



Agriculture (Scotland) Act 1948

1948 CHAPTER 45

PART II

GOOD ESTATE MANAGEMENT AND GOOD HUSBANDRY.

Dispossession of owners or occupiers on grounds of bad estate management or bad husbandry.

31 Dispossession on grounds of bad estate management.

- (1) Where a warning notice is in force in relation to the management of land, and the Secretary of State is satisfied that the management thereof does not while the notice is in force show satisfactory improvement, and certifies accordingly, the Secretary of State shall, subject to the provisions of this section, have power to purchase compulsorily in accordance with the provisions of this Act in that behalf the land to which the notice relates or any part of that land.
- (2) Where the Secretary of State proposes to purchase any land under the last foregoing subsection and is satisfied that it is necessary for the purpose of securing the proper management thereof that he should acquire any other adjacent or contiguous land which is being managed by the same person in conjunction with the first-mentioned land, and certifies accordingly, the Secretary of State shall, subject to the provisions of this section, have power to purchase that other land compulsorily in accordance with the provisions aforesaid.
- (3) Where any person having an interest in land, by notice in writing served on the Secretary of State within six months of the giving by the Secretary of State of a certificate under the foregoing provisions of this section relating to any other land, represents to the Secretary of State that the first-mentioned land was at the time when the certificate was given being managed in conjunction with that other land and that it is not reasonably practicable to manage it except in conjunction therewith, and requires that the Secretary of State shall purchase the said interest, then unless the Secretary of State is satisfied that the representation is not justified and certifies accordingly before the expiration of the prescribed period, the Secretary of State shall be deemed on the

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

date on which the said period expires to have been authorised to purchase the interest compulsorily in accordance with the provisions of this Act in that behalf and to have served a notice to treat in respect of the interest on that date.

The power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this subsection.

- (4) The Secretary of State shall not give any certificate under subsection (1), (2) or (3) of this section until, after affording to any such person as is specified in subsection (6) of this section an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, the Secretary of State has given to any such person as is so specified notice in writing of the proposal to give the certificate together with such particulars as appear to the Secretary of State requisite for informing him of the general grounds on which the Secretary of State is satisfied as mentioned in subsection (1) of this section.
- (5) Any person to whom notice of a proposal is given under the last foregoing subsection may require that the proposal shall be referred to the Land Court, and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- (6) The persons referred to in subsection (4) of this section are—
 - (a) in the case of a proposed certificate under subsection (1) or (2) of this section, every person on whom under paragraph 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947, a notice would be required to be served of a proposed compulsory purchase order under that Act authorising the compulsory purchase of the land to which the proposed certificate is to relate;
 - (b) in the case of a proposed certificate under subsection (3) of this section, the person by whom the representation in question was made.
- (7) No certificate under subsection (1) or (2) of this section shall be given until not less than twelve months has expired from the coming into operation of the warning notice in question, except where the person who for the time being is the owner to whom the notice relates has failed to comply with any direction under the foregoing provisions of this Part of this Act given to him as the owner—
 - (a) in the case of a proposed certificate under subsection (1) of this section, of the land to which the proposed certificate is to relate,
 - (b) in the case of a proposed certificate under subsection (2) thereof, of the land proposed to be acquired under subsection (1) of this section;

and no person on whom a notice to treat is served under powers conferred by either of the said subsections (1) and (2) shall be required to convey his interest to the Secretary of State, or, if he is in occupation of the land in question, to give up the occupation thereof, before the expiration of three months from the service of the notice to treat.

32 Dispossession on grounds of bad husbandry.

- (1) Where a warning notice is in force in relation to the farming of an agricultural unit, and the Secretary of State is satisfied that the farming thereof does not while the notice is in force show satisfactory improvement, then subject to the provisions of this section—
 - (a) where in the case of any land comprised in the unit the occupier is not the owner thereof, the Secretary of State shall have power by order to terminate

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

the occupier's interest in, and to require him to give up his occupation of, that land, or any part thereof specified in the order, as from such date not earlier than three months after the making of the order as may be specified therein, and to require that the owner shall as from the said date either farm it himself, if he so elects and the Secretary of State approves, or let it to a tenant approved by the Secretary of State;

- (b) where in the case of any land comprised in the unit the occupier is the owner thereof, the Secretary of State shall have power by order to direct that as from such date as aforesaid the occupier shall give up his occupation of that land, or any part thereof specified in the order, and let it to a tenant approved by the Secretary of State:

Provided that in any case where under this subsection the approval of the Secretary of State is withheld the owner may require that the matter shall be referred to the Land Court and the provisions in that behalf of Part VI of this Act shall apply accordingly.

- (2) The Secretary of State shall not make an order, under the last foregoing subsection until, after affording to the occupier and, in the case of a proposal to make an order under paragraph (a) thereof, to the owner of the land to which the proposed order is to relate an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, the Secretary of State has given to the occupier, and in such a case as aforesaid to the said owner, notice in writing of the proposal to make the order, together with such particulars as appear to the Secretary of State requisite for informing the recipient of the notice of the general grounds on which the Secretary of State is satisfied as mentioned in subsection (1) of this section.
- (3) The Secretary of State, before making an order under subsection (1) of this section in the case of any land which is situated in a crofting parish and is occupied by a landholder or a statutory small tenant, shall take into consideration the general circumstances of the occupier, including his employment, if any, in one or more of the occupations commonly followed as subsidiary or auxiliary to the cultivation of a holding, and the need of the occupier for the land as a place of residence.

In this subsection the expressions "crofting parish," "landholder," "statutory small tenant" and "holding" have the like meanings as in the Small Landholders (Scotland) Acts, 1886 to 1931.

- (4) An occupier or owner to whom notice of a proposal is given under subsection (2) of this section may require that the proposal shall be referred to the Land Court, and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- (5) No order under subsection (1) of this section shall be made until not less than twelve months has expired from the coming into operation of the warning notice in question, except where the person who for the time being is the occupier to whom the notice relates has failed to comply with any direction under the foregoing provisions of this Part of this Act given to him as the occupier of land comprised in the agricultural unit to which the proposed order under subsection (1) of this section is to relate.
- (6) For the avoidance of doubt it is hereby declared that the termination under paragraph (a) of subsection (1) of this section of the interest of a tenant in any land is to be treated, for the purposes of the provisions relating to compensation of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, as the termination of his tenancy of the land, but nothing in this section shall be construed as entitling the tenant to any compensation for disturbance.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (7) Where under paragraph (a) of subsection (1) of this section an order is made terminating the interest of a tenant in part only of a holding (as defined in the Act of 1923),—
- (a) the said provisions relating to compensation shall apply as if the part to which the order relates were - a separate holding; and
 - (b) the tenant shall be entitled to a reduction of rent proportionate to the value of the part to which the order relates, and the amount of that reduction shall, in default of agreement, be determined by arbitration under the Act of 1923.
- (8) A certified copy of an order under subsection (1) of this section requiring an occupier to give up his occupation of any land shall be a sufficient warrant for ejection against the occupier or any party in his right in the event of noncompliance with such order.

33 Power of Secretary of State to take possession where occupier dispossessed and no other arrangements made.

- (1) Where, at the date as from which a person is required under paragraph (a) or (6) of section (i) of the last foregoing section himself to farm any land or to let it to a person approved by the Secretary of State, the person on whom the requirement is imposed has not complied therewith, the Secretary of State may take possession of the land for the purpose of farming it, and—
- (a) on the Secretary of State taking possession of the land any tenancy thereof granted without the approval of the Secretary of State and since the imposition of the requirement shall be deemed to have terminated by reason of a notice to quit duly given by the landlord, and
 - (b) the Secretary of State may by order require the tenant whose tenancy is deemed to have terminated as aforesaid to give up his occupation of the land.
- (2) While the Secretary of State is in possession of land under this section it shall be his duty to secure that it is farmed in accordance with the rules of good husbandry either—
- (a) by a person acting under the direction of the Secretary of State, or
 - (b) by a person entrusted by the Secretary of State with the farming thereof on such terms, being terms which in the opinion of the Secretary of State would be ' appropriate to a letting thereof to a tenant from year to year, as may be agreed between the Secretary of State and the said person;
- and subject to the provisions of this section the Secretary of State and the person who, apart from any tenancy deemed to have terminated under paragraph (a) of subsection (1) of this section, for the time being would be entitled to possession of the land but for the exercise by the Secretary of State of his powers under this section (hereafter in this section referred to as " the landlord ") shall have the like rights against and liabilities to each other as if the Secretary of State were a tenant of the land under a tenancy from year to year beginning on the date on which the Secretary of State took possession of the land and granted by the landlord under a lease containing such provisions (other than provisions as to rent or any such payment as is mentioned in the next following subsection) as may be agreed between the Secretary of State and the landlord, and providing for the making of payments by the Secretary of State of such amounts at such times as a tenant under such a lease might reasonably be expected to make by way of rent.
- (3) On the Secretary of State taking possession of land under this section there shall be ascertained—

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (a) the amount (if any) in addition to rent which might reasonably have been expected to be payable by an incoming tenant, under the lease referred to in the last foregoing subsection, in respect of things previously done for the purposes of the farming of the land, and in respect of seeds, tillages, growing crops and other matters;
 - (b) the cost of the carrying out of any work which under the rules of good husbandry or under the lease ought to have been carried out on the land by the occupier before the Secretary of State took possession thereof, being work which is necessary for putting the land into good tenantable condition;
- and if the said amount is greater than the said cost the difference shall be recoverable from the Secretary of State by the landlord, and if less the difference shall be recoverable from the landlord by the Secretary of State.
- (4) Where the Secretary of State has taken possession of land under this section in consequence of the termination of the interest of a tenant, then, without prejudice to his responsibilities under the rules of good estate management, the landlord shall be liable to the Secretary of State to carry out any work which under the lease with the tenant he was liable to carry out, being work which is necessary for putting the land into good tenantable condition; and any such liability shall be enforceable by the Secretary of State in like manner as if it were imposed by the lease referred to in subsection (2) of this section.
- (5) The Secretary of State shall be entitled to continue in possession of land under this section—
- (a) where it is being farmed by a person acting under the direction of the Secretary of State, and it is shown to the Secretary of State that the landlord has made arrangements satisfactory to the Secretary of State for the farming of the land by himself or by a person approved by the Secretary of State, until the next twenty-eighth day of May or twenty-eighth day of November as may be specified in a notice in writing served on the Secretary of State by the landlord not later than two months before the said day;
 - (b) where it is being farmed by a person to whom the Secretary of State has entrusted the farming thereof, until that person is entitled to possession of the land as tenant thereof under an agreement with the landlord approved by the Secretary of State.
- (6) Nothing in subsection (2) of this section shall entitle the Secretary of State, on giving up possession of land, to compensation for disturbance; but save as aforesaid that subsection shall apply as if when the Secretary of State gives up possession he were quitting the land on the termination of the tenancy referred to in that subsection by notice to quit duly given by the landlord.
- (7) The enactments relating to income tax, and in particular such of those enactments as relate to the deduction of tax from rent and to the taxation of excess rents, shall apply—
- (a) in relation to payments made under subsection (2) of this section by the Secretary of State to the landlord, as if the Secretary of State were a tenant and the landlord were a lessor of the land under such a lease as is mentioned in the said subsection (2) and the payments were rent paid thereunder;
 - (b) in relation to payments made by any such person as is mentioned in paragraph (b) of that subsection to the Secretary of State, as if the said person were a tenant and the Secretary of State were a lessor of the land under such a letting as is mentioned in the said paragraph (b) and the payments were rent paid thereunder.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (8) Any question arising under subsections (2) to (6) of this section between the Secretary of State and the landlord shall, in default of agreement, be determined by arbitration under the Act of 1923.
- (9) A certified copy of an order under subsection (1) of this section requiring a tenant to give up his occupation of any land shall be a sufficient warrant for ejection against the tenant or any party in his right in the event of non-compliance with such order.

34 Power of tenant or landlord to apply for dispossession of owner or occupier.

- (1) On any review under subsection (3) of section twenty-seven of this Act of the management of land or the farming of an agricultural unit of which the owner is not also the occupier.—
 - (a) if the review is of management, the Secretary of State shall consider any request made by the occupier that the Secretary of State shall exercise his powers under subsection (1) of section thirty-one of this Act in relation to the land;
 - (b) if the review is of farming, the Secretary of State shall consider any request made by any owner of land comprised in the agricultural unit that the Secretary of State shall exercise his powers under subsection (1) of section thirty-two of this Act in relation to the said land.
- (2) Where such a request is made the Secretary of State shall not comply therewith unless he is satisfied that the management or the farming, as the case may be, has not shown satisfactory improvement while the warning notice has been in force, but save as aforesaid may, subject to the provisions of this section, either comply with or refuse the request.
- (3) If the Secretary of State proposes to refuse such a request, he shall give notice in writing of his proposal to the owner and to the occupier.
- (4) If before the expiration of the prescribed period from the making of such a request no notice has been given either under the last foregoing subsection of a proposal to refuse the request or under section thirty-one or thirty-two of this Act of a proposal complying with the request, the Secretary of State shall be deemed to have given notice of his proposal to refuse the request.
- (5) Where notice of a proposal to refuse such a request is given or deemed to have been given the person by whom the request was made may require that the proposal shall be referred to the Land Court and the provisions in that behalf of Part VI of this Act shall apply accordingly.
- (6) Where in consequence of a report of the Land Court on a reference under the last foregoing subsection the Secretary of State complies with such a request as aforesaid, the provisions of subsections (4) and (5) of section thirty-one of this Act or subsections (2) and (4) of section thirty-two thereof, as the case may be, shall not apply to any action of the Secretary of State necessary to comply with the request.