



Agricultural Holdings (Scotland) Act 1991

1991 CHAPTER 55

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

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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.
- (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 [^{F1}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 [^{F2}16 of the Bankruptcy (Scotland) Act 2016],

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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;
 - (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

- F1** 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.)
- F2** 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.

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