

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 4: Compensation under Agricultural Tenancies

Section 49: Notice required for certain improvements

152. This section provides that no compensation shall be payable to a tenant of an SLDT or LDT under section 45(1) of the 2003 Act in respect of an improvement listed under Part II of Schedule 5 to the 1991 Act unless written notice was given by the tenant to the landlord specifying the tenant's intention to carry it out and the manner in which it is proposed to carry it out. This reflects what section 38(1)(c) of the 1991 Act provides in respect of compensation payable to tenants of 1991 Act tenancies for such improvements, the only exception to the requirement for notice under the 1991 Act being that under subsection (2A) of section 38 of the 1991 Act, which is inserted by section 43 of the 2003 Act.
153. Subsection (2) applies, with necessary modifications, subsections (1) to (4) of section 39 of the 1991 Act (as read with Schedule 5 to that Act) to compensation to tenants of SLDTs and LDTs under section 45(1) of the 2003 Act. The effect of section 39(1) of the 1991 Act, as modified, is that compensation is not payable under section 45(1) in respect of an improvement listed under Part II of Schedule 5 to the 1991 Act if, within 60 days of receiving notice from the tenant under section 49(1), the landlord gives written notification to the tenant of objection to the improvement or to the manner in which the tenant proposes to carry the improvement out.
154. Section 39(2) of the 1991 Act provides that where the landlord gives notification of objection under section 39(1), as modified, of the 1991 Act then the tenant may apply to the Land Court for approval of carrying out the improvement. On such application the Land Court may approve the carrying out of the improvement, unconditionally or upon such terms as appear to the Court to be just, or it may withhold approval.
155. Section 39(3) of the 1991 Act provides that within one month of receiving notice of the Land Court's approval of the carrying out of the improvement the landlord may serve written notice on the tenant containing an undertaking that the landlord shall carry out the improvement. Section 39(4) of the 1991 Act provides that if the landlord does not serve such a notice undertaking to carry out the improvement that has been approved by the Land Court then the tenant may carry out the improvement and shall be entitled to compensation under section 45(1) on quitting the land on termination of the tenancy. If the landlord does serve such a notice but fails to carry out the improvement the tenant may apply to the Land Court for an order that the landlord has failed to carry out the improvement in a reasonable time. On obtaining such an order the tenant may then proceed to carry out the improvement and shall be entitled to compensation under section 45(1) on quitting the land on termination of the tenancy.