

# **AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 4: Compensation under Agricultural Tenancies**

##### ***Section 46: Payment of compensation by incoming tenant***

143. This section applies, with necessary modifications, subsections (2) to (5) of section 35 of the 1991 Act (as read with Schedule 5 to that Act) to compensation which is payable, or which has been paid, by the landlord under section 45(1) of the 2003 Act to an outgoing tenant of an SLDT or an LDT.
144. The effect of subsection (2) of section 35 of the 1991 Act, as modified, is that any agreement between an incoming tenant under an SLDT or an LDT and the landlord under which the tenant is to pay to the outgoing tenant or to refund to the landlord any compensation payable under section 45(1) of the 2003 Act shall be null and void, subject to the exception specified in subsection (3) of section 35 of the 1991 Act, as modified.
145. Subsection (3) of section 35 of the 1991 Act, as modified, provides that subsection (2) of section 35 of the 1991 Act, as modified, is not applicable where the improvement is of a kind listed under Part III of Schedule 5 to the 1991 Act, the agreement between tenant and landlord is in writing and it states a maximum amount payable by the incoming tenant.
146. Subsection (4) of section 35 of the 1991 Act, as modified, provides that where an incoming tenant under an SLDT or LDT, on entering into occupation of the land subject to the tenancy, with the written consent of the landlord pays to the outgoing tenant compensation payable under section 45(1) of the 2003 Act under the provisions set out in subsection (3) of section 35 of the 1991 Act, then that tenant, on quitting the land is entitled to claim compensation from the landlord for the improvement, or part of it, under section 45(1) of the 1991 Act in the same way as the outgoing tenant would have been entitled to do if that tenant had remained tenant and quitted the land at the time the tenant claiming compensation by virtue of this subsection quits it.
147. Subsection (5) of section 35 of the 1991 Act, as modified, provides that where, in a case not falling under either of subsections (2) or (3) of section 35 of the 1991 Act, as modified, a tenant under an SLDT or LDT on entering into occupation of the land pays to the landlord any amount in respect of the whole or part of a new improvement then that tenant, subject to the terms of any written agreement between the landlord and the tenant, on quitting the land can claim compensation for the improvement, or part of it, under section 45(1) of the 2003 Act as that tenant would have been entitled to claim if that tenant had carried out the improvement, or part thereof, and had been the tenant at the time the improvement was in fact carried out.