



# Agricultural Holdings (Scotland) Act 1991

## 1991 CHAPTER 55

### PART IV

#### COMPENSATION FOR IMPROVEMENTS

#### **33 Improvements**

In this Part the following are referred to as “improvements”—

“1923 Act improvement” means an improvement carried out on an agricultural holding, being an improvement specified in Schedule 3 to this Act, and begun before 31st July 1931;

“1931 Act improvement” means an improvement so carried out, being an improvement specified in Schedule 4 to this Act and begun on or after 31st July 1931 and before 1st November 1948;

“old improvement” means a 1923 Act improvement or a 1931 Act improvement;

“new improvement” means an improvement carried out on an agricultural holding, being an improvement specified in Schedule 5 to this Act begun on or after 1st November 1948.

#### **34 Right to compensation for improvements**

- (1) Subject to subsections (2) to (4), (7) and (8) below, and to sections 36 and 39 to 42 of this Act, a tenant of an agricultural holding shall be entitled, on quitting the holding at the termination of the tenancy, to compensation from the landlord in respect of improvements carried out by the tenant.
- (2) A tenant whose lease was entered into before 1st January 1921 shall not be entitled to compensation under this section for an improvement which he was required to carry out by the terms of his tenancy.
- (3) A tenant shall not be entitled to compensation under this section for an old improvement carried out on land which, at the time the improvement was begun, was not a holding within the meaning of the Agricultural Holdings (Scotland) Act 1923 as

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originally enacted, or land to which provisions of that Act relating to compensation for improvements and disturbance were applied by section 33 of that Act.

(4) Nothing in this section shall prejudice the right of a tenant to any compensation to which he is entitled—

- (a) in the case of an old improvement, under custom, agreement or otherwise;
- (b) in the case of a new improvement, under an agreement in writing between the landlord and the tenant;

in lieu of any compensation provided by this section.

(5) Where a tenant has remained in an agricultural holding during two or more tenancies, he shall not be deprived of his right to compensation under subsection (1) above by reason only that the improvements were not carried out during the tenancy on the termination of which he quits the holding.

(6) Subject to section 36(4) of this Act, a tenant shall be entitled to compensation under this section in respect of the 1931 Act improvement specified in paragraph 28 of Schedule 4 to this Act, or the new improvement specified in paragraph 32 of Schedule 5 to this Act (laying down of temporary pasture), notwithstanding that the laying down or the leaving at the termination of the tenancy of temporary pasture was in contravention of the terms of the lease or of any agreement made by the tenant respecting the method of cropping the arable lands; but, in ascertaining the amount of the compensation, the arbiter shall take into account any injury to or deterioration of the holding due to the contravention (except insofar as the landlord may have recovered damages therefor).

(7) Where under an agreement in writing entered into before 1st January 1921 a tenant is entitled to compensation which is fair and reasonable having regard to the circumstances existing at the time of the making of the agreement, for an old improvement specified in Part III of Schedule 3 to this Act or in Part III of Schedule 4 to this Act, such compensation shall, as respects that improvement, be substituted for compensation under subsection (1) above.

(8) Compensation shall not be payable under this Part of this Act in respect of repairs of the kind specified in paragraph 29 of Schedule 3 to this Act or in paragraph 29 of Schedule 4 to this Act unless, before beginning to execute any such repairs, the tenant gave to the landlord notice in writing under paragraph (29) of Schedule 1 to the Agricultural Holdings (Scotland) Act 1923, or under paragraph (30) of Schedule 1 to the Small Landholders and Agricultural Holdings (Scotland) Act 1931, of his intention to execute the repairs, together with particulars thereof, and the landlord failed to exercise the right conferred on him by the said paragraph (29) or, as the case may be, the said paragraph (30) to execute the repairs himself within a reasonable time after receiving the notice.

### **35 Payment of compensation by incoming tenant**

(1) This section applies to compensation which is payable or has been paid to an outgoing tenant of an agricultural holding by the landlord under or in pursuance of this Act or the Agricultural Holdings (Scotland) Act 1923, the Small Landholders and Agricultural Holdings (Scotland) Act 1931, the Agriculture (Scotland) Act 1948 or the 1949 Act.

(2) Subject to subsection (3) below, any agreement made after 1st November 1948 between an incoming tenant and his landlord whereby the tenant undertakes to pay to

the outgoing tenant or to refund to the landlord any compensation to which this section applies shall be null and void.

- (3) Subsection (2) above shall not apply in the case of an improvement of a kind referred to in Part III of Schedule 5 to this Act, where the agreement is in writing and states a maximum amount which may be payable thereunder by the incoming tenant.
- (4) Where, on entering into occupation of an agricultural holding, a tenant, with the consent in writing of the landlord pays to the outgoing tenant compensation to which this section applies—
  - (a) in respect of an old improvement, in pursuance of an agreement in writing made before 1st November 1948; or
  - (b) where subsection (3) above applies,the incoming tenant shall be entitled, on quitting the holding, to claim compensation for the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if the outgoing tenant had remained tenant of the holding and quitted it at the time at which the tenant quits it.
- (5) Where, in a case not falling within subsection (2) or (3) above, a tenant, on entering into occupation of an agricultural holding, paid to his landlord any amount in respect of the whole or part of a new improvement, he shall, subject to any agreement in writing between the landlord and the tenant, be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as he would have been entitled if he had been tenant of the holding at the time when the improvement was carried out and the improvement or part thereof had been carried out by him.

### **36 Amount of compensation under this Part**

- (1) Subject to subsections (2) to (4) below, the amount of any compensation payable to a tenant under this Part of this Act shall be such sum as fairly represents the value of the improvement to an incoming tenant.
- (2) In the ascertainment of the amount of compensation payable in respect of an old improvement, there shall be taken into account any benefit which the landlord has given or allowed to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement.
- (3) In the ascertainment of the amount of compensation payable under this section for a new improvement, there shall be taken into account—
  - (a) any benefit which the landlord has agreed in writing to give the tenant in consideration of the tenant carrying out the improvement; and
  - (b) any grant out of moneys provided by Parliament which has been or will be made to the tenant in respect of the improvement.
- (4) In ascertaining the amount of any compensation payable under section 34(6) of this Act, the arbiter shall take into account any injury to or deterioration of the holding due to the contravention of the lease or agreement referred to in that subsection, except in so far as the landlord has recovered damages in respect of such injury or deterioration.

### **37 Consents necessary for compensation for some improvements**

- (1) Compensation under this Part of this Act shall not be payable for—

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- (a) a 1923 Act improvement specified in Part I of Schedule 3 to this Act;
- (b) a 1931 Act improvement specified in Part I of Schedule 4 to this Act; or
- (c) a new improvement specified in Part I of Schedule 5 to this Act;

unless, before the improvement was carried out, the landlord consented to it in writing (whether unconditionally or upon terms as to compensation or otherwise agreed on between the parties).

- (2) Where such consent was given on terms agreed as to compensation, the compensation payable under the agreement shall be substituted for compensation under section 34 of this Act.

### **38 Notice required of certain improvements**

- (1) Subject to subsections (2) to (6) below, compensation under this Act shall not be payable for—

- (a) a 1923 Act improvement specified in Part II of Schedule 3 to this Act;
- (b) a 1931 Act improvement specified in Part II of Schedule 4 to this Act;
- (c) a new improvement specified in Part II of Schedule 5 to this Act;

unless the tenant gave notice to the landlord in accordance with subsection (3) below of his intention to carry it out and of the manner in which he proposed to do so.

- (2) Subsection (1) above shall not apply in the case of an improvement mentioned in subsection (1)(a) or (b) above, if the parties agreed by the lease or otherwise to dispense with the requirement for notice under subsection (3).

- (3) Notice shall be in accordance with this subsection if it is in writing and—

- (a) in the case of an improvement mentioned in subsection (1)(a) above, it was notice under section 3 of the Agricultural Holdings (Scotland) Act 1923, given not more than 3 nor less than 2 months,
- (b) in the case of an improvement mentioned in subsection (1)(b) above, it was notice under the said section 3, given not more than 6 nor less than 3 months,
- (c) in the case of an improvement mentioned in subsection (1)(c) above, it was given not less than 3 months,

before the tenant began to carry out the improvement.

- (4) In the case of an improvement mentioned in subsection (1)(a) or (b) above, compensation shall not be payable unless—

- (a) the parties agreed on the terms as to compensation or otherwise on which the improvement was to be carried out;
- (b) where no such agreement was made and the tenant did not withdraw the notice, the landlord failed to exercise his right under the said section 3 to carry out the improvement himself within a reasonable time; or
- (c) in the case of an improvement mentioned in subsection (1)(b) above, where the landlord gave notice of objection and the matter was referred under section 28(2) of the Small Landholders and Agricultural Holdings (Scotland) Act 1931 for determination by the appropriate authority, that authority was satisfied that the improvement should be carried out and the improvement was carried out in accordance with any directions given by that authority as to the manner of so doing.

- (5) If the parties agreed (either after notice was given under this section or by an agreement to dispense with it) on terms as to compensation, the compensation payable under the agreement shall be substituted for compensation under this Part of this Act.
- (6) In subsection (4) above, “the appropriate authority” means—
  - (a) in relation to the period before 4th September 1939, the Department of Agriculture for Scotland;
  - (b) in relation to the period starting on that day, the Secretary of State.

**39 Compensation for Sch. 5, Pt. II, improvements conditional on approval of Land Court in certain cases**

- (1) Subject to subsections (2) to (4) below, compensation under this Part of this Act shall not be payable in respect of a new improvement specified in Part II of Schedule 5 to this Act if, within one month after receiving notice under section 38(3) of this Act from the tenant of his intention to carry out the improvement, the landlord gives notice in writing to the tenant that he objects to the carrying out of the improvement or to the manner in which the tenant proposes to carry it out.
- (2) Where notice of objection has been given under subsection (1) above, the tenant may apply to the Land Court for approval of the carrying out of the improvement, and on such application the Land Court may approve the carrying out of the improvement either—
  - (a) unconditionally, or
  - (b) upon such terms, as to reduction of the compensation which would otherwise be payable or as to other matters, as appears to them to be just,or may withhold their approval.
- (3) If, on an application under subsection (2) above, the Land Court grant their approval, the landlord may, within one month after receiving notice of the decision of the Land Court, serve notice in writing on the tenant undertaking to carry out the improvement himself.
- (4) Where, on an application under subsection (2) above the Land Court grant their approval, then if either—
  - (a) no notice is served by the landlord under subsection (3) above, or
  - (b) such a notice is served but, on an application made by the tenant in that behalf, the Land Court determines that the landlord has failed to carry out the improvement within a reasonable time,

the tenant may carry out the improvement and shall be entitled to compensation under this Part of this Act in respect thereof as if notice of objection had not been given by the landlord, and any terms subject to which the approval was given shall have effect as if they were contained in an agreement in writing between the landlord and the tenant.