



Agricultural Holdings (Scotland) Act 1991

1991 CHAPTER 55

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 arbitration.

- (2) On a reference under subsection (1) above, the arbiter shall by his award 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 arbiter to be reasonable.
- (3) On a reference under subsection (1) above, the arbiter may include in his award 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 award of an arbiter 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 award or from such later date as the award may specify.

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.
- (3) Nothing in subsection (2) above shall prohibit any agreement made between the landlord and the tenant after the lease has been entered into whereby one party undertakes to execute on behalf of the other, whether wholly at his own expense or wholly or partly at the expense of the other, any work which the other party is required to execute in order to fulfil his obligations under the lease.
- (4) Any provision in a lease 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.
- (5) Any question arising as to the liability of a landlord or tenant under this section shall be determined by arbitration.
- (6) This section applies to any lease of an agricultural holding entered into on or after 1st November 1948.

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.

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 manurial 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, but no other—
 - (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.
- (4) For the purposes of any proceedings for an interdict brought under subsection (3)(a) above, the question whether a tenant is exercising, or has exercised, his rights under subsection (1) above in such a manner as to injure or deteriorate, or to be likely to injure or deteriorate the holding, shall be determined by arbitration; and a certificate of the arbiter as to his determination of any such question shall, for the purposes of any proceedings (including an arbitration) 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.

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- (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 under section 9 of 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.

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.
- (3) A record under this section shall be made by a person to be appointed by the Secretary of State, and shall be in such form as may be prescribed.
- (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, on the application of the landlord or the tenant, 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.
- (8) The remuneration of the 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 the 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.

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 landlord or the tenant may, by notice in writing served on the other party, demand a reference to arbitration under this Act of the question whether it is expedient in order to secure the full and efficient farming of the holding that the amount of land required to be maintained as permanent pasture should be reduced.
- (2) On a reference under subsection (1) above the arbiter may by his award 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 arbiter gives a direction under subsection (2) above reducing the area of land which is to be maintained as permanent pasture, he may also by his award 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.

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.

11 Bequest of lease

- (1) Subject to subsections (2) to (8) below, the tenant of an agricultural holding may, by will or other testamentary writing, bequeath his lease of the holding to his son-in-law or daughter-in-law or to any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the Succession (Scotland) Act 1964.
- (2) A person to whom the lease of a holding is so bequeathed (in this section referred to as "the legatee") shall, if he accepts the bequest, give 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 subsection (4) below, the lease

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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.

- (4) Where notice has been given under subsection (2) above, the landlord may within one month thereafter give to the legatee a counter-notice intimating that he objects to receiving him as tenant under the lease.
- (5) If the landlord gives a counter-notice under subsection (4) above, the legatee may make application to the Land Court for an order declaring him to be tenant under the lease as from the date of the death of the deceased tenant.
- (6) If, on the hearing of such an application, any reasonable ground of objection stated by the landlord is established to the satisfaction of the Land Court, they shall declare the bequest to be null and void, but in any other case they shall make an order in terms of the application.
- (7) Pending any proceedings under this section, the legatee, with the consent of the executor in whom the lease is vested under section 14 of the Succession (Scotland) Act 1964, shall, unless the Land Court on cause shown otherwise direct, have possession of the holding.
- (8) If the legatee does not accept the bequest, or if the bequest is declared null and void under subsection (6) above, 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.

12 Right of landlord to object to acquirer of lease

- (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 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 subsection (2) below, the lease shall be binding on the landlord and on the acquirer, as landlord and tenant respectively, as from the date of the acquisition.
- (2) Within one month after receipt of a notice given under subsection (1) above the landlord may give a counter-notice to the acquirer intimating that the landlord objects to receive him as tenant under the lease; and not before the expiry of one month from the giving of the counter-notice the landlord may make application to the Land Court for an order terminating the lease.
- (3) On an application under subsection (2) above, the Land Court shall, if they are satisfied that the landlord has established a reasonable ground of objection, make an order terminating the lease, to take effect as from such term of Whitsunday or Martinmas as they may specify.
- (4) Pending any proceedings under this section, the acquirer, with the consent of the executor in whom the lease is vested under section 14 of the Succession (Scotland) Act 1964 shall, unless the Land Court on cause shown otherwise direct, have possession of the holding.
- (5) Termination of the lease under this section shall be treated, for the purposes of Parts IV and V of this Act (compensation), as termination of the acquirer’s tenancy of the holding; but nothing in this section shall entitle him to compensation for disturbance.

Variation of rent

13 Variation of rent

- (1) Subject to subsection (8) below, the landlord or the tenant of an agricultural holding may, whether the tenancy was created before or after the commencement of this Act, by notice in writing served on the other party, demand a reference to arbitration of the question what rent should be payable in respect of the holding as from the next day after the date of the notice on which the tenancy could have been terminated by notice to quit (or notice of intention to quit) given on that date, and the matter shall be referred accordingly.
- (2) On a reference under subsection (1) above, the arbiter shall determine, in accordance with subsections (3) to (7) below the rent properly payable in respect of the holding as from the “next day” mentioned in subsection (1) above.
- (3) For the purposes of this section the rent properly payable in respect of a holding shall normally be the rent at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing landlord to a willing tenant, there being disregarded (in addition to the matters referred to in subsection (5) below) any effect on rent of the fact that the tenant is in occupation of the holding.
- (4) Where the evidence available to the arbiter is in his opinion insufficient to enable him to determine the rent properly payable or he is of the view that the open market for rents of comparable subjects in the surrounding area is distorted by scarcity of lets or by other factors, the rent properly payable for the purposes of this section shall be the rent which he would expect to be paid, in a market which was not affected by such distortion, having particular regard to the following—
 - (a) information about open market rents of comparable subjects outside the surrounding area;
 - (b) the entire range of offers made as regards any lease of subjects which are comparable after regard is had to the terms of that lease;
 - (c) sitting tenants' rents fixed by agreement for subjects in the surrounding area which are comparable after regard is had to any element attributable to goodwill between landlord and tenant or to similar considerations; and
 - (d) the current economic conditions in the relevant sector of agriculture.
- (5) The arbiter shall not take into account any increase in the rental value of the holding which is due to improvements—
 - (a) so far as—
 - (i) they have been executed wholly or partly at the expense of the tenant (whether or not that expense has been or will be reimbursed by a grant out of moneys provided by Parliament) without equivalent allowance or benefit having been made or given by the landlord in consideration of their execution; and
 - (ii) they have not been executed under an obligation imposed on the tenant by the terms of his lease;
 - (b) which have been executed by the landlord, in so far as the landlord has received or will receive grants out of moneys provided by Parliament in respect of the execution thereof,

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nor fix the rent at a higher amount than would have been properly payable if those improvements had not been so executed.

- (6) The continuous adoption by the tenant of a standard of farming or a system of farming more beneficial to the holding 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 holdings in the district, shall be deemed, for the purposes of subsection (5) above, to be an improvement executed at his expense.
- (7) The arbiter shall not fix the rent at a lower amount by reason of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant.
- (8) Subject to subsection (9) below, a reference to arbitration under subsection (1) above shall not be demanded in circumstances which are such that any increase or reduction of rent made in consequence thereof would take effect as from a date earlier than the expiry of 3 years from the latest in time of the following—
 - (a) the commencement of the tenancy;
 - (b) the date as from which there took effect a previous variation of rent (under this section or otherwise);
 - (c) the date as from which there took effect a previous direction under this section that the rent should continue unchanged.
- (9) There shall be disregarded for the purposes of subsection (8) above—
 - (a) a variation of rent under section 14 of this Act;
 - (b) an increase of rent under section 15(1) of this Act;
 - (c) a reduction of rent under section 31 of this Act.

14 Arbitrations under sections 4 and 5

Where it appears to an arbiter—

- (a) on a reference under section 4 of this Act that, by reason of any provision which he is required by that section to include in his award, or
- (b) on a reference under section 5 of this Act that, by reason of any provision included in his award,

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

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, or
 - (c) in compliance with a direction given by the Secretary of State under powers conferred on him by or under any enactment,

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.
- (3) Any question arising between the landlord and the tenant in the application of this section shall be determined by arbitration.

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.

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.

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.

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- (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.
- (3) Any question arising as to the amount of compensation payable under subsection (2) above shall be determined by arbitration.

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 sheriff 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 sheriff may, unless the arrears of rent then due are paid or caution is found to his 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.
- (4) Section 5 of chapter XV of Book L of the Codifying Act of Sederunt of 14th June 1913, anent removings, shall not apply in any case where the procedure under this section is competent.