



# Agricultural Holdings (Scotland) Act 1991

## 1991 CHAPTER 55

### PART III

#### NOTICE TO QUIT AND NOTICE OF INTENTION TO QUIT

#### **21 Notice to quit and notice of intention to quit**

- (1) Subject to section 20 of this Act and to subsections (6) and (7) below a tenancy of an agricultural holding shall not come to an end except by operation of a notice which complies with this subsection notwithstanding any agreement or any provision in the lease to the contrary.
- (2) In this Act, a notice which complies with subsection (1) above is referred to as a “notice to quit” if it is given by the landlord to the tenant and as a “notice of intention to quit” if it is given by the tenant to the landlord.
- (3) A notice complies with subsection (1) above if—
  - (a) it is in writing;
  - (b) it is a notice of intention to bring the tenancy to an end;
  - (c) where the notice is to take effect at the termination of the stipulated endurance of the lease, it is given not less than one year nor more than 2 years before that date;
  - (d) in the case of a lease continued in force by tacit relocation, it gives not less than one year nor more than 2 years' notice.
- (4) The provisions of the Sheriff Courts (Scotland) Act 1907 relating to removings shall, in the case of an agricultural holding, have effect subject to this section.
- (5) Notice to quit shall be given either—
  - (a) in the same manner as notice of removal under section 6 of the Removal Terms (Scotland) Act 1886; or
  - (b) in the form and manner prescribed by the Sheriff Courts (Scotland) Act 1907, and such notice shall come in place of the notice required by the said Act of 1907.

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- (6) Nothing in this section shall affect the right of the landlord of an agricultural holding to remove a tenant whose estate has been sequestrated under the Bankruptcy (Scotland) Act 1985 or the Bankruptcy (Scotland) Act 1913, or who by failure to pay rent or otherwise has incurred irritancy of his lease or other liability to be removed.
- (7) This section shall not apply—
- (a) to a notice given in pursuance of a stipulation in a lease entitling the landlord to resume land for building, planting, feuing or other purposes (not being agricultural purposes); or
  - (b) in relation to subjects let under a lease for any period less than a year, not being a lease which by virtue of section 2 of this Act takes effect as a lease from year to year.

## **22 Restrictions on operation of notices to quit**

- (1) Where not later than one month from the giving of a notice to quit an agricultural holding (or, in a case where section 23(3) of this Act applies, within the extended period therein mentioned) the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit, subject to subsection (2) below and to section 25 of this Act, the notice to quit shall not have effect unless the Land Court consent to the operation thereof.
- (2) Subsection (1) above shall not apply where—
- (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in his own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on the condition that he shall, along with the last or waygoing crop, sow permanent grass seeds;
  - (b) the notice to quit is given on the ground that the land is required for use, other than agriculture, for which permission has been granted on an application made under the enactments relating to town and country planning, or for which (otherwise than by virtue of any provision of those enactments) such permission is not required;
  - (c) the Land Court, on an application in that behalf made not more than 9 months before the giving of the notice to quit, were satisfied that the tenant was not fulfilling his responsibilities to farm the holding in accordance with the rules of good husbandry, and certified that they were so satisfied;
  - (d) at the date of the giving of the notice to quit the tenant had failed to comply with a demand in writing served on him by the landlord requiring him within 2 months from the service thereof to pay any rent due in respect of the holding, or within a reasonable time to remedy any breach by the tenant, which was capable of being remedied, of any term or condition of his tenancy which was not inconsistent with the fulfilment of his responsibilities to farm in accordance with the rules of good husbandry;
  - (e) at the date of the giving of the notice to quit the interest of the landlord in the holding had been materially prejudiced by a breach by the tenant, which was not capable of being remedied in reasonable time and at economic cost, of any term or condition of the tenancy which was not inconsistent with the fulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry;

- (f) at the date of the giving of the notice to quit the tenant's apparent insolvency had been constituted in accordance with section 7 of the Bankruptcy (Scotland) Act 1985;
- (g) section 25(1) of this Act applies, and the relevant notice complies with section 25(2)(a), (b) and (d) of this Act;

and, where any of paragraphs (a) to (f) above applies, the ground under the appropriate paragraph on which the notice to quit proceeds is stated in the notice.

## **23 Consent by Land Court or arbitration on notices to quit**

- (1) An application by a landlord for the consent of the Land Court under section 22 of this Act to the operation of a notice to quit shall be made within one month after service on the landlord by the tenant of a counter-notice requiring that subsection (1) of that section shall apply to the notice to quit.
- (2) A tenant who has been given a notice to quit in connection with which any question arises under section 22(2) of this Act shall, if he requires such question to be determined by arbitration under this Act, give notice to the landlord to that effect within one month after the notice to quit has been served on him.
- (3) Where the award of the arbiter in an arbitration required under subsection (2) above is such that section 22(1) of this Act would have applied to the notice to quit if a counter-notice had been served within the period provided for in that subsection, that period shall be extended up to the expiry of one month from the issue of the arbiter's award.
- (4) Where such an arbitration as is referred to in subsection (2) above has been required by the tenant, or where an application has been made to the Land Court for their consent to the operation of a notice to quit, the operation of the notice to quit shall be suspended until the issue of the arbiter's award or of the decision of the Land Court, as the case may be.
- (5) Where the decision of the Land Court giving their consent to the operation of a notice to quit, or the award of the arbiter in such an arbitration as is referred to in subsection (2) above, is issued at a date later than 6 months before the date on which the notice to quit is expressed to take effect, the Land Court, on application made to them in that behalf at any time not later than one month after the issue of the decision or award aforesaid, may postpone the operation of the notice to quit for a period not exceeding 12 months.
- (6) If the tenant of an agricultural holding receives from the landlord notice to quit the holding or a part thereof and in consequence thereof gives to a sub-tenant notice to quit that holding or part, section 22(1) of this Act shall not apply to the notice given to the sub-tenant; but if the notice to quit given to the tenant by the landlord does not have effect, then the notice to quit given by the tenant to the sub-tenant shall not have effect.
- (7) For the purposes of subsection (6) above, a notice to quit part of the holding which under section 30 of this Act is accepted by the tenant as notice to quit the entire holding shall be treated as a notice to quit the holding.
- (8) Where notice is served on the tenant of an agricultural holding to quit the holding or a part thereof, being a holding or part which is subject to a sub-tenancy, and the tenant serves on the landlord a counter-notice in accordance with section 22(1) of this Act, the tenant shall also serve on the sub-tenant notice in writing that he has served such

counter-notice on the landlord and the sub-tenant shall be entitled to be a party to any proceedings before the Land Court for their consent to the notice to quit.

## **24 Consents for purposes of section 22**

- (1) Subject to subsection (2) below and to section 25(3) of this Act, the Land Court shall consent under section 22 of this Act to the operation of a notice to quit an agricultural holding or part of an agricultural holding if, but only if, they are satisfied as to one or more of the following matters, being a matter or matters specified by the landlord in his application for their consent—
  - (a) that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of good husbandry as respects the land to which the notice relates, treated as a separate unit;
  - (b) that the carrying out thereof is desirable in the interests of sound management of the estate of which that land consists or forms part;
  - (c) that the carrying out thereof is desirable for the purposes of agricultural research, education, experiment or demonstration, or for the purposes of the enactments relating to allotments, smallholdings or such holdings as are referred to in section 64 of the Agriculture (Scotland) Act 1948;
  - (d) that greater hardship would be caused by withholding than by giving consent to the operation of the notice;
  - (e) that the landlord proposes to terminate the tenancy for the purpose of the land being used for a use, other than for agriculture, not falling within section 22(2)(b) of this Act.
- (2) Notwithstanding that they are satisfied as aforesaid, the Land Court shall withhold consent to the operation of the notice to quit if in all the circumstances it appears to them that a fair and reasonable landlord would not insist on possession.
- (3) Where the Land Court consent to the operation of a notice to quit they may (subject to section 25(4) of this Act) impose such conditions as appear to them requisite for securing that the land to which the notice relates will be used for the purpose for which the landlord proposes to terminate the tenancy.
- (4) Where, on an application by the landlord in that behalf the Land Court are satisfied that by reason of any change of circumstances or otherwise any condition imposed under subsection (3) above ought to be varied or revoked, they shall vary or revoke the condition accordingly.

## **25 Termination of tenancies acquired by succession**

- (1) This section applies where notice to quit is duly given to the tenant of an agricultural holding who acquired right to the lease of the holding—
  - (a) under section 16 of the Succession (Scotland) Act 1964; or
  - (b) as a legatee, under section 11 of this Act.
- (2) Notice to quit is duly given to a tenant to whom this section applies if—
  - (a) it complies with section 21 of this Act; and
  - (b) it specifies as its effective date—
    - (i) where, when he acquired right to the lease, the unexpired period of the lease exceeded 2 years, the term of outgo stipulated in the lease;

- (ii) where, when he acquired right to the lease, the unexpired period was 2 years or less, the term of outgo stipulated in the lease or the corresponding date in any subsequent year, being a date not less than one nor more than 3 years after the said acquisition;
  - (c) where he was a near relative of the deceased tenant from whom he acquired right, it specifies the Case set out in Schedule 2 to this Act under which it is given; and
  - (d) where he was not a near relative of the deceased tenant from whom he acquired right, he acquired right to the lease after 1st August 1958.
- (3) Section 22(1) of this Act shall apply and section 24 of this Act shall not apply where subsection (2)(c) above applies and notice to quit is duly given in accordance with subsection (2)(a) to (c) above; and in such a case the Land Court shall consent to the operation of a notice duly given—
  - (a) where the holding was let before 1st January 1984, if they are satisfied that the circumstances are as specified in any Case set out in Part I of Schedule 2 to this Act;
  - (b) where the holding was let on or after that date and the notice specifies any of Cases 4, 5 or 7 in that Schedule, unless the tenant satisfies them that the circumstances are not as specified in that Case (provided that, for the purposes of Case 7, the tenant shall not be required to prove that he is not the owner of any land);
  - (c) where the holding was let on or after that date, if they are satisfied that the circumstances are as specified in Case 6 in that Schedule;except that where any of Cases 1, 2, 3, 6 or 7 in that Schedule is specified, the Court shall withhold consent on that ground if it appears to them that a fair and reasonable landlord would not insist on possession.
- (4) Where consent is given because the circumstances are as specified in Case 2 or 6 in Schedule 2 to this Act, the Land Court shall impose such conditions as appear to them necessary to secure that the holding to which the notice relates will, within 2 years after the termination of the tenancy, be amalgamated with the land specified in the notice; and section 27 of this Act shall, with any necessary modifications, apply to a condition imposed under this subsection as that section applies to a condition imposed under section 24 of this Act.
- (5) Part III of Schedule 2 to this Act shall have effect for the purposes of interpretation of this section and that Schedule.

## **26 Certificates of bad husbandry**

- (1) For the purposes of section 22(2)(c) of this Act, the landlord of an agricultural holding may apply to the Land Court for a certificate that the tenant is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry, and the Land Court, if satisfied that the tenant is not fulfilling his said responsibilities, shall grant such a certificate.
- (2) In determining whether to grant a certificate under this section, the Land Court shall disregard any practice adopted by the tenant in compliance with any obligation imposed on him by or accepted by him under section 31B of the Control of Pollution Act 1974.

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## **27 Penalty for breach of condition**

- (1) Where, on giving consent under section 22 of this Act to the operation of a notice to quit an agricultural holding or part of an agricultural holding, the Land Court imposes a condition under section 24(3) of this Act, and it is proved, on an application to the Land Court on behalf of the Crown that the landlord—
- (a) has failed to comply with the condition within the period allowed, or
  - (b) has acted in breach of the condition,
- the Land Court may impose on the landlord a penalty of an amount not exceeding 2 years' rent of the holding at the rate at which rent was payable immediately before the termination of the tenancy, or, where the notice to quit related to a part only of the holding, of an amount not exceeding the proportion of the said 2 years' rent which it appears to the Land Court is attributable to that part.
- (2) A penalty imposed under this section shall be a debt due to the Crown and shall, when recovered, be paid into the Consolidated Fund.

## **28 Effect on notice to quit of sale of holding**

- (1) This section shall apply where a contract for the sale of the landlord's interest in land which comprises or forms part of an agricultural holding is made after the giving of a notice to quit and before its expiry.
- (2) Unless, within the period of 3 months ending with the date on which a contract to which this section applies is made, the landlord and the tenant have agreed in writing whether or not the notice to quit shall continue to have effect—
- (a) the landlord shall,—
    - (i) within 14 days after the making of the contract; or
    - (ii) before the expiry of the notice to quit,
 whichever is the earlier, give notice to the tenant of the making of the contract; and
  - (b) the tenant may, before the expiry of the notice to quit and not later than one month after he has received notice under paragraph (a) above, give notice in writing to the landlord that he elects that the notice to quit shall continue to have effect.
- (3) Where this section applies, unless—
- (a) the landlord and tenant have agreed that the notice to quit shall continue to have effect;
  - (b) the tenant has so elected, under subsection (2)(b) above; or
  - (c) the landlord having failed to give notice of the making of the contract in accordance with subsection (2)(a) above, the tenant quits the holding in consequence of the notice to quit,
- the notice to quit shall cease to have effect.
- (4) Where this section applies and there is an agreement between the landlord and the tenant that the notice to quit shall continue to have effect, the notice shall not be invalid by reason only that the agreement is conditional.

## **29 Notice to quit part of holding to be valid in certain cases**

- (1) A notice to quit part of an agricultural holding held on a tenancy from year to year shall not be invalid on the ground that it relates to part only of the holding if it is given—

- (a) for the purpose of adjusting the boundaries between agricultural units or of amalgamating agricultural units or parts thereof, or
- (b) with a view to the use of the land to which the notice relates for any of the purposes mentioned in subsection (2) below,

and the notice states that it is given for that purpose or with a view to such use, as the case may be.

(2) The purposes referred to in subsection (1)(b) above are—

- (a) the erection of farm labourers' cottages or other houses with or without gardens;
- (b) the provision of gardens for farm labourers' cottages or other houses;
- (c) the provision of allotments;
- (d) the provision of small holdings under the Small Landholders (Scotland) Acts 1886 to 1931, or of such holdings as are referred to in section 64 of the Agriculture (Scotland) Act 1948;
- (e) the planting of trees;
- (f) the opening or working of coal, ironstone, limestone, brick-earth, or other minerals, or of a stone quarry, clay, sand, or gravel pit, or the construction of works or buildings to be used in connection therewith;
- (g) the making of a watercourse or reservoir;
- (h) the making of a road, railway, tramroad, siding, canal or basin, wharf, or pier, or work connected therewith.

### **30 Tenant's right to treat notice to quit part as notice to quit entire holding**

Where a notice to quit part of an agricultural holding is given to a tenant, being a notice which is rendered valid by section 29 of this Act, and the tenant within 28 days after—

- (a) the giving of the notice, or
- (b) where the operation of the notice depends on any proceedings under the foregoing provisions of this Act, the time when it is determined that the notice has effect,

whichever is later, gives to the landlord a counter-notice in writing that he accepts the notice as a notice to quit the entire holding, to take effect at the same time as the original notice, the notice to quit shall have effect accordingly.

### **31 Reduction of rent where tenant dispossessed of part of holding**

(1) Where—

- (a) the tenancy of part of an agricultural holding terminates by reason of a notice to quit which is rendered valid by section 29 of this Act; or
- (b) the landlord of an agricultural holding resumes possession of part of the holding in pursuance of a provision in that behalf contained in the lease,

the tenant shall be entitled to a reduction of rent of an amount, to be determined by arbitration, proportionate to that part of the holding, together with an amount in respect of any depreciation of the value to him of the residue of the holding caused by the severance or by the use to be made of the part severed.

(2) Where subsection (1)(b) above applies, the arbiter, in determining the amount of the reduction, shall take into account any benefit or relief allowed to the tenant under the lease in respect of the part whose possession is being resumed.

## **32 Further restrictions on operation of certain notices to quit**

- (1) Subsections (2) to (5) below shall apply where—
  - (a) notice to quit an agricultural holding or part of an agricultural holding is given to a tenant; and
  - (b) the notice includes a statement in accordance with section 22(2) of this Act and paragraph (d) thereof to the effect that it is given by reason of the tenant's failure to remedy a breach of a kind referred to in section 66(1) of this Act.
- (2) If not later than one month from the giving of the notice to quit the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit, subject to subsection (3) below, the notice to quit shall not have effect (whether as a notice to which section 22(1) of this Act does or does not apply) unless the Land Court consent to the operation thereof.
- (3) A counter-notice under subsection (2) above shall be of no effect if within one month after the giving of the notice to quit the tenant serves on the landlord an effective notice under section 23(2) of this Act requiring the validity of the reason stated in the notice to quit to be determined by arbitration.
- (4) Where—
  - (a) the tenant has served on the landlord a notice of the kind referred to in subsection (3) above;
  - (b) the notice to quit would, apart from this subsection, have effect in consequence of the arbitration; and
  - (c) not later than one month from the date on which the arbiter's award is delivered to the tenant the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit;the notice to quit shall not have effect (whether as a notice to which section 22(1) of this Act does or does not apply) unless the Land Court consent to the operation thereof.
- (5) On an application made in that behalf by the landlord, the Land Court shall consent under subsection (2) or (4) above or (6) below to the operation of the notice to quit unless in all the circumstances it appears to them that a fair and reasonable landlord would not insist on possession.
- (6) Where a notice to quit is given in accordance with section 66(3) of this Act in a case where the arbitration under that section followed an earlier notice to quit to which subsection (1) above applied, if the tenant serves on the landlord a counter-notice in writing within one month after the giving of the subsequent notice to quit (or, if the date specified in that notice for the termination of the tenancy is earlier, before that date), the notice to quit given under section 66(3) of this Act shall not have effect unless the Land Court consent to the operation thereof.