



Agricultural Holdings (Scotland) Act 1949

1949 CHAPTER 75

Supplementary provisions

71 Representations to the Secretary of State

- (1) Any enactment in this Act providing, in relation to the taking of any action by the Secretary of State, for his taking the action after affording to a person 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, shall be construed as a provision that the Secretary of State shall comply with the following requirements.
- (2) The Secretary of State shall give notice to the said person specifying the action proposed to be taken and informing him of the effect of the three following subsections.
- (3) If within the prescribed time and in the prescribed manner the said person makes representations to the Secretary of State in writing, the Secretary of State shall not take the action in question until he has considered the representations.
- (4) If, whether or not representations are made to the Secretary of State in writing, the said person within the prescribed time and in the prescribed manner requires that an opportunity be afforded to him of being heard by a person appointed by the Secretary of State for the purpose, such an opportunity shall be afforded to him and, on the same occasion, to any other person to whom under the enactment referred to in subsection (1) of this section the Secretary of State is required to afford such an opportunity, and the Secretary of State shall not take the action in question until he has considered any representations made at the hearing.
- (5) No officer or servant of an Agricultural Executive Committee or of any sub-committee thereof shall be appointed under the last foregoing subsection to receive representations relating to land in the area of the Committee.

72 References to the Land Court

- (1) In any case where by any of the provisions of this Act a person is empowered to require that a proposal of the Secretary of State to take any action shall be referred to the Land

Court, then, if within the prescribed time and in the prescribed manner the said person so requires, the proposal shall be referred accordingly.

- (2) On any such reference the Land Court shall determine—
- (a) whether the conditions as to which the Secretary of State must be satisfied before taking the action are fulfilled, and
 - (b) whether, having regard to their determination under the foregoing paragraph and to all the circumstances of the case, the Secretary of State should or should not take the action proposed,
- and shall report to the Secretary of State accordingly; and the Secretary of State shall forward a copy of the report to any person who availed himself of an opportunity to make representations to the Secretary of State afforded to him under the provisions in question of this Act.
- (3) In any such case as is mentioned in subsection (1) of this section the Secretary of State shall not give effect to the proposal until the expiration of the period within which a reference to the Land Court may be required.
- (4) Where such a reference is duly required, the Secretary of State shall act in accordance with the report of the Land Court and not otherwise.
- (5) Forthwith after taking action in any such case as is mentioned in subsection (1) of this section, the Secretary of State shall serve notice thereof in writing on any person who under the provisions in question of this Act was entitled to be afforded an opportunity to make representations to the Secretary of State.

73 Proceedings of the Land Court

The provisions of the Small Landholders (Scotland) Acts, 1886 to 1931, with regard to the Land Court shall, with any necessary modifications, apply for the purpose of the determination of any matter which they are required by or under this Act to determine, in like manner as those provisions apply for the purpose of the determination by the Land Court of matters referred to them under those Acts.

74 Matters to be referred to arbitration

Save as otherwise expressly provided in this Act, any question or difference of any kind whatsoever between the landlord and the tenant of an agricultural holding arising out of the tenancy or in connection with the holding (not being a question or difference as to liability for rent) shall, whether such question or difference arises during the currency or on the termination of the tenancy, be determined by arbitration.

75 Provisions as to arbitrations

- (1) Any matter which by or under this Act, or by regulations made thereunder, or under the lease of an agricultural holding is required to be determined by arbitration shall, whether the matter arose before or after the passing of this Act, be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions of the Sixth Schedule to this Act, and the Arbitration (Scotland) Act, 1894, shall not apply to any such arbitration.

- (2) The Secretary of State may by rules make such provision as he thinks desirable for expediting, or reducing the expenses of, proceedings on arbitrations under this Act:

Provided that the Secretary of State shall not make rules inconsistent with the provisions of the Sixth Schedule to this Act.

- (3) The power conferred by the last foregoing subsection on the Secretary of State shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section and the last foregoing section shall not apply to valuations of sheep stocks, dung, fallow, straw, crops, fences and other specific things the property of an outgoing tenant, agreed under a lease to be taken over from him at the termination of a tenancy by the landlord or the incoming tenant, or to any questions which it may be necessary to determine in order to ascertain the sum to be paid in pursuance of such agreement, and that whether such valuations and questions are referred to arbitration under the lease or not.

76 Constitution of panel of arbiters, and provisions as to remuneration of arbiter

- (1) Such number of persons as may be appointed by the Lord President of the Court of Session, after consultation with the Secretary of State, shall form a panel of persons from whom any arbiter appointed, otherwise than by agreement, for the purposes of an arbitration under and in accordance with the provisions of the Sixth Schedule to this Act shall be selected.
- (2) The panel of arbiters constituted under the foregoing subsection shall be subject to revision by the Lord President of the Court of Session, after such consultation as aforesaid, at such intervals not exceeding five years, as the Lord President and the Secretary of State may from time to time agree.
- (3) The remuneration of an arbiter appointed as aforesaid by the Secretary of State shall be such amount as is fixed by the Secretary of State, and the remuneration of an arbiter appointed by the parties to any such arbitration shall, in default of agreement between those parties and the arbiter, be such amount as, on the application of the arbiter or of either of the parties, is fixed by the auditor of the sheriff court, subject to appeal to the sheriff.
- (4) The remuneration of an arbiter, when agreed or fixed under this section, shall be recoverable by the arbiter as a debt due from either of the parties to the arbitration, and any amount paid in respect of the remuneration of the arbiter by either of those parties in excess of the amount (if any) directed by the award to be paid by him in respect of the expenses of the award shall be recoverable from the other party to the arbitration.

77 Appointment of arbiter in cases to which the Secretary of State is a party

Where the Secretary of State is a party to any question or difference which under this Act is to be determined by arbitration or by an arbiter appointed in accordance with the provisions of this Act, the arbiter shall, in lieu of being appointed by the Secretary of State, be appointed by the Land Court, and the remuneration of the arbiter so appointed shall be such amount as may be fixed by the Land Court.

78 Determination of questions by Land Court in lieu of arbitration

Any question or difference between the landlord and the tenant of an agricultural holding which by or under this Act or under the lease is required to be determined by arbitration may, if the landlord and the tenant so agree, in lieu of being determined in pursuance of subsection (1) of section seventy-five of this Act be determined by the Land Court, and the Land Court shall, on the joint application of the landlord and the tenant, determine such question or difference accordingly.

79 Power of Secretary of State to vary First and Fourth Schedules to this Act

- (1) The Secretary of State may, after consultation with persons appearing to him to represent the interests of landlords and tenants of agricultural holdings, by order vary the provisions of the First and Fourth Schedules to this Act.
- (2) An order under this section may make such provision as to the operation of this Act in relation to tenancies current when the order takes effect as appears to the Secretary of State to be just having regard to the variation of the said Schedules effected by the order:

Provided that nothing in any order made under this section shall affect the right of a tenant to claim, in respect of an improvement made or begun before the date on which such order takes effect, any compensation to which, but for the making of the order, he would have been entitled.

- (3) An order under this section shall be embodied in a statutory instrument which shall be of no effect unless approved by resolution of each House of Parliament.

80 Power of limited owners to give consents, etc.

The landlord of an agricultural holding, whatever may be his estate or interest in the holding, may for the purposes of this Act give any consent, make any agreement, or do or have done to him any act which he might give or make or do or have done to him if he were absolute owner of the holding.

81 Power of heir of entail to apply entailed moneys for improvements

The price of any entailed land sold under the provisions of the Entail Acts, when such price is entailed estate within the meaning of those Acts, may be applied by the heir of entail in respect of the remaining portion of the entailed estate, or in respect of any other estate belonging to him and entailed upon the same series of heirs, in payment of any expenditure and expenses incurred by him in pursuance of this Act in carrying out or paying compensation for any old improvement specified in Part I or Part II of the Second or Third Schedule to this Act or any new improvement specified in Part I or Part II of the First Schedule thereto, or in discharge of any charge with which the estate is burdened in pursuance of this Act in respect of such an improvement.

82 Power of landlord to obtain charge on holding in respect of compensation, etc., paid by him

- (1) Where on or after the first day of November, nineteen hundred and forty-eight, the landlord of an agricultural holding, not being the absolute owner of the holding, has paid to the tenant of the holding the amount due to him under this Act, or under

custom or agreement, or otherwise, in respect of compensation for an old or a new improvement or in respect of compensation for disturbance, or has himself defrayed the cost of an improvement proposed to be executed by the tenant, the Secretary of State may, on the application of the landlord and after giving not less than fourteen days notice to the absolute owner of the holding, make in favour of the landlord a charging order charging and burdening the holding with an annuity to repay the amount of the compensation or of the cost of the improvement, as the case may be, together with the expenses of obtaining the charging order and recording it in the appropriate Register of Sasines ; and the provisions of subsections (2) and (4) and of subsections (6) to (10) of section fifty-five of the Water (Scotland) Act, 1946, shall, with the following and any other necessary modifications, apply to any such charging order—

- (a) for any reference to the local authority there shall be substituted a reference to the Secretary of State;
 - (b) for any reference to the period of thirty years there shall be substituted in the case of a charging order made in respect of compensation for, or of the cost of, an improvement a reference to the period within which the improvement will, in the opinion of the Secretary of State, have become exhausted ;
 - (c) for references to Part III of the said Act of 1946 there shall be substituted references to this Act.
- (2) An annuity constituted a charge by a charging order recorded in the appropriate Register of Sasines shall be a charge on the holding specified in the order and shall rank after all prior charges heritably secured thereon.
- (3) The creation of a charge on a holding under this section shall not be deemed to be a contravention of any prohibition against charging or burdening contained in the deed or instrument under which the holding is held.

83 Power of land improvement companies to advance money

Any company now or hereafter incorporated by Parliament or incorporated under the Companies Act, 1948, and having power to advance money for the improvement of land, or for the cultivation and farming of land, may make an advance of money upon a charging order duly made and recorded under this Act, on such terms and conditions as may be agreed upon between the company and the person entitled to the order.

84 Appointment of guardian to landlord or tenant in certain cases

Where the landlord or the tenant of an agricultural holding is a pupil or a minor or is of unsound mind, not having a tutor, curator or other guardian, the sheriff, on the application of any person interested, may appoint to him, for the purposes of this Act, a tutor or a curator, and may recall the appointment and appoint another tutor or curator if and as occasion requires.

85 Validity of consents, etc.

It shall be no objection to any consent in writing or agreement in writing under this Act signed by the parties thereto or by any persons authorised by them that the consent or agreement has not been executed in accordance with the enactments regulating the execution of deeds in Scotland.