

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 5: Miscellaneous Amendments to the 1991 Act

Section 67: Notices to quit

222. Where a landlord under a 1991 Act tenancy serves notice to quit upon the tenant under section 21 of the 1991 Act the tenant may, under section 22(1) of the 1991 Act, serve a counter-notice on the landlord within one month of the giving of the notice to quit (or, where section 23(3) applies, within the extended period mentioned in that section). The effect of such a counter-notice is to prevent the notice to quit having effect unless the Land Court, after scrutiny, consents (in accordance with section 24 of the 1991 Act) to its operation. However, a tenant is unable to serve a counter notice (and so has no opportunity to prevent a notice to quit from having effect) where any of the provisions of section 22(2) are complied with and are given in the notice to quit as the ground for termination.
223. Prior to amendment, a landlord was able to comply with section 22(2)(b) of the 1991 Act (and thus avoid the notice to quit being scrutinised by the Land Court) even in situations where planning consent was not required and where, consequently, there had been no scrutiny of the proposed development by the planning authorities (e.g. where the proposed non-agricultural use did not involve a change from the existing use, in which case planning permission was not required for a reason independent of the town and country planning enactments).
224. As amended by section 67(1) of the 2003 Act, however, section 22(2)(b) of the 1991 Act is only complied with where the land is required for use, other than agriculture, for which permission both requires to be, and has been, obtained under the Town and Country Planning Acts. In short, it is only complied with where the proposed development has been scrutinised, and permission has been granted, by the planning authorities. Consequently, neither outline planning permission nor permitted developments, which do not require full planning permission, comply with section 22(2)(b) as amended. In these situations, the tenant will always be able to serve a counter notice and thus require the notice to quit to be scrutinised by the Land Court.
225. Section 24(1) of the 1991 Act sets out the matters in respect of one or more of which the Land Court must be satisfied before giving consent, under section 22 of the 1991 Act, to the operation of a notice to quit. Section 24(2) of the 1991 Act sets out the circumstances in which the Court must withhold consent to the operation of a notice to quit, even where it is satisfied under section 24(1) of the 1991 Act. Previously, the only ground on which the Court required to withhold its consent was if, in all the circumstances, it appeared to the Court that a fair and reasonable landlord would not insist on recovering possession. As amended by subsection (2), section 22(4) of the 1991 Act still makes such provision. However, it now also provides that, where the

*These notes relate to the Agricultural Holdings (Scotland) Act
2003 (asp 11) which received Royal Assent on 17 April 2003*

notice is to quit the whole holding, the Land Court shall withhold its consent where, in all the circumstances, the landlord's proposed use of the land would not create both greater economic and social benefits to the community than would otherwise be the case if the tenancy continued in existence. Subsections (5) and (6) provide definitions for the purposes of this new provision. Subsection (7) provides that the Land Court is to have regard to such representations as it considers may assist it in its consideration of the matters set out in the new provision.