

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 4: Compensation under Agricultural Tenancies

Section 51: Compensation arising as a result of diversification, etc

158. Subsection (1) inserts new section 45A into the 1991 Act. It makes provision for the recovery of compensation arising as a result of the tenant's use of the land for a purpose which is not agricultural. A purpose which is not an agricultural purpose may be determined by reference to the definition of agriculture in section 93 of the 2003 Act. The compensation is recoverable when the tenant of a 1991 Act tenancy quits the holding on termination of the tenancy. The compensation may be recoverable either by the landlord from the tenant or vice versa. Subsection (2) amends section 47 (provisions supplementary to sections 45 and 46) so that those provisions which apply to section 45 will also apply to new section 45A.
159. New section 45A(1) provides for the landlord to recover compensation from the tenant where the landlord can show that the value of the holding has been reduced during the tenancy by the use of the holding, on or after this section comes into force, for a non-agricultural purpose, whether or not authorised under sections 40 or 41. The compensation is to be an amount equal to the reduction in value of the holding. New section 45A(2) provides for the recovery of compensation by either landlord or tenant from the other in respect of trees planted on the holding by the tenant, after new section 45A(2) has come into force, for future cropping (as distinct from trees planted for other purposes, such as establishing shelter belts). The level of any compensation that may be recoverable by the landlord from the tenant, or vice versa, depends on the difference between (a) the value of the trees to a hypothetical purchaser for future cropping and (b) the evaluated loss of rent to the landlord arising from retaining the trees until the likely date of cropping added to the cost to the landlord of thereafter returning the land to agricultural use. Where (a) is greater than (b) then the tenant is entitled to recover the difference between the two figures. Where (b) is greater than (a) then the landlord is entitled to recover the difference between the two figures (see subsection (4)).
160. New section 45A(5) provides for the tenant to recover compensation from the landlord where the value of the holding has been increased during the tenancy by such use of the land or part of the land, or such change to the land as has been permitted under sections 40 (Notice of and objection to diversification) or 41 (Imposition of conditions by Land Court). The use must have occurred on or after the coming into force of this section. The compensation is to fairly represent the value of the use, change or carrying out of the activities to an incoming tenant (following the test for assessing compensation for an improvement under section 36(1) of the 1993 Act). The "value to a hypothetical incoming tenant" test reflects that used in relation to compensation payable when a

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

tenant quits the land on termination of the lease for agricultural improvements made by a tenant.

161. New section 45A(6)(a) provides that, in ascertaining the amount of compensation recoverable by the tenant from the landlord under section 45A(5) of the 1991 Act, that account shall be taken of any benefit which the landlord has agreed in writing to give to the tenant in consideration of the tenant undertaking the non-agricultural purpose permitted under section 40 or 41 of the 2003 Act. New section 45A(6)(b) provides that, subject to any conditions of the grant scheme itself, where any grant has been or will be paid to the tenant then, in calculating the compensation payable to the tenant, the grant is only to be taken into account where both landlord and tenant have contributed towards the cost of the improvement. In such cases only that proportion of the grant equal to the tenant's contribution to the cost of the improvement expressed as a proportion of the total of the tenant's contribution and the landlord's contribution combined shall be taken into account (similar to the effects of sections 44 and 47(2) of the 2003 Act in relation to compensation payable where public grant has contributed towards the cost of an agricultural improvement).
162. New section 45A(7) provides that no compensation is payable under new section 45A(5) if, due to the non-agricultural use authorised under section 40 or 41 of the 2003 Act, the land is unsuitable for use for agriculture by an incoming tenant or if, due to any use of the fixed equipment in connection with any of those authorised non-agricultural purposes, the landlord would not, at the commencement of an incoming tenant's tenancy, be able to fulfil his obligations as to fixed equipment under the lease imposed by virtue of section 5(2)(a) of the 1991 Act. Again, the "value to a hypothetical incoming tenant" test reflects that use in relation to compensation payable at waygo for agricultural improvements made by a tenant.
163. New section 45A(8) provides that a tenant's right to compensation under section 45A is not exercisable only in respect of such use or change of land during the currency of the tenancy on the termination of which the tenant quits the land. The right to compensation under section 45A is also exercisable in respect of such use or change of land carried out during any previous tenancy, so long as the tenant has remained in occupation of the land. Subsection (2) of this section amends section 47 (provisions supplementary to sections. 45 and 46) of the 1991 Act so that it applies to new section 45A of the 1991 Act. Section 47 of the 1991 Act, as applied to section 45A, provides that compensation is not recoverable by a landlord under section 45A unless that landlord has given written notice to the tenant not later than 3 months before the termination of the tenancy, of the landlord's intention to claim compensation under section 45A.