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

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 4: Compensation under Agricultural Tenancies

Section 43: Agreements as to compensation for improvements

133. This section amends provisions in the 1991 Act that relate to compensation that is payable to a tenant on quitting the land at the termination of the tenancy (known as "waygo") for improvements the tenant has made to fixed equipment during the term of the lease. Subsection (1) inserts new section 33A into the 1991 Act, which applies to improvements made prior to the coming into force of this Act where the tenancy is a 1991 Act tenancy. Subsections (2) and (3) make provision in respect of improvements made on or after the coming into force of this section where the tenancy is a 1991 Act tenancy.

134. Schedule 5 to the 1991 Act lists improvements which, if carried out on an agricultural holding and begun after 1st November 1948, entitle the tenant, on quitting the holding at the termination of the tenancy, to compensation under Part IV of the 1991 Act. Those improvements listed under Part II of Schedule 5 to the 1991 Act are improvements in respect of which compensation is payable only where the tenant gave at least three months written notice to the landlord in accordance with section 38 of the 1991 Act. Those improvements listed under Part III of Schedule 5 to the 1991 Act are improvements in respect of which compensation is payable irrespective of whether the landlord's consent was obtained or notice was given to the landlord.

135. Section 5(2)(a) of the 1991 Act places upon the landlord an obligation at the point that the lease was entered into, albeit an obligation that could subsequently be contracted out of by virtue of section 5(3) of the 1991 Act, to carry out certain works in respect of fixed equipment and buildings. New section 33A provides that where a tenant carries out an improvement listed in either Part II or III of Schedule 5 to the 1991 Act by executing work which the landlord would have been under an obligation to carry out at the time the lease was entered into by virtue of section 5(2)(a) of the 1991 Act, then that tenant is entitled to compensation under Part IV of the 1991 Act on quitting the holding at termination of the lease This compensation is payable even where the parties have contracted under section 5(3) to vary the landlord's obligations at the time the lease was entered into and to make the tenant responsible to carry out those obligations instead. In this event, the restoration of the tenant to entitlement to compensation under Part IV of the 1991 Act is achieved by disapplying any term of the lease or agreement between the landlord and tenant restricting or excluding compensation in relation to such part or proportion of the improvement carried out by the tenant as the landlord would have been under an obligation to carry out at the point the lease was entered into by virtue of section 5(2)(a) of the 1991 Act. Such a term of the lease or agreement, however, remains in effect in respect of such part or proportion of the improvement carried out

by the tenant which the landlord was not under an obligation to carry out, by virtue of section 5(2)(a) of the 1991 Act, at the point the lease was entered into.

136. Subsection (2) of this section repeals provisions of the 1991 Act that enable a landlord and tenant to contract out of the provisions in respect of compensation payable to the tenant under Part IV of the 1991 Act. This does not affect existing agreements that provide for the payment of compensation, except insofar as new section 33A, inserted into the 1991 Act by subsection (1) of this section, applies.

137. New subsection (2A) of section 38 of the 1991 Act (inserted by section 43(3) of the 2003 Act) disapplies the requirement for the tenant to give notice to the landlord of the tenant's intention to carry out an improvement listed under Part II of Schedule 5 to the 1991 Act where the improvement carried out by the tenant was one which the landlord was under an obligation to carry out at the point the lease was entered into by virtue of section 5(2)(a) of the 1991 Act. The effect is that any failure by the tenant to give notice in respect of such an improvement will not prevent the tenant from being entitled to compensation under Part IV of the 1991 Act.

Section 44: Amount of compensation where grant made to tenant

138. This section substitutes new text for part of section 36(3) of the 1991 Act. Previously, when calculating the compensation payable under Part IV of the 1991 Act to a tenant for a new improvement, section 36(3)(b) provided for the whole amount of any grant which had been or would be paid to the tenant in respect of the improvement to be taken into account (the effect of which was to reduce the amount of compensation payable by the landlord to the tenant).

139. The effect of section 36(3)(b) as now amended is that, subject to any conditions of the grant scheme itself, the assessment of value of an improvement which is attributable to a public grant will depend on the extent to which the landlord and tenant respectively contributed to the cost of the improvement. 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 account of. For example, where an improvement costing £12,000 is financed by a contribution of £6,000 from the tenant, £3,000 from the landlord and £3,000 by way of grant then the portion of the grant to be taken account of in assessing the compensation payable to the tenant under section 36(1) of the 1991 Act is £2,000 (i.e. the £3,000 public grant award is apportioned between tenant and landlord in the same ratio as their own contributions to the improvement: in this case a ratio of 2 : 1).

Section 45: Right to compensation for improvements

140. Subsections (1) and (2) provide that tenants of both SLDTs and LDTs are entitled on quitting the land on termination of the tenancy to compensation from the landlord in respect of improvements specified in Schedule 5 to the 1991 Act (as section 34(1) of the 1991 Act provides in respect of 1991 Act tenancies). Section 47 sets out how the compensation payable is to be calculated.

141. Subsection (3) provides that compensation is payable in respect of the laying down of temporary pasture (an improvement listed at paragraph 32 of Schedule 5 to the 1991 Act) even if laying down or leaving temporary pasture at the termination of the tenancy contravenes a term of the lease or an agreement between the landlord and the tenant as to the method of cropping the arable lands (as section 34(6) of the 1991 Act provides in respect of 1991 Act tenancies).

142. Subsection (4) provides that a tenant's right to compensation for improvements is not limited to improvements carried out during the currency of the tenancy on the

termination of which the tenant quits the land. The right to such compensation is also exercisable in respect of improvements carried out during any previous tenancy, so long as the tenant has remained in occupation of the land.

Section 46: Payment of compensation by incoming tenant

143. This section applies, with necessary modifications, subsections (2) to (5) of section 35 of the 1991 Act (as read with Schedule 5 to that Act) to compensation which is payable, or which has been paid, by the landlord under section 45(1) of the 2003 Act to an outgoing tenant of an SLDT or an LDT.

144. The effect of subsection (2) of section 35 of the 1991 Act, as modified, is that any agreement between an incoming tenant under an SLDT or an LDT and the landlord under which the tenant is to pay to the outgoing tenant or to refund to the landlord any compensation payable under section 45(1) of the 2003 Act shall be null and void, subject to the exception specified in subsection (3) of section 35 of the 1991 Act, as modified.

145. Subsection (3) of section 35 of the 1991 Act, as modified, provides that subsection (2) of section 35 of the 1991 Act, as modified, is not applicable where the improvement is of a kind listed under Part III of Schedule 5 to the 1991 Act, the agreement between tenant and landlord is in writing and it states a maximum amount payable by the incoming tenant.

146. Subsection (4) of section 35 of the 1991 Act, as modified, provides that where an incoming tenant under an SLDT or LDT, on entering into occupation of the land subject to the tenancy, with the written consent of the landlord pays to the outgoing tenant compensation payable under section 45(1) of the 2003 Act under the provisions set out in subsection (3) of section 35 of the 1991 Act, then that tenant, on quitting the land is entitled to claim compensation from the landlord for the improvement, or part of it, under section 45(1) of the 1991 Act in the same way as the outgoing tenant would have been entitled to do if that tenant had remained tenant and quitted the land at the time the tenant claiming compensation by virtue of this subsection quits it.

147. Subsection (5) of section 35 of the 1991 Act, as modified, provides that where, in a case not falling under either of subsections (2) or (3) of section 35 of the 1991 Act, as modified, a tenant under an SLDT or LDT on entering into occupation of the land pays to the landlord any amount in respect of the whole or part of a new improvement then that tenant, subject to the terms of any written agreement between the landlord and the tenant, on quitting the land can claim compensation for the improvement, or part of it, under section 45(1) of the 2003 Act as that tenant would have been entitled to claim if that tenant had carried out the improvement, or part thereof, and had been the tenant at the time the improvement was in fact carried out.

Section 47: Amount of compensation

148. Subsection (1) provides that the amount of compensation payable to a tenant under an SLDT or LDT is to be such sum as fairly represents the value of the improvement to an incoming tenant (as section 36(1) of the 1991 Act provides in respect of 1991 Act tenancies).

149. The effect of subsection (2) is that in ascertaining the amount of compensation payable to a tenant of an SLDT or LDT under section 45(1) of the 2003 Act the same matters are to be taken into account as are to be taken into account in ascertaining the amount of compensation payable to a tenant of a 1991 Act tenancy. Subsection (2) is in almost identical terms to section 36(3) of the 1991 Act as amended by section 44. Subsection (2)(a) provides that account is to be taken of any benefit which the landlord has agreed in writing to give the tenant for carrying out the improvement. Subsection 2(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.

150. Any injury to or deterioration of the land in contravention of a term of the lease or of any agreement as to the method of cropping the arable lands is to be taken into account in ascertaining the compensation payable under section 45(3) of the 2003 Act, except insofar as the landlord has recovered damages in respect of that injury or deterioration.

Section 48: Consent required for compensation in certain cases

151. 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 I of Schedule 5 to the 1991 Act unless the written consent of the landlord, (which may include conditions) , is obtained before the improvement was carried out (as section 37(1)(c) of the 1991 Act provides in respect of compensation payable to tenants of 1991 Act tenancies for such improvements).

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.

Section 50: Compensation for disturbance and damage by game

156. Subsection (1) repeals section 43(4)(c) of the 1991 Act. The effect of this repeal is to remove the limit on the level of compensation for disturbance (previously 2 years' rent of the holding) to which a tenant of a 1991 Act tenancy is entitled under section 43 of the 1991 Act.

157. Subsection (2) amends section 52 of the 1991 Act which previously provided that a tenant of a 1991 Act tenancy may have anything from one month up to 13 months in which to submit a claim for damage to the tenant's crops by game, depending on when within an agreed 12-month period the damage occurs. The effect of this amendment is to require the tenant of a 1991 Act tenancy to submit such a claim for compensation within 6 months of the date on which the tenant notified the landlord of the damage under section 52(2)(a) of the 1991 Act.

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 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.

Section 52: Compensation for disturbance

164. Subsection (1) of this section provides that a tenant under an SLDT or LDT is entitled to compensation for disturbance where any land comprised in a lease constituting an SLDT or LDT is resumed by the landlord under section 17 of the 2003 Act or where, having been given notice of the landlord's intention to resume any land comprised in the lease, the tenant terminates the lease by giving notice under section 17(3) of the 2003 Act. In the former case, the tenant will also be entitled to compensation under subsection (5).

165. Subsection (2) of this section applies, with modifications, subsections (3) to (6) of section 43 of the 1991 Act to compensation for disturbance payable under section 52(1) of the 2003 Act.

166. Section 43(4)(a) of the 1991 Act, as modified, provides that the minimum compensation payable to the tenant under section 52(1) of the 2003 Act is an amount equal to one year's rent of the land at the rate at which rental was payable immediately before termination of the tenancy. The meaning of rent is given in section 43(5) of the 1991 Act and, failing agreement, can be determined by the Land Court (see paragraph 28 of the Schedule).

167. Where compensation is payable under section 52(1)(a) and the resumption is in respect only of part of the land, then compensation is payable only in respect of the land being resumed and is calculated on the basis of the yearly rent proportionate to that part (see section 52(2)(c)). In such a case, account is to be taken of any benefit or relief allowed to the tenant by the lease in respect of the part resumed (see section 52(4)).

168. Subsection (3) applies where compensation is payable under section 52(1)(b) and the part of the land affected by the landlord's notice of intention to resume along with any land resumed following any previous such notice together amount to less than a quarter of either the area or rental value of the original land comprised in the lease constituting the tenancy. In these cases then, provided that the remainder of the land is reasonably capable of being farmed separately, then the compensation is payable only in respect of that part of the land to which the landlord's current notice of intention to resume relates.

169. The minimum level of compensation fixed by section 43(4)(a) of the 1991 Act is payable without the tenant requiring to provide proof of any loss or expense incurred. Previously, section 43(4)(c) fixed a maximum amount of compensation payable for disturbance, but that provision is repealed by section 50(1) of the 2003 Act. If the tenant wishes to claim a greater amount of compensation than the minimum level provided for then the tenant, by virtue of section 43(4)(b) of the 1991 Act, must give to the landlord not less than one month's notice of the sale of such goods, implements, fixtures, produce or stock as referred to in section 43(3) of the 1991 Act.

170. Section 43(3) of the 1991 Act, as modified by section 52(2) of the 2003 Act and paragraph 28 of the Schedule, sets out how the amount of compensation payable under section 52(1) of the 2003 Act is to be calculated. It is to be the amount of the loss or expense directly attributable to the quitting of the land which is unavoidably incurred by the tenant upon or in connection with the sale or removal of the tenant's household goods, implements of husbandry, fixtures, farm produce on or used in connection with the land, including any expense reasonably incurred by the tenant in preparation of the claim for compensation, but excluding the expenses arising from the determination any question arising under these provisions. (see paragraph 28 of the Schedule).

171. Section 43(6) of the 1991 Act, as modified, provides that, notwithstanding that the tenant of the land comprised in the lease constituting an SLDT or LDT has lawfully sublet the whole or part of the land, that tenant is not debarred from recovering compensation under this section by reason only of not being in occupation of that land and so not actually quitting it.

Section 53: Compensation for other particular things

172. Subsection (1) applies, with modifications, section 44 (compensation for continuous adoption of special standard of farming) of the 1991 Act to SLDTs and LDTs as it does to 1991 Act tenancies. Section 44 of the 1991 Act, as modified, entitles tenants of SLDTs and LDTs, where the value of the land to an incoming tenant has been increased during the tenancy by the adoption of a more beneficial standard or system of farming than that required by the lease or normally practised on comparable land, to compensation representing the value of adoption of that standard or system to an incoming tenant. The entitlement to such compensation arises when the tenant quits the land.

173. Subsection (2) applies, with modifications, section 45A (compensation arising as a result of diversification etc.) (inserted into the 1991 Act by section 51 of the 2003 Act) as read with section 47(1) of the 1991 Act to LDTs as it applies to 1991 Act tenancies. Section 45A is inserted into the 1991 Act by section 51 of the 2003 Act.

174. Subsection (3) applies, with modifications, section 52 (compensation for damage by game) of the 1991 Act to SLDTs and LDTs as it does to 1991 Act tenancies. Section 52 of the 1991 Act is amended by section 50(2) of the 2003 Act.

Section 54: Compensation where compulsory acquisition of land

175. Subject to two exceptions (see subsection (4)), this section applies where any acquiring authority acquires the interest of a tenant under, or takes possession of the land or any part of the land comprised in a lease constituting, an SLDT or LDT (thus making similar

provision for such tenants as section 56 of the 1991 Act makes in respect of tenants of 1991 Act tenancies).

176. The first exception is where the land, or any part of it, is acquired for the purposes of agricultural research or experiment or of demonstrating agricultural methods (this exception does not apply where the power to acquire or take possession of the land is exercised by virtue of section 189 of the Town and Country Planning (Scotland) Act 1997 or section 7 of the New Towns (Scotland) Act 1968: see subsection (5)). The second exception is where the land or any part of it is acquired by the Scottish Ministers under sections 57(1)(c) or 64 of the Agriculture (Scotland) Act 1948.

177. Where subsection (1) applies, subsection (2) provides that the acquiring authority is to pay to the tenant compensation of a sum equal to four times the annual rental of the land or, where only part of the land is being compulsorily acquired or possessed, four times the annual rent proportionate to that part. The tenant will not be entitled to compensation where, immediately before the acquiring of the interest or taking of possession, that tenant was not in, nor entitled to take, possession of any of the land.

178. Subsection (6) applies, with modifications, Schedule 8 of the 1991 Act to payments made under subsection (2) as it does to payments made under section 56 of the 1991 Act. The two principal effects of this are that, first, any dispute as to the sum payable under subsection (2) is to be determined by the Lands Tribunal (see paragraph 1 of Schedule 8 to the 1991 Act); and, second, where the rent payable by the tenant (being the basis on which compensation is calculated) has not been independently determined under section 9 or 10 or by the Land Court then the acquiring authority, where it considers the rent to be "unduly high", may make application for the rent to be considered by the Lands Tribunal for Scotland. The Tribunal must first determine the "appropriate rent" if determined under section 9 or 10. If the actual rent is not substantially higher than the "appropriate rent" then the application must be dismissed. If it is substantially higher than the "appropriate rent" but was not fixed by landlord and tenant with a view to increasing the compensation payable then the application must be dismissed. If the application is not to be dismissed then the compensation payable is to be ascertained on the basis of the "appropriate rent".

Section 55: Right to compensation for yielding vacant possession

179. This section applies to 1991 Act tenancies and to former such tenancies which, by virtue of section 2 of the 2003 Act, have been converted to LDTs. Its effect is to provide for compensation arrangements that a landlord and tenant may enter into by agreement where either the landlord wishes to sell the tenanted land with vacant possession or the tenant wishes to quit the land.

180. Subsections (2) and (3) apply where the landlord wishes to sell the tenanted land. In such cases, the landlord and tenant may enter into an agreement whereby the tenant quits the land in return for compensation calculated according to the formula set out in subsection (3). These provisions set out arrangements which affect landlord and tenant only if entered into voluntarily by both parties. They do not affect the security of tenure to which the tenant is entitled. The landlord cannot compel the tenant to quit the land under any of the provisions of this section. Nor can either party compel the other to enter into an agreement under any of the provisions of this section.

181. Subsections (4) and (5) apply where the tenant wishes to quit the land. In such cases, the landlord and tenant may enter into an agreement whereby the tenant quits the land and the landlord pays to that tenant compensation calculated according to the formula set out in subsection (5). These provisions set out arrangements which affect landlord and tenant only if entered into voluntarily by both parties. The landlord is not obliged, unless voluntarily entering into such an agreement, to pay such (or indeed, any) compensation under these provisions. Nor may a landlord oblige a tenant to quit the land by offering to pay compensation to the tenant on the basis of this formula. These provisions do

not affect a landlord's obligation to pay compensation under any other provision of the 1991 Act.

182. Subsection (6) stipulates arrangements for the appointment of the valuer, while subsections (7) and (8) set out factors to be taken into account as part of the valuation of land and compensation payable.

Section 56: No right to penal rent, etc.

183. This section makes similar provision in respect of SLDTs and LDTs as does section 48 of the 1991 Act in respect of 1991 Act tenancies. It prevents the landlord from imposing a financial penalty, in excess of the damage actually suffered by the landlord, on the tenant for a breach or non-fulfilment of a term or condition of the lease, and overrides any purported condition in the lease to the contrary.

Section 57: Provision as to parts of land and divided land

184. This section makes similar provision in respect of SLDTs and LDTs as do sections 49(3) and (4) and 50 of the 1991 Act in respect of 1991 Act tenancies.

185. The effect of subsections (1) and (2) is to remove non-agricultural land held under an SLDT or LDT from consideration when calculating compensation payable under this Part of the 2003 Act. The meaning of what constitutes non-agricultural land in subsection (2) differs from the corresponding meaning in section 49(4) of the 1991 Act in respect of 1991 Act tenancies, in that subsection (2) requires consideration to be given to whether the land would have been capable of being let as an agricultural tenancy at the point when the tenancy commenced (rather than at the point when compensation is due to be paid). The effect of this distinction is that land used by the tenant of an SLDT or LDT for a diversified non-agricultural purpose is not caught by subsection (2), and so remains eligible to be taken into account in assessing compensation under Part 4 of the 2003 Act.

186. Subsection (3) provides that, where the landlord's interest in the land is divided between two or more interests and the rent payable under the lease has not been apportioned with the tenant's consent or under any statutory provision, then the tenant may require that any compensation payable to the tenant under Part 4 of the 2003 Act be paid as if the land had not been divided. Subsection (4) empowers the Land Court to determine how compensation payable to a tenant is to be apportioned between those persons who, together, constitute the landlord. The Court may also determine how any additional expenses of the apportionment application are to be apportioned between those people.

Section 58: Compensation not payable where direction as to permanent pasture

187. This section makes similar provision in respect of SLDTs and LDTs as does section 51 of the 1991 Act in respect of 1991 Act tenancies. It provides that no compensation is payable to the tenant in respect of anything done by the tenant in pursuance of any direction as to permanent pasture given by virtue of section 15 (see subsection (1)(a)), nor for any improvement of the type specified in Part III of Schedule 5 to the 1991 carried out for the purposes of any requirement in relation to permanent pasture provided for by virtue of section 15 (see subsection (2)). It also restricts the compensation that can be paid to an outgoing tenant where land is ploughed up in pursuance of a direction as to permanent pasture given by virtue of section 15 (see subsection (1)(b)).

Section 59: Extent to which compensation recoverable under agreements

188. This section makes similar provision in respect of SLDTs and LDTs as does section 53 of the 1991 Act in respect of 1991 Act tenancies.

189. Subsection (1) provides that, unless there is any express provision to the contrary in Part 4, where a landlord or tenant of an SLDT or LDT is entitled to compensation under any provision of Part 4 they are entitled to such compensation by virtue of that provision alone and notwithstanding any term of any agreement between them (whether to increase, reduce or not pay the compensation).

190. Subsection (2) provides that where the landlord and tenant agree in writing a variation of the terms of the lease as may be made by a direction by virtue of section 15 (permanent pasture) then they may also, in that written agreement, provide for the exclusion of compensation on the same basis as it is excluded under section 58(1).

191. By virtue of subsection (3), in a case where Part 4 makes no provision for compensation then any claim by a landlord or tenant of an SLDT or LDT is not enforceable unless it is made under a written agreement. This includes compensation payable to a landlord for any dilapidations caused to the land by the tenant.