



Agriculture (Scotland) Act 1948

1948 CHAPTER 45

PART I

AGRICULTURAL HOLDINGS.

Compensation for disturbance, and provisions as to notices to quit.

5 Compensation for disturbance.

- (1) Where the tenancy of a holding terminates by reason of a notice to quit given by the landlord, and in consequence of the notice the tenant quits the holding, then, subject to the provisions of this section, unless—
- (a) on an application in that behalf made to the Secretary of State not more than nine months before the giving of the notice to quit the Secretary of State was satisfied in relation to the holding that the tenant was not fulfilling his responsibilities to farm in accordance with the rules of good husbandry, and certified that he was so satisfied; or
 - (b) 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 two months from the service of the demand 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 said responsibilities; or
 - (c) at the said date the interest of the landlord in the holding had been materially prejudiced by the commission by the tenant of a breach 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 as aforesaid; or
 - (d) at the said date the tenant was a person who had become notour bankrupt or executed a trust deed for behoof of his creditors;

and unless the notice to quit states that it is given by reason of one or more of the matters aforesaid, specifying it or them, compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section.

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The provisions of the Second Schedule to this Act shall have effect in relation to applications for certificates under paragraph (a) of this subsection.

- (2) The amount of the compensation payable under this section shall be the amount of the loss or expense directly attributable to the quitting of the holding which is unavoidably incurred by the tenant upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (not being expenses of an arbitration to determine any question arising under this section):

Provided that—

- (a) the compensation payable under this section shall be an amount equal to one year's rent of the holding at "the rate at which rent was payable immediately before the termination of the tenancy without proof by the tenant of any such loss or expense as aforesaid;
- (b) the tenant shall not be entitled to claim any greater amount than one year's rent of the holding unless he has given to the landlord not less than one month's notice of the sale of any such goods, implements, fixtures, produce or stock as aforesaid and has afforded him a reasonable opportunity of making a valuation thereof;
- (c) the tenant shall not in any case be entitled to compensation in excess of two years' rent of the holding.

In this subsection the expression " rent " means the rent after deduction of such an amount as the arbiter, failing agreement, may find to be equivalent to the aggregate of the following amounts, that is to say—

- (i) the amount payable by the landlord in respect of the holding for the year in which the tenancy was terminated by way of owners' rates or of any other public rates, taxes or assessments or other public burdens, the charging of which on the landlord would entitle him to relief in respect of tax under Rule 4 of No. V of Schedule A to the Income Tax Act, 1918; and
 - (ii) the amount (if any) recovered in respect of that year from the landlord in pursuance of subsection (1) of section forty-seven of the Local Government (Scotland) Act, 1929.
- (3) Where the tenant of a holding has lawfully sub-let the whole or part of the holding, and in consequence of a notice to quit given by his landlord becomes liable to pay compensation under this section to the sub-tenant, the tenant shall not be debarred from recovering compensation under this section by reason only that, owing to not being in occupation of the holding or of part of the holding on the termination of his tenancy, he does not quit the holding or that part.
- (4) Where under section thirty of the Act of 1923 the tenant accepts a notice to quit part of his holding as a notice to quit the entire holding, and—
- (a) the part of the holding affected by the notice given by the landlord, together with any part of the holding affected by any previous notice given by the landlord under that section, is either less than one fourth part of the area of the original holding or of a rental value less than one fourth part of the rental value of the original holding, and
 - (b) the holding as proposed to be diminished is reasonably capable of being farmed as a separate holding,

compensation shall not be payable under this section except in respect of the part of the holding to which the notice to quit relates.

- (5) Compensation shall not be payable under this section in the case of a 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 a tenant for a definite and limited period for cultivation as arable land on the condition that the tenant shall, along with the last or waygoing crop, sow permanent grass seeds.
- (6) Compensation payable under this section shall be in addition to any compensation to which the tenant may be entitled apart from this section.
- (7) If, while a certificate under paragraph (a) of subsection (1) of this section is in force, the landlord within nine months from the application for the certificate gives notice to quit to the tenant—
 - (a) the Secretary of State shall have power, after affording to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, to give to the tenant by notice in writing such directions as appear to the Secretary of State necessary for securing that the holding shall not further deteriorate before the determination of the tenancy, and subsections (5) to (9) of section twenty-nine and section thirty-seven of this Act shall apply to directions under this subsection as they apply to directions under the said section twenty-nine; and
 - (b) where the tenant contravenes or fails to comply with any directions given under the foregoing paragraph, the Secretary of State may order that the tenancy shall terminate by virtue of the notice to quit at such date earlier than the date specified in that notice as may be specified in the order, being a date not less than three months later than the service on the tenant of notice in writing of the making of the order, and such order shall provide for the reference to arbitration under the Act of 1923 of any question or difference arising between the landlord and the tenant by reason of the earlier termination of the tenancy.
- (8) Sections twelve to fourteen of the Act of 1923 (which relate to compensation for disturbance) shall cease to have effect.
- (9) Nothing in this section shall apply to a notice to terminate a tenancy of a holding subsisting under a lease in writing entered into before the fifteenth day of May, nineteen hundred and forty-seven, where—
 - (a) immediately before the creation of the tenancy the holding had been for a period of not less than twelve months in the occupation of the landlord; and
 - (b) the holding is let upon the express terms that if the landlord desires to resume that occupation before the expiration of a specified period not exceeding seven years the landlord shall be entitled to give notice to quit, without becoming liable to pay to the tenant any compensation for disturbance; and
 - (c) the notice to terminate the tenancy is given so as to enable the landlord to resume occupation of the holding within the specified period.

6 Notice of termination of tenancy.

For subsection (x) of section twenty-six of the Act of 1923 (which relates to notices to quit) there shall be substituted the following subsection—

“(1) Notwithstanding the termination of the stipulated endurance of any lease, the tenancy shall not come to an end unless, not less than one year nor more than two years before the termination of the lease, written notice has been given by either party to the other of his intention to bring the tenancy to an end.

The provisions of this subsection shall have effect notwithstanding any agreement or any provision in the lease to the contrary.”

7 Restrictions on termination by notice of tenancies of holdings.

- (1) Where notice to quit a holding or part of a holding is given to the tenant thereof, and not later than one month from the giving of the notice to quit the tenant serves on the landlord notice in writing requiring that this subsection shall apply to the notice to quit, then, subject to the provisions of the next following subsection, the notice to quit shall not have effect unless the Secretary of State consents to the operation thereof.
- (2) The last foregoing subsection shall not apply—
 - (a) where the Secretary of State has consented under this section to the operation of the notice to quit before the giving thereof, and that fact is stated in the notice;
 - (b) where one or more of the conditions specified in paragraphs (a) to (d) of subsection (1) of section five of this Act is fulfilled, and it is stated in the notice to quit that the notice is given by reason thereof;
 - (c) where permanent pasture has been let so that subsection (5) of section five of this Act applies to the lease;
 - (d) where the notice to quit is given on the ground that the land is required for a use, other than for 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, and that fact is stated in the notice.
- (3) Without prejudice to the discretion of the Secretary of State in a case falling within paragraphs (a) to (e) of this subsection, the Secretary of State shall withhold his consent under this section to the operation of a notice to quit unless he is satisfied—
 - (a) that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of efficient farming whether as respects good estate management or good husbandry or otherwise; or
 - (b) that the carrying out thereof is otherwise desirable for the purposes of agricultural research, education, experiment or demonstration or for the purposes of the enactments relating to smallholdings or such holdings as are mentioned in section sixty-four of this Act or allotments; or
 - (c) where the tenancy was created after the passing of this Act, that the landlord proposes to terminate the tenancy for a purpose, specified in (he lease, for which the interest of the landlord was held immediately before the creation of the tenancy, and that greater hardship would be caused by the Secretary of State's withholding than by his granting his consent to the operation of the notice; or
 - (d) where the tenancy was created before the passing of this Act and the same person was landlord at the passing thereof as at the time when the notice to quit was given -or, if the application for the consent of the Secretary of State is made before giving the notice to quit, at the time of the application, that

- greater hardship would be caused by the Secretary of State's withholding than by his granting his consent to the operation of the notice; or
- (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 paragraph (d) of the last foregoing subsection.
- (4) The Secretary of State shall not give or withhold his consent under this section to the operation of a notice to quit except after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State.
- (5) Forthwith after the giving or withholding of his consent as aforesaid the Secretary of State shall give notice thereof in writing to the landlord and to the tenant.
- (6) If the landlord or the tenant is dissatisfied with the Secretary of State's decision to withhold or to give his consent to the operation of a notice to quit, the landlord or the tenant may, within twenty-one days after notice has been given to him under the last foregoing subsection, appeal to the Land Court against the decision; and where an appeal has been so taken subsections (1) to (3) of this section shall have effect with the substitution (except in so much of paragraph (d) of the said subsection (3) as relates to the application for the consent of the Secretary of State) for references to the Secretary of State of references to the Land Court.
- (7) Where the Secretary of State or the Land Court consents under this section to the operation of a notice to quit the Secretary of State or the Court may impose such conditions as appear to the Secretary of State or the Court 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, and if the Secretary of State is satisfied that within a reasonable time after the notice to quit has expired any condition imposed under this section has not been complied with—
- (a) the Secretary of State may take possession of the land for the purpose of farming it, and
- (b) the provisions of section thirty-three of this Act shall apply as they apply where the Secretary of State takes possession of land under that section, but with the substitution for the reference to a requirement of a reference to a condition.
- Where on an application by the landlord in that behalf the Secretary of State is satisfied that by reason of any change of circumstances or otherwise any condition imposed under this subsection ought to be varied or revoked, he shall vary or revoke the condition accordingly.
- (8) The Secretary of State may make regulations—
- (a) for requiring any question arising under subsection (2) of this section to be determined by arbitration under the Act of 1923, for limiting the time within which any such arbitration may be required or any proceedings for the purposes thereof may be taken, and for extending the period within which a notice may be given by the tenant under subsection (1) of this section where any such arbitration is required;
- (b) as to the time within which and the manner in which applications for the Secretary of State's consent to the operation of notices to quit may be made under this section;
- (c) for suspending the operation of notices to quit until the issue of the arbiter's award or the decision of the Land Court under this section ;

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- (d) for postponing the date at which a tenancy is to be terminated by a notice to quit, which has effect in consequence of any such award or decision as aforesaid;
 - (e) for excluding the application of subsection (1) of this section in relation to sub-tenancies in such cases as may be prescribed, and for making such provision as appears to the Secretary of State expedient for the purpose of safeguarding the interests of sub-tenants, including provision enabling the Secretary of State or the Land Court, where the interest of a tenant is terminated by notice to quit, to secure that a subtenant will hold from the landlord on the like terms as he held from the tenant.
- (9) Nothing in this section shall apply to any such notice as is specified in subsection (9) of section five of this Act.

8 Provisions as to notices to quit where holding agreed to be sold.

- (1) The provisions of the two following subsections shall have effect where, whether before or after the commencement of this Part of this Act, notice to quit land being or comprised in a holding has been given to the tenant and at any time after the commencement of this Part of this Act while the notice is current a contract is made for the sale of the landlord's interest in the land or any part thereof.
- (2) Unless within the period of three months ending with the making of the contract the landlord and the tenant have agreed in writing whether on the making of such a contract the notice shall continue in force or be of no effect.—
- (a) the landlord shall, within the period of fourteen days from the making of the contract, or, where the notice to quit expires within the last mentioned period, before the expiration of the notice to quit, give notice in writing to the tenant of the making of the contract, and
 - (b) the tenant may before the expiration of the notice to quit notify the landlord in writing that the tenant elects that the notice to quit shall continue in force, so however that the tenant shall not give a notification under this paragraph after the expiration of one month from the receipt by him of a notice under the last foregoing paragraph of the making of the contract.
- (3) In default of any such agreement or notification as aforesaid the notice to quit shall be of no effect unless the landlord has failed duly to give notice of the making of the contract and the tenant quits the holding in consequence of the notice to quit.
- (4) A notice to quit shall not be Invalid by reason only that under any such agreement as aforesaid the operation of the notice is conditional.
- (5) The foregoing provisions of this section shall have effect in substitution for the provisions of section twenty-seven of the Act of 1923.