Agricultural Holdings (Scotland) Act 2003

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PART 1

AGRICULTURAL TENANCIES

CHAPTER 2

GENERAL PROVISION AS TO NEW TYPES OF TENANCY

Short limited duration tenancies and limited duration tenancies: general provision

9 Review of rent under limited duration tenancies

(1) Where a lease constituting a limited duration tenancy makes no provision for review of rent, the rent due as payable under the lease is to be reviewed and determined in accordance with this section.

(2) A rent review is to take place on such date as the landlord or tenant may specify in a notice in writing to the other provided that—

(a) the notice is given not less than one year nor more than two years before the date so specified; and

(b) the date so specified is not less than three years—

(i) in the case of the first rent review, from the commencement of the tenancy; or

(ii) in the case of any subsequent rent review, from the date of the review under this subsection which precedes it.

(3) On review, subject to subsections (4) to (7), the rent payable is the rent which the tenancy would reasonably be expected to fetch in the open market where there is a willing landlord and a willing tenant—

(a) disregarding—

(i) any effect on rent due to the fact that the tenant is in occupation of the land; and

(ii) any distortion in rent due to a scarcity of lets; and

(b) having regard to—

(i) the terms of the tenancy (other than those relating to rent);

(ii) information about rents for other agricultural tenancies (including when fixed) and any factors affecting those rents (or any of them) except any distortion due to a scarcity of lets; and

(iii) the current economic conditions in the relevant sector of agriculture.

(4) Account is to be taken of any increase in the rental value of the land resulting from the use of the land for a purpose that is not an agricultural purpose.

(5) No account is to be taken of any increase in the rental value of the land resulting from improvements—

(a) so far as—

(i) they have been carried out wholly or partly at the expense of the tenant (whether or not that expense has been or will be reimbursed by any grant) without equivalent allowance or benefit having been made or given by the landlord in consideration of their execution; and

(ii) they have not been carried out under an obligation imposed on the tenant by the terms of the lease; and

(b) which have been carried out by the landlord, in so far as the landlord has received or will receive any grant in respect of them,

nor may the rent be determined to be a higher amount than would have been payable if those improvements had not been so carried out.

(6) For the purposes of subsection (5)—

(a) subject to paragraph (b), "improvements" is to be construed by reference to Schedule 5 to the 1991 Act; and

(b) the continuous adoption by the tenant of a standard of farming or a system of farming more beneficial to the land than the standard or system required by the terms of the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant's expense.

(7) No account is to be taken of—

(a) any reduction in the rental value of the land as a result of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant; or

(b) any such reduction resulting from—

(i) the use of any of the land, or changes to the land, for a purpose that is not an agricultural purpose; or

(ii) the carrying out of conservation activities on the land.

(8) The rent determined in accordance with this section is to take effect from the date of the rent review.