



Agriculture (Scotland) Act 1948

1948 CHAPTER 45

PART I

AGRICULTURAL HOLDINGS.

Variation and ascertainment of terms of leases.

11 Variation of rent of holdings.

- (1) Subject to the provisions of this section the landlord or the tenant of a holding may, whether the tenancy was created before or after the commencement of this Part of this Act, by notice in writing served on his tenant or his landlord demand a reference to arbitration of the question what rent should be payable in respect of the holding as from the next ensuing day on which the tenancy could have been terminated by notice to quit given at the date of demanding the reference, and the matter shall be referred accordingly.
- (2) On any reference under the last foregoing subsection the arbiter—
 - (a) shall not take into account any increase in the rental value of the holding which is due to improvements which have been executed thereon in so far as they were 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 any equivalent allowance or benefit made or given by the landlord in consideration of their execution, and have not been executed under an obligation imposed on the tenant by the terms of his lease, or to improvements which have been executed thereon 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, or fix the rent at a higher amount than would have been properly payable if these improvements had not been so executed, and
 - (b) 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.

Status: This is the original version (as it was originally enacted).

Subject as aforesaid, and subject to the provisions of section forty-eight of the Local Government (Scotland) Act, 1929, and of paragraph (6) of section nineteen of the Agricultural Marketing Act, 1931, the arbiter shall determine what rent should properly be payable in respect of the holding as from the day mentioned in the last foregoing subsection.

- (3) A reference to arbitration under subsection (1) of this section shall not be demanded in such circumstances that any increase or reduction of rent made in consequence thereof would take effect as from a date earlier than the expiration of five years from the latest in time of the following dates, that is to say—
- (a) the commencement of the tenancy, or
 - (b) the date as from which there took effect a previous increase or reduction of rent (whether made under this section or otherwise), or
 - (c) the date as from which there took effect a previous direction under this section that the rent should continue unchanged:

Provided that there shall be disregarded for the purposes of this subsection—

- (i) any increase of rent under subsection (4) of this section or any such increase as is referred to in paragraph (i) of the proviso to that subsection;
 - (ii) any reduction of rent under subsection (7) of section thirty-two of this Act or under section thirty-one of the Act of 1923;
 - (iii) any other variation of rent which under the following provisions of this Act is directed to be disregarded for the purposes of this subsection.
- (4) Where the landlord of a holding has, whether before or after the commencement of this Part of this Act, carried out on the holding any improvement, whether specified in the First Schedule to the Act of 1923 or not, being an improvement—
- (a) carried out at the request of or in agreement with the tenant, or in pursuance of an undertaking given by the landlord under subsection (3) or paragraph (b) of subsection (6) of section three of the Act of 1923, or
 - (b) carried out in compliance with a direction given by the Secretary of State under powers conferred on him by or under any enactment, or
 - (c) carried out in such circumstances that apart from this Act any interest or rent in respect thereof would be recoverable by the landlord under section nine of the Agriculture (Miscellaneous Provisions) Act, 1943, or section nine of the Hill Farming Act, 1946,

the rent of the holding shall, if the landlord by notice in writing served on the tenant within six months from the completion of the improvement so requires, be increased as from the completion of the improvement, or, where- the improvement was completed before the commencement of this Part of this Act, as from the commencement of this Part of this Act, by an amount equal to the increase in the rental value of the holding attributable to the carrying out of the improvement:

Provided that—

- (i) no increase shall be made under this subsection if before the commencement of this Part of this Act the landlord and the tenant have agreed on any increase in rent or other benefit to the landlord in respect of the improvement, or if before the commencement of this Part of this Act any sum has become payable under subsection (3) of section three of the Act of 1923, the said Act of 1943, or the said Act of 1946;

- (ii) where any grant has been made to the landlord in respect of the improvement out of moneys provided by Parliament, the increase in rent provided for by the foregoing provisions of this subsection shall be reduced proportionately.
- (5) No interest or rent shall be recoverable by a landlord under the said Act of 1943 or the said Act of 1946 in respect of any improvement specified in paragraph (c) of the last foregoing subsection, whether completed before or after the commencement of this Part of this Act, except where before the commencement of this Part of this Act either the landlord and the tenant have agreed on the payment of interest or rent, or interest or rent has become payable in respect of the improvement.
- (6) Any question arising between the landlord and the tenant of the holding under the two last foregoing subsections shall be determined by arbitration.

12 Variation of terms of tenancy as to permanent pasture.

- (1) Where under the lease of a holding, whether entered into before or after the commencement of this Part of this Act, provision is made for the maintenance of specified land, or a specified proportion of the holding, as permanent pasture, and it appears to the Secretary of State, either on the application of the landlord or the tenant or otherwise.—
 - (a) that 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, and
 - (b) where there has been an application under this section by the landlord or the tenant, that the landlord or the tenant has requested his tenant or his landlord to agree to the appropriate reduction but no agreement has been reached thereon, the Secretary of State may, after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, direct that the lease shall have effect subject to such, modifications of the provisions thereof as to land which is to be maintained as permanent pasture or is to be treated as arable land, and as to cropping, as appear to the Secretary of State expedient as aforesaid and are specified in the direction.
- (2) Where by virtue of a direction under this section a lease has effect subject to a reduction of the land which is to be maintained as permanent pasture, the provisions of paragraphs 2 and 3 of the Third Schedule to this Act shall have effect in relation to the direction.
- (3) Where the landlord and the tenant of a holding enter into an agreement in writing for any such variation of the terms of the lease as could be made by direction under subsection (1) of this section, or under the said paragraph 2, the agreement may, notwithstanding anything in this Part of this Act, provide for the exclusion of compensation in like manner as under the said paragraph 3.

13 Respective liabilities of landlord and tenant for provision and maintenance of fixed equipment and for payment of insurance premiums.

- (1) Where a lease has been entered into-after the commencement of this Part of this Act for the letting of a holding, 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 the provisions of section thirty-seven of the Act of 1923 shall apply

to the making of such a record and to the cost thereof as they apply to a record made under that section.

- (2) There shall be deemed to be incorporated in every lease entered into after the commencement of this Part of this Act for the letting of a holding—
 - (a) an undertaking by the landlord that, at the commencement of the tenancy or as soon as is reasonably possible 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 the kind of produce specified in the lease, or (failing such specification) in use to be produced on the holding and the quality and quantity thereof, and 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 immediately after it was put in repair as aforesaid or, in the case of equipment provided, improved, replaced or renewed during the tenancy, as it was in immediately after it was so provided, improved, replaced or renewed.
- (3) Nothing in the last foregoing subsection shall be deemed to prohibit any agreement made after the lease has been entered into between the landlord and the tenant whereby one of the parties undertakes to execute on behalf of the other party, and wholly at his own expense or wholly or partly at the expense of the other party, 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 entered into after the commencement of this Part of this Act 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 of a tenant under this section shall be determined by arbitration.

14 Provisions for securing written leases and for the revision of certain leases.

- (1) Where in respect of the tenancy of a holding—
 - (a) there is not in force a lease in writing embodying the terms of the tenancy, or
 - (b) there is in force such a lease, being either a lease entered into after the commencement of this Part of this Act or 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 it contains no provision for one or more of the matters specified in the Fourth Schedule to this Act or contains a provision inconsistent therewith or with the last foregoing section,the landlord or the tenant may give notice in writing to his tenant or his landlord requesting him to enter into such a lease containing provision for all of the said matters or a provision not inconsistent with the said Schedule or the said section, as the case may be; and if within the period of six 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 any such reference the arbiter shall by his award specify the terms of the existing tenancy, and, in so far as those terms make no provision for all the matters specified in the Fourth Schedule to this Act or make provision inconsistent therewith or with the last foregoing section, make such provision for those matters as appears to the arbiter to be reasonable.
- (3) On any such reference the arbiter may include in his award any further provisions not inconsistent with the provisions of this Act relating to the tenancy which may be agreed between the landlord and the tenant.

15 Supplementary provisions as to s. 13 and s. 14.

- (1) Where by virtue of section fourteen of this Act the liability for the maintenance or repair of any item of fixed equipment is transferred from the tenant to the landlord, the landlord may within the prescribed period beginning with the date on which the transfer takes effect require that there shall be determined by arbitration, and paid by the tenant, the amount of any compensation which would have been payable under section four of this Act or in accordance with subsection (3) of that section, 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.
- (2) For the purposes of so much of subsection (3) of section four of this Act as prevents a landlord claiming compensation in respect of the same holding both under a lease and under subsection (1) of the said section four, any claim under the last foregoing subsection shall be disregarded.
- (3) Where by virtue of section fourteen of this Act the liability for the maintenance or repair of any item of fixed equipment is transferred from the landlord to the tenant, 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 prescribed period beginning with the date on which the transfer takes effect so requires, be determined by arbitration and any amount directed by the award to be paid by the landlord shall be paid by him to the tenant.
- (4) Where it appears to the arbiter—
 - (a) on any reference under subsection (5) of section thirteen of this Act that by reason of any provision included in his award, or
 - (b) on any reference under section fourteen of this Act that by reason of any provision which he is required by that section to include in his award,it is equitable that the rent of the holding should be varied, he may vary the rent accordingly, and for the purposes of subsection (3) of section eleven of this Act any variation of rent under this subsection shall be disregarded.
- (5) The award of an arbiter under section thirteen or fourteen of this Act shall have effect as if the terms and provisions specified and made therein were contained in an agreement in writing entered into by the landlord and the tenant and having effect as from the making of the award or, if the award so provides, from such later date as may be specified therein.

16 Leases to continue in force notwithstanding variation of terms, etc.

The lease of a holding shall not be deemed to have been brought to an end, and accordingly neither the landlord nor the tenant of the holding 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 of the terms of the lease (including the rent payable thereunder) have been varied or revised in pursuance of any provision of this Part of this Act in that behalf.