



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 4

COMPENSATION UNDER AGRICULTURAL TENANCIES

CHAPTER 4

MISCELLANEOUS PROVISION AS TO COMPENSATION

55 Right to compensation for yielding vacant possession

- (1) This section applies to—
 - (a) a 1991 Act tenancy; and
 - (b) a limited duration tenancy created under section 2.
- (2) Where the landlord wishes to sell the land with vacant possession, the landlord may enter into an agreement in writing with the tenant that—
 - (a) the tenant will give notice of intention to quit and then vacate the land by such date as may be specified in the agreement; and
 - (b) the landlord, having sold the land, will pay to the tenant an amount of compensation for so doing calculated by reference to subsection (3) below.
- (3) That amount is, subject to subsection (8), half of the difference between—
 - (a) the price for which the land is sold; and
 - (b) the estimated value of the land if it had been sold with the tenant still in occupation,minus half of the cost of the valuation carried out for the purposes of paragraph (b).
- (4) Where the tenant wishes to quit the land, the tenant may enter into an agreement in writing with the landlord that—
 - (a) the tenant will give notice of intention to quit and then vacate the land by such date as may be specified in the agreement; and
 - (b) the landlord will pay to the tenant an amount of compensation for so doing calculated by reference to subsection (5) below.

Status: This is the original version (as it was originally enacted).

- (5) That amount is, subject to subsection (8), half of the difference between—
 - (a) the estimated value of the land if sold with vacant possession; and
 - (b) the estimated value of the land if sold with the tenant still in occupation,
 minus half of the cost of the valuations carried out for the purposes of paragraphs (a) and (b).
- (6) Any valuation for the purposes of this section is to be carried out by a valuer appointed by agreement between the landlord and the tenant or by a person nominated by them; and in this section “valuer” includes two valuers with an oversman.
- (7) A valuer appointed or nominated under subsection (6) is to act, so far as practicable, as if the valuation was subject to subsections (2) to (7) of section 34.
- (8) The amount of compensation under subsection (3) or (5) shall take account of—
 - (a) where the tenancy is a limited duration tenancy, the proportion of the term of the tenancy which is unexpired; and
 - (b) in any case, any—
 - (i) investments;
 - (ii) improvements; and
 - (iii) repairs and maintenance,
 in the holding made by both tenant and landlord over the period of the lease.

56 No right to penal rent etc.

The landlord under a short limited duration tenancy or limited duration tenancy is not entitled to recover any sum, by way of higher rent, liquidated damages or otherwise, in consequence of any breach or non-fulfilment of a term or condition of the lease, which is in excess of the damage actually suffered by the landlord in consequence of the breach or non-fulfilment; and any provision of the lease to the contrary is of no effect.

57 Provision as to parts of land and divided land

- (1) Where any land comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy is not agricultural land only because of the reason mentioned in subsection (2), the provisions of this Part as to compensation apply as if the remainder of the land were the land comprised in the lease.
- (2) The reason is that, due to the nature of the building on the land or the use to which the land is put, the land would not, if separately let when the tenancy commenced, have been capable of being the subject of the tenancy.
- (3) Where the interest of the landlord in a short limited duration tenancy or a limited duration tenancy has become vested in several parts in more than one person and the rent payable by the tenant under the lease has not been apportioned with the tenant's consent or under any enactment, the tenant is entitled to require that any compensation payable to the tenant under this Part be determined as if the land had not been divided.
- (4) For the purposes of subsection (3), the Land Court, where necessary, is to apportion the amount payable between the persons who together constitute the landlord, and any additional expenses of the determination caused by the apportionment are to be directed by the Land Court to be paid by those persons in such proportions as it determines.

58 Compensation not payable where direction as to permanent pasture

- (1) Notwithstanding any provision of this Part or any custom or agreement—
 - (a) no compensation is payable under this Part (except under paragraph (b)) to the tenant in respect of anything done in pursuance of any direction as to permanent pasture given by virtue of section 15; and
 - (b) in assessing compensation to an outgoing tenant where land has been ploughed up in pursuance of any such direction, the value per hectare of any tenant's pasture (being pasture laid down at the expense of the tenant or paid for by the tenant on entering the tenancy) comprised in the land is to be taken not to exceed the average value per hectare of the whole of the tenant's pasture comprised in the land on the termination of the tenancy.
- (2) Where an improvement specified in Part III of Schedule 5 to the 1991 Act (that Part of that Schedule having effect for the purposes of this subsection and section 15 as it does for the purposes of section 9 of that Act) is carried out for the purposes of any requirement in relation to permanent pasture provided for by virtue of section 15, the tenant is not entitled to compensation for the improvement.

59 Extent to which compensation recoverable under agreements

- (1) Where by virtue of any provision of this Part compensation is payable to a landlord or tenant of a short limited duration tenancy or a limited duration tenancy, that person—
 - (a) is entitled to such compensation notwithstanding the terms of any agreement between them; and
 - (b) is not entitled to such compensation except by virtue of that provision, but this subsection is subject to any express provision by virtue of this Part to the contrary.
- (2) Where the landlord and tenant agree in writing for such a variation of the terms of the lease as may be made by a direction by virtue of section 15, the agreement may also provide for the exclusion of compensation on the same basis as under section 58(1).
- (3) In a case for which there is no provision for compensation by virtue of this Part, a claim for compensation by a landlord or tenant of a short limited duration tenancy or a limited duration tenancy is not enforceable except under an agreement in writing.