



Agricultural Holdings (Scotland) Act 1991

1991 CHAPTER 55

PART V

OTHER PROVISIONS REGARDING COMPENSATION

Market gardens

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

*Changes to legislation: There are currently no known outstanding effects for the
 Agricultural Holdings (Scotland) Act 1991, Section 41. (See end of Document for details)*

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],

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

Changes to legislation:

There are currently no known outstanding effects for the Agricultural Holdings (Scotland) Act 1991, Section 41.