



Agricultural Holdings (Scotland) Act 1991

1991 CHAPTER 55

PART VII

ARBITRATION AND OTHER PROCEEDINGS

60 Questions between landlord and tenant

- (1) Subject to subsection (2) below and except where this Act makes express provision to the contrary, any question or difference between the landlord and the tenant of an agricultural holding arising out of the tenancy or in connection with the holding (not being a question or difference as to liability for rent) shall, whether such question or difference arises during the currency or on the termination of the tenancy, be determined by arbitration.
- (2) Any question or difference between the landlord and the tenant of an agricultural holding which by or under this Act or under the lease is required to be determined by arbitration may, if the landlord and the tenant so agree, in lieu of being determined by arbitration be determined by the Land Court, and the Land Court shall, on the joint application of the landlord and the tenant, determine such question or difference accordingly.

61 Arbitrations

- (1) Any matter which by or under this Act, or by regulations made thereunder, or under the lease of an agricultural holding is required to be determined by arbitration shall, whether the matter arose before or after the passing of this Act, be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions of Schedule 7 to this Act, and the Arbitration (Scotland) Act 1894 shall not apply to any such arbitration.
- (2) An appeal by application to the Land Court by any party to an arbitration under section 13(1) of this Act (variation of rent) against the award of an arbiter appointed by the Secretary of State or the Land Court on any question of law or fact (including the amount of the award) shall be competent.

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- (3) An appeal under subsection (2) above must be brought within 2 months of the date of issue of the award.
- (4) The Secretary of State may by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament make such provision as he thinks desirable for expediting, or reducing the expenses of, proceedings on arbitrations under this Act.
- (5) The Secretary of State shall not make regulations under subsection (4) above which are inconsistent with the provisions of Schedule 7 to this Act.
- (6) Section 62 of this Act shall apply to the determination by arbitration of any claims which arise—
 - (a) under this Act or any custom or agreement, and
 - (b) on or out of the termination of the tenancy of an agricultural holding or part thereof.
- (7) This section and section 60 of this Act shall not apply to valuations of sheep stocks, dung, fallow, straw, crops, fences and other specific things the property of an outgoing tenant, agreed under a lease to be taken over from him at the termination of a tenancy by the landlord or the incoming tenant, or to any questions which it may be necessary to determine in order to ascertain the sum to be paid in pursuance of such an agreement, whether such valuations and questions are referred to arbitration under the lease or not.
- (8) Any valuation or question mentioned in subsection (7) above falling to be decided by reference to a date after 16th May 1975, which would, if it had fallen to be decided by reference to a date immediately before that day, have been decided by reference to fiars prices, shall be decided in such manner as the parties may by agreement determine or, failing such agreement, shall, notwithstanding the provisions of that subsection, be decided by arbitration under this Act.

62 Claims on termination of tenancy

- (1) Without prejudice to any other provision of this Act, any claim by a tenant of an agricultural holding against his landlord or by a landlord of an agricultural holding against his tenant, being a claim which arises, under this Act or under any custom or agreement, on or out of the termination of the tenancy (or of part thereof) shall, subject to subsections (2) to (5) below, be determined by arbitration.
- (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, an arbiter has been appointed by agreement between the landlord and the tenant under this Act or an application for the appointment of an arbiter under those provisions has been made by the landlord or the tenant.
- (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.

63 Panel of arbiters, and remuneration of arbiter

- (1) Such number of persons as may be appointed by the Lord President of the Court of Session, after consultation with the Secretary of State, shall form a panel of persons from whom any arbiter appointed, otherwise than by agreement, for the purposes of this Act shall be selected.
- (2) The panel of arbiters constituted under subsection (1) above shall be subject to revision by the Lord President of the Court of Session, after consultation with the Secretary of State, at such intervals not exceeding 5 years, as the Lord President and the Secretary of State may from time to time agree.
- (3)
 - (a) the remuneration of an arbiter appointed by the Secretary of State under Schedule 7 to this Act shall be such amount as is fixed by the Secretary of State;
 - (b) the remuneration of an arbiter appointed by the parties to an arbitration under this Act shall, in default of agreement between those parties and the arbiter, be such amount as, on the application of the arbiter or of either of the parties, is fixed by the auditor of the sheriff court, subject to appeal to the sheriff;
 - (c) the remuneration of an arbiter, when agreed or fixed under this subsection, shall be recoverable by the arbiter as a debt due from either of the parties;
 - (d) any amount paid in respect of the remuneration of the arbiter by either of the parties in excess of the amount (if any) directed by the award to be paid by that party in respect of the expenses of the award shall be recoverable from the other party.

64 Appointment of arbiter in cases where Secretary of State is a party

Where the Secretary of State is a party to any question or difference which under this Act is to be determined by arbitration or by an arbiter appointed in accordance with this Act, the arbiter shall, in lieu of being appointed by the Secretary of State, be appointed by the Land Court, and the remuneration of the arbiter so appointed shall be such amount as may be fixed by the Land Court.

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

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Session or in the sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral.

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 arbitration 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 arbiter 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 arbiter 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 arbiter 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 arbiter is satisfied that—
 - (i) the latter method or material would involve undue difficulty or expense,
 - (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 an arbiter 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 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 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 by the arbiter or, as the case may be, of the extended period.
- (3) A notice to quit on a date specified in accordance with subsection (2) above shall be served on the tenant within one month after the expiry of the period specified by the arbiter 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 arbiter; and

- (b) it appears to the arbiter on an arbitration required by notice 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 arbiter may treat the period as having been extended or further extended and make his award as if the period had not expired; and where the breach has not been remedied at the date of the award, the arbiter may extend the period as he considers reasonable, having regard to the length of period which has elapsed since the service of the demand.

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 69 to 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 arbitration, referred to in this section and sections 69 to 72 of this Act as a “sheep stock valuation”.
- (2) In a sheep stock valuation where the lease was entered into before or on 6th November 1946, the arbiter shall in his award 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 he has made special allowance.
- (3) In a sheep stock valuation where the lease was entered into after 6th November 1946, the arbiter shall fix the value of the sheep stock in accordance—
 - (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”.

- (4) Where an arbiter fails to comply with any requirement of subsection (2) or (3) above, his award may be set aside by the sheriff.

- (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.

69 Submission of questions of law for decision of sheriff

- (1) In a sheep stock valuation where the lease was entered into after 10th June 1937 the arbiter may, at any stage of the proceedings, and shall, if so directed by the sheriff (which direction may be given on the application of either party) submit, in the form of a stated case for the decision of the sheriff, any question of law arising in the course of the arbitration.
- (2) The decision of the sheriff on questions submitted under subsection (1) above shall be final unless, within such time and in accordance with such conditions as may be prescribed by Act of Sederunt, either party appeals to the Court of Session, from whose decision no appeal shall lie.
- (3) Where a question is submitted under subsection (1) above for the decision of the sheriff, and the arbiter is satisfied that, whatever the decision on the question may be, the sum ultimately to be found due will be not less than a particular amount, it shall be lawful for the arbiter, pending the decision of such question, to make an order directing payment to the outgoing tenant of such sum, not exceeding that amount, as the arbiter may think fit, to account of the sum that may ultimately be awarded.

70 Determination by Land Court of questions as to value of sheep stock

- (1) Any question which would fall to be decided by a sheep stock valuation—
- (a) where the lease was entered into before or on 6th November 1946 may, on the joint application of the parties; and
 - (b) where the lease was entered into after that date shall, on the application of either party,
- in lieu of being determined in the manner provided in the lease, be determined by the Land Court.
- (2) The Land Court shall determine any question or difference which they are required to determine, in a case where subsection (1)(b) above applies, in accordance with the appropriate provisions—
- (a) where the lease was entered into before 1st December, 1986, of Schedule 9 to this Act;
 - (b) where the lease was entered into on or after that date, of Schedule 10 to this Act.

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 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—

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- (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.

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;
- (b) “arbiter” includes an oversman and any person required to determine the value or price of sheep stock in pursuance of any provision in the lease of an agricultural holding, and “arbitration” shall be construed accordingly; and
- (c) “sheep stock valuation” shall be construed in accordance with section 68(1) of this Act.