

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 1: Agricultural Tenancies

Section 12: Right of tenant to withhold rent

42. **Section 12** gives the Land Court a new power in instances where a landlord has failed to comply timeously with an order from the Land Court for specific implement or an order *ad factum praestandum* (ie. any court decree to enforce the performance of an act) in relation to the landlord's obligations in respect of fixed equipment. Its effect is to allow the tenant to carry out any work which may be required or to withhold rent until such time as the Court terminates the order. Its effect is the same as section 15A of the 1991 Act (as inserted by section 64 of this Act) in relation to 1991 Act tenancies.
43. Subsection (1) limits this provision to these types of Land Court order. In such instances, and where the landlord has failed in a material way to comply with the order by the date specified in that order, subsection (2) permits the tenant to apply to the Land Court for an order under subsection (3). Such an order may authorise the tenant to carry out the necessary work in place of the landlord and/or to consign rent to the Court rather than paying it to the landlord.
44. Subsection (4) states that the Land Court can release funds from the consigned rent to the tenant, on the application of the tenant, to cover reasonable costs the tenant incurs in conducting this work.
45. Such an order continues until the landlord applies to the Land Court under subsection (5) and the Court considers that it is no longer appropriate for the order to remain in force. At this time, the Court will decide how the remaining rental income consigned to it should be allocated between tenant and landlord (subsection (6) refers).
46. Improvements to fixed equipment carried out by the tenant under such an order are to be treated as a landlord's expense to the extent to which the Land Court releases funds to the tenant for the costs reasonably incurred in carrying out these works (subsection (7) refers).
47. Subsections (8) and (9) respectively clarify that a landlord cannot irritate the lease for non-payment of rent if it is as a result of an order made under this section and that this section overrides any contractual term to the contrary.