



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 10

#### AGRICULTURAL HOLDINGS

### CHAPTER 8

#### COMPENSATION FOR TENANT'S IMPROVEMENTS

##### *Amnesty for tenant's improvements*

#### **112 Amnesty for certain improvements by tenant**

- (1) This Chapter applies where, in respect of a relevant improvement—
  - (a) a tenant of an agricultural holding to which the 1991 Act applies intends to claim compensation under section 34 of that Act, or
  - (b) a tenant—
    - (i) under a short limited duration tenancy within the meaning of section 4 of the 2003 Act,
    - (ii) under a limited duration tenancy within the meaning of section 5 of that Act, or
    - (iii) under a modern limited duration tenancy within the meaning of section 5A of that Act,intends to claim compensation under section 45 of that Act.
- (2) A “relevant improvement” is a Part 1, Part 2 or Part 3 improvement completed before the beginning of the amnesty period.
- (3) In this Chapter the “amnesty period” means the period of 3 years beginning with the day on which this section comes into force.
- (4) A tenant may give notice of the relevant improvement to the landlord in accordance with section 114.
- (5) A tenant may not give such notice where—

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- (a) in relation to a Part 1 improvement—
    - (i) the tenant carried out the improvement without the landlord's consent, or
    - (ii) the landlord gave consent, whether orally or in writing, and the tenant carried out the improvement in a manner substantially different to the manner consented to,
  - (b) in relation to a Part 2 improvement, the tenant had given notice under section 38(1) of the 1991 Act or, as the case may be, under section 49(1) of the 2003 Act and—
    - (i) the tenant carried out the improvement in a manner substantially different to the manner proposed in the notice,
    - (ii) the landlord objected to the improvement under section 39(1) of the 1991 Act or, as the case may be, under section 49(2) of the 2003 Act (as read with section 39(1) of the 1991 Act), or
    - (iii) the tenant carried out the improvement in breach of any decision of the Land Court under section 39(2) of the 1991 Act or, as the case may be, under section 49(2) of the 2003 Act (as read with section 39(2) of the 1991 Act),
  - (c) in relation to a Part 3 improvement, the tenant had given notice under section 34(8) of the 1991 Act and the tenant carried out the improvement in a manner substantially different to the manner proposed in the notice.
- (6) Nothing in this section affects the extent to which compensation for a relevant improvement is recoverable by a tenant under custom, agreement or otherwise by virtue of the 1991 Act or 2003 Act in lieu of any compensation by virtue of this Chapter.
- (7) In this section—
- (a) a “Part 1 improvement” means—
    - (i) an improvement specified in Part 1 of schedule 3 of the 1991 Act and begun before 31 July 1931,
    - (ii) an improvement specified in Part 1 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948, or
    - (iii) an improvement specified in Part 1 of schedule 5 of the 1991 Act, and begun on or after 1 November 1948,
  - (b) a “Part 2 improvement” means—
    - (i) an improvement specified in Part 2 of schedule 3 of the 1991 Act and begun before 31 July 1931,
    - (ii) an improvement specified in Part 2 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948, or
    - (iii) an improvement specified in Part 2 of schedule 5 of the 1991 Act and begun on or after 1 November 1948,
  - (c) a “Part 3 improvement” means—
    - (i) an improvement specified in paragraph 29 of schedule 3 of the 1991 Act and begun before 31 July 1931, or
    - (ii) an improvement specified in paragraph 29 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948.

## **113 Amendment of the Agricultural Holdings (Scotland) Acts**

(1) After section 34 of the 1991 Act insert—

### **“34A Amnesty under the Land Reform (Scotland) Act 2016**

A tenant of an agricultural holding is entitled to compensation under section 34 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.”.

(2) After section 45 of the 2003 Act insert—

### **“45A Amnesty under the Land Reform (Scotland) Act 2016**

A tenant under a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy is entitled to compensation under section 45 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.”.

## **114 Amnesty notice**

- (1) A notice given in accordance with this section is an “amnesty notice”.
- (2) An amnesty notice must be in writing and given to the landlord within the amnesty period.
- (3) An amnesty notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address or such other description of the holding as will identify it,
  - (c) details of the relevant improvement, including the manner in which the improvement was carried out,
  - (d) the tenant’s reasons as to why it is fair and equitable for compensation to be payable for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (4) Section 84(4) of the 1991 Act applies to the giving of an amnesty notice as it applies to the giving of a notice under that Act.
- (5) In this Chapter the “holding”, in the case of a short limited duration tenancy, limited duration tenancy or modern limited duration tenancy, means the land comprised in the lease.

### *Objection to amnesty notice and referral to Land Court*

## **115 Objection by landlord**

- (1) Compensation under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act is not payable to the tenant if, before the end of the period of 2 months beginning with the day on which the landlord receives an amnesty notice under section 114, the landlord objects to the relevant improvement or to part of it by giving notice in writing to the tenant.

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- (2) A notice given under subsection (1) must be dated and must state the landlord's reasons for objecting to the relevant improvement or, as the case may be, to part of the relevant improvement.
- (3) The landlord's reasons for objecting must be one or more of the following—
  - (a) that it is not fair and equitable for compensation to be payable for the relevant improvement on the tenant quitting the holding at the termination of the tenancy,
  - (b) that the landlord carried out the improvement in whole or in part, or
  - (c) the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed such benefit in writing.

## **116 Referral to Land Court**

- (1) Where the landlord has given notice of objection under section 115(1), the tenant may, before the end of the period of 2 months beginning with the day on which the tenant received the notice of objection, apply to the Land Court for approval of the relevant improvement for the purposes of section 34 of the 1991 Act or, as the case may be, section 45 of the 2003 Act.
- (2) The Land Court may—
  - (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms, as to reduction of the compensation which would otherwise be payable or as to other matters, as appears to it to be appropriate, or
  - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that—
  - (a) the landlord has benefited or would benefit from the improvement, and
  - (b) in all the circumstances it is just and equitable for compensation to be payable by the landlord for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (4) No compensation is payable to the tenant to the extent that the Land Court determines that—
  - (a) the landlord carried out the improvement, or
  - (b) the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed such benefit in writing.

### *Agreements made during amnesty period*

## **117 Amnesty agreements**

- (1) Where no compensation is payable for a relevant improvement under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act because a relevant requirement has not been met, the landlord and tenant may nonetheless enter into an agreement in writing during the amnesty period (an “amnesty agreement”) that the

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landlord will compensate the tenant for the improvement on the tenant quitting the holding at the termination of the tenancy.

- (2) Section 53 of the 1991 Act and section 59 of the 2003 Act do not apply where an amnesty agreement has been entered into.
- (3) The amount of compensation payable under an amnesty agreement must be as set out in section 36 of the 1991 Act or, as the case may be, in section 47 of the 2003 Act.
- (4) In subsection (1) a “relevant requirement” is a requirement, imposed by virtue of Part 4 of the 1991 Act or by virtue of Chapter 1 of Part 4 of the 2003 Act, compliance with which would entitle a tenant to compensation under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act.

### *Resolution of disputes*

## **118 Arbitration and other dispute resolution**

- (1) In the 1991 Act—
  - (a) in section 61 (agreement to refer matters to arbitration)—
    - (i) in subsection (1), after “this Act” insert “or section 116 of the Land Reform (Scotland) Act 2016”,
    - (ii) in subsection (2)—
      - (A) “8(6),” is repealed,
      - (B) “39,” is repealed,
  - (b) in section 61A(5) (arbitration: procedure etc.), after “this Act” insert “or of section 116 of the Land Reform (Scotland) Act 2016”,
  - (c) in section 61B (clauses in leases as to resolution of disputes), after “under this Act” insert “or under section 116 of the Land Reform (Scotland) Act 2016”.
- (2) In section 1(7A) of the Scottish Land Court Act 1993, for “or the Agricultural Holdings (Scotland) Act 2003” substitute “, the Agricultural Holdings (Scotland) Act 2003 or section 116 of the Land Reform (Scotland) Act 2016”.
- (3) In the 2003 Act—
  - (a) in section 78 (agreement to refer matters to arbitration)—
    - (i) in subsection (1), after “this Act” insert “or by virtue of section 116 of the Land Reform (Scotland) Act 2016”,
    - (ii) in subsection (2), for “section 21, 22 or 49(2)” substitute “section 21 or 22”,
  - (b) in section 79(5) (arbitration: procedure etc.), after “this Act” insert “or by virtue of section 116 of the Land Reform (Scotland) Act 2016”,
  - (c) in section 81 (clauses in leases as to resolution of disputes), after “this Act” insert “or by virtue of section 116 of the Land Reform (Scotland) Act 2016”.