. 5 para. 33** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

#### Marginal Citations

**M21** 1857 c. 26.

**M22** 1980 c. 45.

## 76 Power of land improvement companies to advance money.

Any company incorporated by Parliament or [<sup>F154</sup>formed and registered under the Companies Act 2006] and having power to advance money for the improvement of

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land, or for the cultivation and farming of land, may make an advance of money upon a charging order duly made and recorded or registered under this Act, on such terms and conditions as may be agreed upon between the company and the person entitled to the order.

#### Textual Amendments

**F154** Words in s. 76 substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 125** (with art. 10)

#### 77 Appointment of guardian to landlord or tenant.

Where the landlord or the tenant of an agricultural holding is a pupil or a minor or is of unsound mind, not having a tutor, curator or other guardian, the sheriff, on the application of any person interested, may appoint to him, for the purposes of this Act, a tutor or a curator, and may recall the appointment and appoint another tutor or curator if and as occasion requires.

#### 78 Validity of consents, etc..

It shall be no objection to any consent in writing or agreement in writing under this Act signed by the parties thereto or by any persons authorised by them that the consent or agreement has not been executed in accordance with the enactments regulating the execution of deeds in Scotland.

## PART IX

### SUPPLEMENTARY

*Crown and Secretary of State*

#### 79 Application to Crown land.

(1) This Act shall apply to land belonging to Her Majesty in right of the Crown, with such modifications as may be prescribed; and for the purposes of this Act the Crown Estate Commissioners or other proper officer or body having charge of the land for the time being, or if there is no such officer or body, such person as Her Majesty may appoint in writing under the Royal Sign Manual, shall represent Her Majesty and shall be deemed to be the landlord.

[<sup>F155</sup>(1A) In subsection (1), “proper officer of body” includes a person who manages any land to which section 90B(5) of the Scotland Act 1998 applies.]

(2) This Act shall 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 Her Majesty for the purposes of any government department with such modifications as may be prescribed.

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### Textual Amendments

**F155** S. 79(1A) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 24](#)

## 80 Determination of matters where Secretary of State is landlord or tenant.

- (1) This section applies where the Secretary of State is the landlord or the tenant of an agricultural holding.
- (2) Where this section applies, any provision of this Act [<sup>F156</sup>(except section 8)]—
- (a) under which any matter relating to the holding is referred to the decision of the Secretary of State,<sup>F157</sup> ...
  - <sup>F157</sup>(b) .....  
shall have effect with the substitution for every reference to “the Secretary of State” of a reference to “ the Land Court ”, and any provision referred to in paragraph (a) above which provides for an appeal to an arbiter from the decision of the Secretary of State shall not apply.
- [<sup>F158</sup>(3) Where this section applies, section 8 of this Act shall have effect—
- (a) with the substitution for “Scottish Ministers” in subsection (3) of “sheriff”;
  - (b) as if subsection (3A) were omitted.]

### Textual Amendments

**F156** Words in s. 80(2) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 61\(2\)\(a\), 95\(3\), 95\(4\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)

**F157** S. 80(2)(b) and preceding word repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 41](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

**F158** S. 80(3) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 61\(2\)\(b\), 95\(3\), 95\(4\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)

## 81 Expenses and receipts.

- (1) All expenses incurred by the Secretary of State under this Act shall be paid out of moneys provided by Parliament.
- (2) All sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

## 82 Powers of 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.



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- (3) Admission to any land used for residential purposes shall not be demanded as of right in the exercise of any such power unless 24 hours notice of the intended entry has been given to the occupier of the land.
- (4) Save as provided by subsection (3) above, admission to any land shall not be demanded as of right in the exercise of any such power 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 14 days and beginning at least 24 hours after the giving of the notice and the entry is made on the land during the period specified in the notice.
- (5) Any person who obstructs a person authorised by the Secretary of State exercising any such power shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

*Land Court*

<sup>F159</sup>**83 Proceedings of the Land Court.**

.....

**Textual Amendments**

**F159** S. 83 repealed (5.1.1994) by 1993 c. 45, s. 2(2)(3), [Sch.2](#)

*Service of notices*

**84 Service of notices, etc..**

- (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 registered post or recorded delivery.
- (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 it is delivered to or sent by registered post or recorded delivery to the registered office of the company or body.
- (3) For the purposes of this section and of section 7 of the <sup>M23</sup>Interpretation Act 1978, 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) Unless or until the tenant of an agricultural holding shall have received notice that the person previously entitled to receive the rents and profits of the holding (hereinafter referred to as “the original landlord”) has ceased to be so entitled, and also notice of the name and address of the person who has become so entitled, any notice or other document served on or delivered to the original landlord by the tenant shall be deemed to have been served on or delivered to the landlord of the holding.

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

**C31** S. 84(4) applied (13.6.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 114(4), 130(1)** (with s. 128); S.S.I. 2017/20, reg. 2, sch.

**Marginal Citations**

**M23** 1978 c. 30.

*Interpretation*

**85 Interpretation.**

(1) In this Act, unless the context otherwise requires—

“the 1911 Act” means the <sup>M24</sup>Small Landholders (Scotland) Act 1911;

“the 1949 Act” means the <sup>M25</sup>Agricultural Holdings (Scotland) Act 1949;

“agricultural holding” (except in sections 68 to 72 of this Act) and “agricultural land” have the meanings assigned to them by section 1 of this Act;

“agricultural unit” means land which is an agricultural unit for the purposes of the <sup>M26</sup>Agriculture (Scotland) Act 1948;

“agriculture” includes horticulture, fruit growing; seed growing; dairy farming; 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;

“building” includes any part of a building;

[<sup>F160</sup>“enactment” includes an Act of the Scottish Parliament or an instrument made under an Act of the Scottish Parliament;]

“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 agricultural 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;

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“improvement” shall be construed in accordance with section 33 of this Act, and “new improvement”, “old improvement”, “1923 Act improvement” and “1931 Act improvement” have the meanings there assigned to them;

“Land Court” means the Scottish Land Court;

“Lands Tribunal” means the Lands Tribunal for Scotland;

“landlord” means any person for the time being entitled to receive the rents and profits or to take possession of an agricultural holding, and includes the executor, assignee, legatee, donee, guardian, curator bonis <sup>[F161]</sup> or tutor of a landlord or the trustee or interim trustee in the sequestration of a landlord's estate;]

“lease” means a letting of land for a term of years, or for lives, or for lives and years, or from year to year;

“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;

“market garden” means a holding, cultivated, wholly or mainly, for the purpose of the trade or business of market gardening;

“prescribed” means prescribed by the Secretary of State by regulations made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament;

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

“tenant” means the holder of land under a lease of an agricultural holding and includes the executor, assignee, legatee, donee, guardian, tutor <sup>[F162]</sup> or curator bonis of a tenant or the trustee or interim trustee in the sequestration of a tenant's estate;]

“termination”, in relation to a tenancy, means the termination of the lease by reason of effluxion of time or from any other cause;

- (2) Schedules 5 and 6 to the <sup>M27</sup>Agriculture (Scotland) Act 1948, (which have effect respectively for the purpose of determining for the purposes of that 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 such land is fulfilling his responsibilities to farm it in accordance with the rules of good husbandry) shall <sup>[F163]</sup>, subject to subsections (2A) and (2B) below,] have effect for the purposes of this Act as they have effect for the purposes of that Act.

<sup>[F164]</sup>(2A) For the purposes of this Act, conservation activities are to be treated as being in accordance with the rules of good husbandry if they are carried out in accordance with—

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

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

- (3) References in this Act to the farming of land include references to the carrying on in relation to the land of any agricultural activity.

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- (4) References to the terms, conditions, or requirements of a lease of or of an agreement relating to, an agricultural holding shall be construed as including references to any obligations, conditions or liabilities implied by the custom of the country in respect of the holding.
- (5) Anything which by or under this Act is required or authorised to be done by, to or in respect of the landlord or the tenant of an agricultural holding may be done by, to or in respect of any agent of the landlord or of the tenant.

#### Textual Amendments

- F160** Words in s. 85 inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 42](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F161** Words in s. 85(1) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 12\(5\)\(a\)](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F162** Words in s. 85(1) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 12\(5\)\(b\)](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F163** Words in s. 85(2) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 69(1), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)
- F164** S. 85(2A)-(2B) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 69(2), 95(3), 95(4) (with s. 95(2)); S.S.I. 2003/548, art. 2(e) (with Sch.)

#### Marginal Citations

- M24** 1911 c. 49.
- M25** 1949 c. 75.
- M26** 1948 c. 45.
- M27** 1948 c. 45.

## 86 Construction of references in other Acts to holdings as defined by earlier Acts.

References, in whatever terms, in any enactment, other than an enactment contained in—

this Act,  
the Agricultural Holdings (Scotland) Acts 1923 and 1931, or,  
Part I of the <sup>M28</sup>Agriculture (Scotland) Act 1948

to a holding within the meaning of the Agricultural Holdings (Scotland) Act 1923 or of the Agricultural Holdings (Scotland) Acts 1923 to 1948 shall be construed as references to an agricultural holding [<sup>F165</sup>to which this Act applies].

#### Textual Amendments

- F165** Words in s. 86 substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 43](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

#### Marginal Citations

- M28** 1948 c. 45.

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## **87 Savings.**

Schedule 12 to this Act, which exempts from the operation of this Act certain cases current at the commencement of this Act and contains other transitional provisions and savings shall have effect.

### *Consequential amendments and repeals*

## **88 Consequential amendments and repeals.**

- (1) The enactments specified in Schedule 11 to this Act shall be amended in accordance with that Schedule.
- (2) The enactments specified in Schedule 13 to this Act are repealed to the extent there specified.

### *Citation, commencement and extent*

## **89 Citation, commencement and extent.**

- (1) This Act may be cited as the Agricultural Holdings (Scotland) Act 1991.
- (2) This Act shall come into force at the end of the period of 2 months beginning with the date on which it is passed.
- (3) This Act shall extend to Scotland only, except for those provisions in Schedule 11 which amend enactments which extend to England and Wales or to Northern Ireland.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 5(4B)(b) words substituted by [2016 asp 18 Sch. 2 para. 11\(2\)](#)
- Sch. 8 para. 2(a) words inserted by [2016 asp 18 Sch. 2 para. 11\(3\)\(a\)\(ii\)](#)
- Sch. 8 para. 2(a) words repealed by [2016 asp 18 Sch. 2 para. 11\(3\)\(a\)\(i\)](#)
- Sch. 8 para. 3(a)(i) words substituted by [2016 asp 18 Sch. 2 para. 11\(3\)\(b\)\(i\)](#)
- Sch. 8 para. 3(a)(i) words substituted by [2016 asp 18 Sch. 2 para. 11\(3\)\(b\)\(ii\)](#)
- Sch. 8 para. 4 words substituted by [2016 asp 18 Sch. 2 para. 11\(3\)\(c\)](#)