

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 5: Miscellaneous Amendments to the 1991 Act

Section 63: Variation of rent

202. This section makes amendments to section 13 of the 1991 Act in respect of its provisions with regard to the variation of rent to apply to 1991 Act tenancies. It should be noted, however, that section 13 of the 1991 Act is also amended by paragraph 15 of the Schedule to the 2003 Act.
203. Section 13(1) of the 1991 Act, as amended by paragraph 15 of the Schedule, now provides that either landlord or tenant of a 1991 Act tenancy may have the rent payable in respect of the holding determined by the Land Court. The Land Court will determine the rent payable as from the day after the date on which the tenancy could have been terminated by notice to quit, or of intention to quit, and in doing so is obliged, by section 13(2) of the 1991 Act, to carry out that determination in accordance with the provisions of subsections (3) to (7A) of section 13 of the 1991 Act.
204. Section 13(3) of the 1991 Act, as amended by subsection (b), provides that in assessing the rent properly payable by a willing tenant to a willing landlord in respect of the holding, the terms of the tenancy (except those relating to rent) must be taken into account. However, the effect of the tenant's occupation of the tenancy and any distortion in rent arising from a scarcity of lets must be disregarded.
205. Section 13(4) of the 1991 Act, as amended by subsection (c), provides that in determining the rent payable the Land Court shall have regard to information about the rents of other agricultural holdings, including when those rents were fixed, and any factor affecting any or all of those rents, except any distortion arising from the scarcity of lets. It should also have regard to the current economic conditions in the relevant sector of agriculture. This amendment, by removing the provisions of old subsection (4), also allows a wider range of evidence to be considered in respect of rents of comparable holdings (as, until now, old subsection (4) only allowed such evidence to be used where the evidence available was, in the arbiter's opinion, insufficient to enable the rent properly payable to be determined).
206. Section 7(5) and (6) of the 1991 Act remain broadly unchanged by the 2003 Act, other than a modest amendment to section 7(5) by paragraph 15 of the Schedule. Section 7(5) continues to set out the circumstances in which an improvement to the holding which increases its rental value is not to be taken account of by the Land Court. Section 7(6) of the 1991 Act applies where a tenant continuously adopts a standard or system of farming more beneficial to the holding than that required by the lease or, where the lease is silent, than that normally practised locally on comparable holdings. In such cases, the provision continues to provide that this is to be deemed, for the purposes of

*These notes relate to the Agricultural Holdings (Scotland) Act
2003 (asp 11) which received Royal Assent on 17 April 2003*

section 7(5), an improvement carried out at the tenant's own expense and hence left out of account by the Land Court in assessing the rent payable.

207. Section 13(7) of the 1991 Act previously provided that a lower rent shall not be fixed as a consequence of any dilapidation or deterioration of, or damage to, fixed equipment or land caused by the tenant. As amended by subsection (d) and by paragraph 15 of the Schedule, section 13(7) still makes such provision. However, it now also provides that the Land Court shall not fix a lower rent as a consequence of a reduction in the rental value of the holding resulting from the use of or changes to the land or part of the land for a non-agricultural purpose or from the carrying out of conservation activities on the land. This ensures that landlords do not suffer loss of rental from the use of the land they own as a result of any diversification by their tenants, or the carrying out of conservation activities by their tenants. Any increase in the rental value of the holdings arising from a non-agricultural use shall, however, be taken into account in determining the rent payable, by virtue of new subsection (7A).