



Hill Farming Act 1946

1946 CHAPTER 73

Rehabilitation of Hill Farming Land

1 Grants under schemes for improvement of hill farming land

- (1) With a view to the rehabilitation of hill farming land the appropriate Minister may approve schemes duly submitted to him within five years from the commencement of this Act providing for the making of improvements for the benefit of such land or of other land suitable for use therewith for hill farming purposes (in this Act referred to as "hill farming land improvement schemes"), and may, subject to and in accordance with the provisions of this Act, make out of moneys provided by Parliament grants (in this Act referred to as "improvement grants") in respect of the cost of work done in accordance with an approved hill farming land improvement scheme.
- (2) Before approving a hill farming land improvement scheme the appropriate Minister shall satisfy himself as to the following requirements, that is to say,—
 - (a) that the land for the benefit of which the improvements are proposed ought to be used for hill farming purposes, and comprises an area suitable to be dealt with as a unit for the purpose of rehabilitation thereof for such purposes, and that the improvements proposed are comprehensive enough to provide adequately for the rehabilitation of the land for such purposes ; and
 - (b) that the cost of the work required for making any of the improvements proposed will not be unreasonably high in relation to the benefit to be derived therefrom ;

and before varying an approved scheme under any of the provisions of this Act in that behalf he shall satisfy himself that the scheme as varied will be in conformity with those requirements.

- (3) In this Act—

the expression "hill farming land" means mountain, hill and heath land which is suitable for use for the maintenance of sheep of a hardy kind but not of sheep of other kinds, or which by improvement could be made so suitable ;

the expression "hill farming purposes" means the maintenance of sheep of a hardy kind and the keeping and management thereof in accordance with the

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recognised practices of hill sheep farming, and includes other activities carried on in connection therewith ; and

the expression " improvement" means, subject to the provisions of this section, an operation of any of the kinds specified in the First Schedule to this Act, and any operation incidental to, or necessary or proper in the carrying out of, an operation of any such kind or for securing the full benefit thereof.

- (4) Subject to the provisions of section thirty-seven of this Act, the Ministers may from time to time by order modify the kinds of operations that are to be treated as improvements for the purposes of this Act by adding to the First Schedule to this Act, or by deleting therefrom, or modifying the description of, a kind of operation for the time being therein specified :

Provided that, for the purposes of this Act in its application to a scheme approved before the coming into force of an order under this subsection, any operation which would have been treated as an improvement apart from the order shall continue to be so treated, except that no provision for the carrying out of an operation which by virtue of the order is not to be treated as an improvement shall be made by any subsequent variation of the scheme.

- (5) In considering the approval or variation of hill farming land improvement schemes the appropriate Minister shall have regard to any other provisions in force which may authorise the giving of assistance out of public moneys, by way of grant, subsidy or otherwise, in respect of improvements of the kind proposed, and the giving of assistance under any such other provision in respect of cost that would otherwise be the subject of an improvement grant shall be a ground on which the appropriate Minister may reduce or withhold the grant.

2 Amounts, and payment, of grants under improvement schemes

- (1) The amount which may be paid by way of an improvement grant in respect of the cost of any work shall be one half of the cost of that work so far as approved by the appropriate Minister as having been reasonably incurred.
- (2) Subject to any provision to the contrary made by the approved scheme, an improvement grant payable in respect of the cost of any work shall be paid to the person responsible under the scheme for doing that work.
- (3) An improvement grant in respect of the cost of any work may be paid on the completion of the work, or by instalments on the completion of parts thereof.
- (4) The aggregate of the amounts of improvement grants paid shall not exceed a maximum of four million pounds :

Provided that provision for increasing the said maximum by not more than one million pounds may be made by an order made by the Ministers with the consent of the Treasury at any time within five years from the commencement of this Act and approved by a resolution of the Commons House of Parliament.

3 Contents, submission and approval of improvement schemes

- (1) A hill farming land improvement scheme shall describe the improvements proposed, the work required for making the improvements and the land on which the work is to be done, and shall specify, as respects each item of the work therein described, some person as the person responsible for doing that work.

- (2) Such a scheme may be submitted by any person having an interest in the land for the benefit of which improvements are thereby proposed, or by any person desiring to acquire such an interest as aforesaid in the event of the scheme's being approved, or by two or more such persons, and the appropriate Minister may approve such a scheme submitted as aforesaid either with or without modifications.
- (3) References in this Act to work done in accordance with an approved hill farming land improvement scheme shall be construed, as respects work done at any time, as references to work described in such a scheme (as it stands at that time, whether as approved or as varied under any of the provisions of this Act in that behalf) and done on the land therein described as the land on which the work is to be done by the person therein specified as the person responsible for doing the work.
- (4) Every person who has an interest in land on which, in accordance with such a scheme as approved or as varied as aforesaid, any work is to be done, and who has joined in submitting the scheme or consented to the approval thereof, or has consented to the variation thereof, as the case may be, and every person deriving title to any interest in that land through or under or in succession to any such person, shall be under obligation to permit the doing on the land of all things reasonably necessary to be done thereon for the doing of the work and the maintenance of the improvement.
- (5) Before approving or varying such a scheme the appropriate Minister shall satisfy himself that the person or persons who will be responsible under the scheme as approved, or as varied as aforesaid, as the case may be, for doing the work described therein is or are willing that the work for which he or they respectively will be, so responsible should be done by him or by them respectively, and that he or they will be in a position to do it having regard to the provisions of the last preceding subsection and to the nature of the interest or interests in the land of the persons who have joined or consented as aforesaid.
- (6) The person specified in such a scheme as the person responsible for doing any work may make arrangements with the appropriate Minister or the appropriate local committee constituted under this Act for the doing of the work by the said Minister of committee instead of that person, but at his expense and so that for the purposes of improvement grant the work shall be treated as having been done by that person.

4 Revocation or variation of improvement schemes by consent

A hill farming land improvement scheme may be revoked or varied at any time by the appropriate Minister—

- (a) on application in that behalf being made to him by the person or persons who under the scheme, as it stands immediately before the revocation or variation, is or are responsible for doing the work described therein ; or
- (b) in the absence of such application if that person, or each of those persons, consents.

5 Revocation or variation of improvement schemes on ground of public interest

- (1) If after a hill farming land improvement scheme has been approved it appears to the appropriate Minister to be necessary so to do on the ground either—
 - (a) that it is in the public interest that land for the benefit of which an improvement thereby provided for is to be carried out should be used otherwise than for hill farming purposes, or that land on which work therein described is to be

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done should be used for a purpose inconsistent with the doing of that work thereon ; or

(b) that for any other reason the public interest so requires ;

he may revoke the scheme, or may vary the scheme as appears to him to be requisite on that ground.

- (2) Before revoking or varying a scheme under this section the appropriate Minister shall consult the appropriate advisory committee constituted under this Act.
- (3) Where an approved hill farming land improvement scheme is revoked or varied under this section and cost of work done in accordance with the scheme is rendered abortive by the revocation or variation thereof, the appropriate Minister may pay out of moneys provided by Parliament to the person by whom that cost was incurred an amount equal to that cost in so far as it is so rendered abortive, less the amount of any improvement grant paid or payable in respect of that cost.

For the purposes of this subsection, cost of work done as aforesaid shall be treated as rendered abortive by the revocation or variation of the scheme if and in so far as that cost exceeds the amount of any increase attributable to the work in the value of any interest belonging to the person by whom that cost was incurred in any land, and the amount of any such increase shall be determined by agreement between the appropriate Minister and that person, -or, in default of agreement, shall be determined by an official arbitrator to be appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, who shall have the like powers with respect to procedure, costs, and the statement of special cases as he has under that Act.

6 Revocation or variation of improvement schemes on ground of bad work, delay, etc.

Where in the opinion of the appropriate Minister any work described in an approved hill farming land improvement scheme has been badly done, or has been or is being unreasonably delayed, or is unlikely to be completed (otherwise than in consequence of a revocation or variation of the scheme under either of the two last preceding sections)—

- (a) if it appears to him that in consequence thereof the improvements, so far as they are likely to be carried out, will not provide adequately for the rehabilitation of the land, or that the cost of the work described in the scheme so far as remaining to be done will be unreasonably high in relation to the benefit to be derived therefrom, he may revoke the scheme ;
- (b) if it appears to him that the position would be as mentioned in the preceding paragraph in the absence of a variation of the scheme, but can be rectified by specifying a different person as the person responsible for doing any work or by further or other variation of the scheme, he may vary the scheme accordingly';
- (c) whether he acts under either of the preceding paragraphs or not, he may recover any payment made as an improvement grant or part of an improvement grant in respect of the cost of the work badly done or delayed or unlikely to be completed, and may recover any payment so made in respect of the cost of other work done in accordance with the approved scheme if it appears to him that in the circumstances that work will not contribute to providing adequately for the rehabilitation of the land or that the cost thereof is excessive in relation to the benefit that will be derived therefrom.

7 Hearings before revocation or variation of improvement schemes

Before revoking or varying a hill farming land improvement scheme the appropriate Minister shall afford to—

- (a) the person or persons who under the scheme as it stands immediately before the revocation or variation, is or are responsible for doing the work described therein ;
- (b) any person having an interest in the land for the benefit of which improvements are thereby proposed or in other land specified in the scheme as land on which work is to be done ; and
- (c) any other person who satisfies the appropriate Minister that representations by him ought to be taken into consideration;

an opportunity of appearing before and being heard by a person appointed for the purpose by the appropriate Minister, and shall consider the report of that person.

8 Requirements, in connection with improvement schemes, as to observance of rules of good husbandry, etc.

- (1) The fact that a person to whom an improvement grant in respect of the cost of any work is payable, or would otherwise be payable or has been paid, has in the opinion of the appropriate Minister, neglected, during the period whilst the work was being done, to do other work for the benefit of the land for the benefit of which the improvement was intended, or of contiguous or adjacent land, being work which he ought to have done in the ordinary course in accordance with the rules of good husbandry or with practice customary in the course of good estate management, shall be a ground on which the appropriate Minister may reduce or withhold the grant, or, if it has been paid, may recover from that person the grant or such part of it as appears to the appropriate Minister to be proper.
- (2) The appropriate Minister may, as a condition of approving a hill farming land improvement scheme, require the making, by a person approved by him, of a record of the condition of land for the benefit of which improvements are thereby proposed containing particulars as respects such matters as ought in his opinion to be recorded in connection with the scheme, and the cost incurred in the making of such a record shall be deemed to be part of the cost of work done in accordance with an approved hill farming land improvement scheme for the purpose of subsection (1) of section one of this Act.

9 Operation of the Agricultural Holdings Act, 1923, etc., in relation to improvement schemes

- (1) Subject to the provisions of this section, the Agricultural Holdings Act, 1923, shall apply to improvements for which provision is made by an approved hill farming land improvement scheme as it applies to other improvements.
- (2) Where a tenant of a holding within the meaning of the said Act of 1923 has made thereon an improvement comprised in Part I or Part II of the First Schedule to that Act in accordance with provision in such a scheme for the making of the improvement and for the tenant's being responsible for doing the work, being provision included in the scheme at the instance or with the consent of the landlord, then,—
 - (a) in the case of an improvement comprised in the said Part I, the landlord shall be deemed to have consented as mentioned in section two of that Act in relation to the improvement ; or

- (b) in the case of an improvement comprised in the said Part II, the tenant shall be deemed to have given notice to the landlord as mentioned in section three of that Act in relation to the improvement;

and any agreement as to compensation or otherwise made between the landlord and the tenant in relation to the improvement shall have effect as if it had been such an agreement on terms as is mentioned in the said section two, or the said section three, as the case may be :

Provided, as respects an improvement comprised in the said Part II, that subsection (3) of the said section three (which confers on a landlord power to execute an improvement as to which notice is given by a tenant, and to recover as rent from the tenant a sum in respect of outlay incurred) shall not apply.

- (3) Where such a scheme provides for the making of an improvement that is for the benefit of a holding within the meaning of the said Act of 1923 and for- the landlord's being responsible for doing work required for making the improvement, and that provision is included in the scheme at the instance or with the consent of the tenant, the landlord shall be entitled, in respect of the cost incurred by him of doing that work in accordance with the scheme, so far as approved by the appropriate Minister for the purposes of improvement grant as having been reasonably incurred, to recover from the tenant as rent a sum equal to such percentage per annum (not exceeding five per cent. per annum) of one-half of that cost as may be agreed between the landlord and the tenant, or, in default of agreement. between them, as may be determined by arbitration under the Agricultural Holdings Act, 1923 :

Provided that, if on the ground of the work's being badly done the appropriate Minister withholds or reduces the improvement grant in respect of that cost or takes steps to recover it or part of it, he may direct that the right conferred by this section in respect of that cost shall not be exercisable in respect thereof or of a specified part thereof, and any such direction given after that right has been exercised shall be retrospective and any excess rent paid shall be repaid accordingly.

- (4) Paragraph (b) of subsection (5) of section twelve of the said Act of 1923 (which provides that an arbitrator, in determining what rent is properly payable in respect of a holding, shall not take into account any increase in the rental value due to improvements so far as they were executed wholly or partly by and at the expense of the tenant and in the other circumstances therein mentioned, or fix that rent at a higher amount than would have been payable if those improvements had not been so executed) shall apply to improvements so far as the expense of the execution thereof is made good to the person by whom it was incurred by a payment by way of improvement grant.
- (5) For the purpose's of paragraph (b) of subsection (5) of section twelve of the said Act of 1923, expense of a tenant which is made good to him by a payment by way of improvement grant shall be treated as expense of his notwithstanding that it is so made good.
- (6) In assessing the amount of any compensation payable, whether under the said Act of 1923 or under custom or agreement, to a tenant of agricultural land, if it is shown to the satisfaction of the person assessing the compensation that the improvement or cultivations in respect of which the compensation is claimed was or were wholly or in part the result of or incidental to work in respect of the cost of which an improvement grant has been paid or will be payable, the amount of the grant shall be taken into account as if it had been a benefit allowed to the tenant in consideration of his

executing the improvement or cultivations, and the compensation shall be reduced to such extent as that person considers appropriate.

10 Attachment of conditions as to letting, etc., of new and improved cottages

- (1) Regulations shall be made by the appropriate Minister—
 - (a) for securing that, where an improvement grant has been made in respect of cost of work done for the erection, improvement or reconditioning of a cottage, conditions with respect to the occupation and maintenance thereof shall apply to the cottage for such period from the date on which it first becomes fit for occupation after the completion of the work (not being longer than twenty years) as may be specified in the regulations, including (without prejudice to the generality of this subsection) a condition prohibiting the occupation of the cottage otherwise than by the owner or a tenant thereof ; and
 - (b) in the event of a breach of any of the conditions for the recovery by the appropriate Minister from the owner of the cottage of sums paid (whether before or after the breach) on account of the grant, together with interest , thereon at such rate as may be specified in the regulations and for withholding any sums which, apart from the breach, would be payable to him.
- (2) Regulations under the preceding subsection shall provide for the conditions thereby applied to a cottage ceasing to apply on payment to the appropriate Minister by such person as may be specified in the regulations of such amount as may be so specified, and may contain such incidental and supplementary provisions as appear to the appropriate Minister to be requisite or expedient for the purposes thereof, and in this section the expressions " owner " and " tenant " mean, respectively, owner and tenant as defined by the regulations.

11 Provision as to application of capital for improvements to settled hill farming land

- (1) For the purposes of the provisions of the Settled Land Act, 1925, relating to improvements authorised by that Act, any operation which is to be treated as an improvement for the purposes of this Act, and which is of a kind prescribed by regulations made by the Minister of Agriculture and Fisheries as being of a permanent character, shall be treated as if it were included in the Third Schedule to that Act and were specified in Part I thereof (which specifies improvements the cost of which is not liable to be replaced by instalments).
- (2) The preceding subsection shall apply for the purposes of the said provisions of the Settled Land Act, 1925, as extended to trusts for sale by section twenty-eight of the Law of Property Act, 1925.

12 Improvement of hill farming land subject to rights of common

- (1) Where the Minister of Agriculture and Fisheries (in this section referred to as " the Minister ") is of opinion that it is expedient so to do for the purpose of rehabilitating hill farming land in England or Wales that is subject to fights of common of pasture, he shall have power, subject to the provisions of this section, to do work required for making improvements for the benefit thereof, and the provisions in that behalf of this section shall have effect as to the recovery by the Minister from persons claiming to enjoy rights over such land of sums amounting in- the aggregate to one half of the cost of work done by him under this section.

- (2) Before beginning to do work under this section, the Minister shall publish, in such manner as he thinks best adapted for informing persons enjoying rights, of common over the land for the benefit of which the improvements are intended and any person entitled as lord of the manor or otherwise to the soil of that land, a notice—
- (a) stating that he is of the opinion aforesaid, specifying what improvements ought, in his opinion, to be made and the work required for making them, the land on which he proposes to do the work, the estimated cost of the work and the period (which shall not be less than twenty-eight days from the date of the publication of the . notice) within which written objection to the doing of the work may be made to him by any person claiming to be such a person as aforesaid ; and
 - (b) inviting any person so claiming who is willing to bear an apportioned part of half the estimated cost of the work to furnish to the Minister, within the period aforesaid, his name and address and particulars of such matters relating to the rights which he claims to enjoy as may be specified in the notice.
- (3) If an objection to the doing of the work is duly made to the Minister by any person so claiming as aforesaid within the time limited by the notice for making objections, then, unless either—
- (a) the objection is withdrawn by that person or appears to the Minister to be frivolous ; or
 - (b) the Minister is satisfied that the claim is groundless ;
- no further steps shall be taken under this section in pursuance of the notice, but without prejudice to the publication of a fresh notice.
- (4) Subject to the provisions of the last preceding subsection, the Minister, after the expiration of the said period, shall, by an instrument executed by him, apportion half the amount stated in the notice as the estimated cost of the work amongst the persons who have furnished their names under subsection (2) of this section as being willing to bear apportioned parts thereof, in such amounts as he thinks just, and shall serve on each of them, at the address furnished by him under that subsection, a copy of the said instrument having annexed thereto particulars of the matters by reference to which each of the amounts has been arrived at and a statement of the period (which shall not be less than twenty-eight days from the date of the service of the copy) within which written objection to the amount apportioned to that person may be made by him to the Minister.
- (5) If no objection is duly made under the last preceding subsection within the time limited for the making of objections, or if all objections so made are withdrawn by the persons by whom they were respectively made, the Minister may do the work.
- (6) If an objection duly made as aforesaid is not withdrawn by the person by whom it was made, the Minister may revise the apportionment, and the provisions of the two last preceding subsections shall apply to a revised apportionment as they apply to an original apportionment.
- (7) Where the Minister has done work under this section, the amount apportioned to any person under the instrument by virtue of the execution of which the Minister became entitled to do the work or, where the actual cost of the work falls short of the estimated cost thereof, that amount abated rateably as between it and the remainder of the amounts so apportioned, shall be recoverable from that person by the Minister on the completion of the work.

- (8) Where work under this section for making improvements consists of or includes the making or restoration of permanent fences, subsections (1) and (2) of this section shall have effect as if references therein to persons enjoying or claiming to enjoy rights of common over the land for the benefit of which the improvements are intended included references to persons occupying adjoining land, and as if, in relation to any such person, there were substituted, for the reference in paragraph (b) of the said subsection (2) to rights claimed to be enjoyed, a reference to the adjoining land occupied by him.
- (9) Nothing done under this section shall be treated as an admission of the existence or non-existence of an obligation on the part of a person occupying land adjoining land subject to rights of common of pasture to fence against animals on the last-mentioned land, or as to the extent of any such obligation.
- (10) No work under this section on land subject to rights of common of pasture shall be so done as to prevent or impede access to that land or any part thereof for a period exceeding three years from the beginning of the work.
- (11) Notwithstanding the provisions of subsection (4) of section one of this Act, an operation specified in a notice published under subsection (2) of this section shall not, so far as the operation of this section is dependent on the publication of that notice, be deemed to cease to be an improvement by reason of the deletion from the First Schedule to this Act of that operation or any modification of the description thereof.
- (12) The power conferred by this section on the Minister to do work required for making improvements for the benefit of any land shall not be construed as extending so as to authorise the Minister to do work for that purpose on other land without the consent of all persons interested in that other land whose consent to the doing of the work would be requisite apart from this section.
- (13) The net cost of any work done under this section by the Minister shall be brought into account for the purposes of subsection (4) of section two of this Act as if it had been an improvement grant paid by him.

In this subsection the expression " net cost " means, in relation to any work, the cost of doing it less the aggregate of the amounts recoverable under subsection (7) of this section in respect thereof.