



Crofters (Scotland) Act 1993

1993 CHAPTER 44

Compensation for improvements and for deterioration or damage

30 Compensation to crofter for improvements

(1) Where—

- (i) a crofter renounces his tenancy or is removed from his croft, or
- (ii) the tenancy of a croft, being a tenancy the interest of the tenant under which is comprised in the estate of a deceased crofter, is terminated in pursuance of section 16(3) of the 1964 Act,

the crofter or, as the case may be, the executor of the deceased crofter shall, subject to the provisions of this Act, be entitled to compensation for any permanent improvement made on the croft if—

- (a) the improvement is suitable to the croft; and
- (b) the improvement was executed or paid for by the crofter or, as the case may be, the deceased crofter, or any of the predecessors of the crofter or of the deceased crofter in the tenancy; and
- (c) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the crofter or, as the case may be, the deceased crofter was bound to execute the improvement or, if the improvement was executed in pursuance of such an agreement, the crofter has not received or, as the case may be, the deceased crofter did not receive and his executor has not received, by way of reduction of rent or otherwise, fair consideration for the improvement.

(2) Where—

- (a) a person on becoming the tenant of a croft has with the consent of the landlord paid to the outgoing tenant any compensation due to him in respect of any permanent improvement and has agreed with the Secretary of State to assume any outstanding liability to the Secretary of State of the outgoing tenant in respect of any loan made to him; or

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- (b) on a person becoming the tenant of a croft the Secretary of State on his behalf has paid to the landlord a sum representing the value to such person of an existing improvement on the croft;

such person shall for the purposes of subsection (1) above be deemed to have executed or paid for the improvement.

For the purposes of paragraph (a) above, a landlord who has not paid the compensation due either to the outgoing tenant or to the Secretary of State and has not applied to the Secretary of State to determine under subsection (4) of section 43 of this Act that any amount due by him to the Secretary of State by virtue of subsection (3) of that section shall be deemed to be a loan by the Secretary of State to him shall be deemed to have given his consent.

- (3) Subsection (1) above shall not apply to any buildings erected by a crofter in contravention of any interdict or other judicial order.
- (4) The amount of the compensation payable under subsection (1) above shall, failing agreement, be fixed by the Land Court.
- (5) Nothing in this Act shall affect the provisions of the Agricultural Holdings (Scotland) Act 1991 with respect to the payment to outgoing tenants of compensation for improvements:

Provided that—

- (a) where any improvements are valued under that Act with a view to the payment of compensation to a crofter or to the executor of a deceased crofter, the valuation shall, unless the landlord and the crofter or executor otherwise agree in writing, be made by the Land Court; and
- (b) compensation shall not be payable under that Act for an improvement for which compensation is payable under this Act.

- (6) Notwithstanding anything in this section—

- (a) a crofter who immediately before 1st October 1955 was a statutory small tenant, or
- (b) the statutory successor of such a crofter, or
- (c) the executor of such a crofter or of such a statutory successor,

shall not be entitled, in respect of any permanent improvement made or begun before 1st October 1955, to any compensation to which he would not have been entitled if his tenancy had expired immediately before 1st October 1955.

- (7) In this Act “permanent improvement” means any of the improvements specified in Schedule 3 to this Act:

Provided that no building or other structure erected on a croft shall be held to be a permanent improvement on the croft unless it is a fixture on the land.

31 Permanent improvements made on crofts for purposes of subsidiary or auxiliary occupations

- (1) A crofter may erect any buildings or other structures, or execute any works, on his croft which—
- (a) are reasonably required to enable him to make use of the croft for any subsidiary or auxiliary occupation in accordance with paragraph 3 of Schedule 2 to this Act, and

- (b) will not interfere substantially with the use of the croft as an agricultural subject.
- (2) Any buildings or other structures erected, or any works executed, under subsection (1) above on any croft shall, if in the case of any such buildings or structures they are fixtures on the land, be permanent improvements on the croft and shall be deemed to be suitable to the croft for the purposes of section 30(1)(a) of this Act.
- (3) The provisions of subsection (2) above shall apply in relation to buildings or other structures erected, or works executed, on any croft before 27th August 1961 if such buildings, structures or works could have been erected or executed under subsection (1) above if the said subsection (1) had then been in force:

Provided that nothing in this subsection shall authorise the payment of compensation under section 14 of the 1955 Act in respect of any such buildings, structures or works as are mentioned in this subsection where the crofter has renounced his tenancy or has been removed from his croft before 27th August 1961.

32 Assessment of compensation for improvements

- (1) The amount of any compensation payable under section 30(1) of this Act to a crofter who renounces his tenancy or is removed from his croft, or to the executor of a deceased crofter, in respect of a permanent improvement on the croft shall be a sum equal to—
 - (a) the value of that improvement as at the date when—
 - (i) the crofter renounced his tenancy, or
 - (ii) the crofter was removed from the croft, or
 - (iii) the tenancy of the croft was terminated in pursuance of section 16(3) of the 1964 Act,as the case may be, calculated in accordance with subsection (2) below, less
 - (b) the value of any assistance or consideration which may be proved to have been given by the landlord of the croft or any of his predecessors in title in respect of the improvement.
- (2) For the purposes of subsection (1) above, the value of an improvement on any croft shall be taken to be the amount, if any, which, having regard to the location of the croft and any other circumstances which might affect the demand for the tenancy thereof, the landlord might reasonably be expected to receive in respect of the improvement from a person who might reasonably be expected to obtain the tenancy of the croft if the croft were offered on the open market for letting with entry on the date referred to in subsection (1)(a) above.
- (3) Where—
 - (a) compensation falls to be assessed under subsections (1) and (2) above in respect of any permanent improvement on a croft; and
 - (b) the amount of such compensation is fixed or assessed by the Land Court under section 30(4) or 39(3)(a) of this Act,

then, if the crofter, or (as the case may be) the executor of the deceased crofter, is qualified as mentioned in subsection (4) below, he may request the Land Court to determine the amount which would have been payable by way of compensation in respect of that improvement if the Crofters (Scotland) Act 1961 had not been passed; and if the amount last mentioned is greater than the amount fixed or assessed by the

Land Court as aforesaid, the difference between the two said amounts shall be payable to the crofter or executor by the Secretary of State:

Provided that—

- (a) the Secretary of State shall be entitled to set off any amount due to him by the crofter or, as the case may be, the executor of the deceased crofter in respect of a loan made under section 22(2) or (3) of the 1955 Act, section 42(4) or (5) of this Act or section 7(7) or section 9 of the Small Landholders (Scotland) Act 1911 against any sum payable to the crofter or executor by the Secretary of State under this subsection; and
 - (b) this subsection shall not apply where compensation in respect of the improvement in question has on a previous occasion fallen to be assessed under subsections (1) and (2) above.
- (4) The reference in subsection (3) above to a crofter who is qualified is a reference to a crofter—
- (a) whose tenancy of the croft in question began before 27th August 1961, or
 - (b) who holds the tenancy of such croft as statutory successor to his immediate predecessor in the tenancy and each of whose predecessors (being in each case a person whose tenancy of the croft began on or after 27th August 1961) held such tenancy as statutory successor to his immediate predecessor,
- and for the purposes of the said subsection the executor of a deceased crofter shall be deemed to be qualified if the deceased crofter would have been qualified as mentioned in the foregoing provisions of this subsection.

33 Record of improvements

- (1) The Land Court shall, on the application of the landlord or the crofter, make a record of the condition of the cultivation of a croft and of the buildings and other permanent improvements thereon, and by whom the permanent improvements have been executed or paid for.
- (2) Any application under this section shall be intimated by the Land Court to the other party concerned and each party shall be given an opportunity of being heard on any matter affecting the record of the croft.

34 Compensation to landlord for deterioration or damage

- (1) Where—
 - (a) a crofter renounces his tenancy or is removed from his croft, or
 - (b) the tenancy of a croft, being a tenancy the interest of the tenant under which is comprised in the estate of a deceased crofter, is terminated in pursuance of section 16(3) of the 1964 Act,
 the landlord shall be entitled to recover from the crofter or, as the case may be, from the executor of the deceased crofter compensation for any deterioration of, or damage to, any fixed equipment provided by the landlord committed or permitted by the crofter or, as the case may be, by the deceased crofter or his executor.
- (2) The amount of the compensation payable under subsection (1) above shall be the cost, as at the date of the crofter's quitting the croft or, as the case may be, of the termination of the tenancy, of making good the deterioration or damage; and the landlord shall be

entitled to set off the amount so payable against any compensation payable by him in respect of permanent improvements.

- (3) The amount of the compensation payable under subsection (1) above shall, failing agreement, be fixed by the Land Court.

35 Assessment of compensation for improvements or deterioration on joint application to Land Court

Where—

- (a) a crofter has given notice of renunciation of his tenancy, or
- (b) the landlord of the croft either gives to the executor of a deceased crofter, or receives from such an executor, notice terminating the tenancy of the croft in pursuance of section 16(3) of the 1964 Act,

the Land Court may, on the joint application of the crofter or, as the case may be, the executor of the deceased crofter and the landlord or, where the crofter's rights to compensation for permanent improvements have been transferred in whole or in part under section 43 of this Act to the Secretary of State, on the joint application of the Secretary of State and the landlord, assess prior to the renunciation or, as the case may be, the termination the amounts which will on renunciation or termination become due under sections 30 and 34 of this Act by the landlord by way of compensation for permanent improvements and by the crofter or executor by way of compensation for deterioration or damage; and the amounts so assessed shall, on renunciation or, as the case may be, termination, become due accordingly.

36 Compensation to cottar for improvements

- (1) Where a cottar if not paying rent is removed from his dwelling and any land or buildings occupied by him in connection therewith, or if paying rent renounces his tenancy or is removed, he shall be entitled to compensation for any permanent improvement if—

- (a) the improvement is suitable to the subject; and
- (b) the improvement was executed or paid for by the cottar or the cottar's wife or husband or any predecessor of the cottar or of the cottar's wife or husband; and
- (c) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the cottar was bound to execute the improvement, or, if the improvement was executed in pursuance of such an agreement, the cottar has not received, by way of reduction of rent or otherwise, fair consideration for the improvement.

- (2) The amount of the compensation payable under subsection (1) above shall, failing agreement, be fixed by the Land Court, and sections 30(3) and 32(1) and (2) of this Act shall apply in relation to such cottar as they apply in relation to crofters.

- (3) Where the amount of the compensation payable under subsection (1) above is fixed by the Land Court under subsection (2) above, then, if the cottar is qualified as mentioned in subsection (4) below, he may request the Land Court to determine the amount which would have been payable by way of compensation in respect of the permanent improvement concerned if the Crofters (Scotland) Act 1961 had not been passed; and if the amount last mentioned is greater than the amount fixed by the Land Court as aforesaid, the difference between the two said amounts shall be payable to the cottar by the Secretary of State:

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Provided that—

- (a) the Secretary of State shall be entitled to set off any amount due to him by the cottar in respect of a loan made under section 22(2) of the 1955 Act, section 42(4) of this Act or section 9 of the Small Landholders (Scotland) Act 1911 against any sum payable to the cottar by the Secretary of State under this subsection; and
 - (b) this subsection shall not apply where compensation in respect of the improvement in question has on a previous occasion fallen to be assessed under section 32(1) and (2) of this Act as applied by subsection (2) above.
- (4) The reference in subsection (3) above to a cottar who is qualified is a reference to a cottar—
- (a) whose occupation of the subject in question began before 27th August 1961; or
 - (b) who occupies such subject as heir-at-law, legatee or assignee of his immediate predecessor as occupier of the subject, and each of whose predecessors (being in each case a person whose occupation of the subject began on or after 27th August 1961) occupied the subject as heir-at-law, legatee or assignee of his immediate predecessor.
- (5) In this section “predecessor”, in relation to a cottar or to the wife or husband of a cottar, means any person to whom the cottar or the wife or husband of the cottar might, failing nearer heirs, have succeeded in case of intestacy.