

AGRICULTURAL TENANCIES ACT 2008

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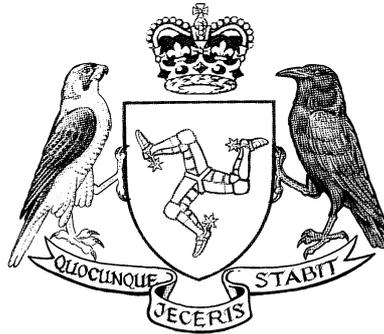
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Isle of Man } Signed in Tynwald: 21st October 2008
 to Wit } Received Royal Assent: 21st October 2008
 Announced to Tynwald: 21st October 2008

AN ACT

to make further provision with respect to tenancies which include agricultural land.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

PART 1

GENERAL PROVISIONS

Farm business tenancies

- 1.** (1) A tenancy is a “farm business tenancy” for the purposes of this Act if —
- Meaning of
“farm business
tenancy”

P1995/8/1
- (a) it is granted by or pursuant to a written contract,
 - (b) it meets the business conditions together with either the agriculture condition or the notice conditions, and
 - (c) it is not a tenancy which, by virtue of section 2, cannot be a farm business tenancy.
- (2) The business conditions are —
- (a) that all or part of the land comprised in the tenancy is farmed for the purposes of a trade or business, and
 - (b) that, since the beginning of the tenancy, all or part of the land so comprised has been so farmed.

- (3) The agriculture condition is that, having regard to —
- (a) the terms of the tenancy,
 - (b) the use of the land comprised in the tenancy,
 - (c) the nature of any commercial activities carried on on that land, and
 - (d) any other relevant circumstances,

the character of the tenancy is primarily or wholly agricultural.

- (4) The notice conditions are —
- (a) that, on or before the relevant day, the landlord and the tenant each gave the other a written notice —
 - (i) identifying (by name or otherwise) the land to be comprised in the tenancy or proposed tenancy, and
 - (ii) containing a statement to the effect that the person giving the notice intends that the tenancy or proposed tenancy is to be, and remain, a farm business tenancy, and
 - (b) that, at the beginning of the tenancy, having regard to the terms of the tenancy and any other relevant circumstances, the character of the tenancy was primarily or wholly agricultural.

(5) In subsection (4) “the relevant day” means whichever is the earlier of the following —

- (a) the day on which the parties enter into any instrument creating the tenancy, other than an agreement to enter into a tenancy on a future date, or
- (b) the beginning of the tenancy.

(6) The written notice referred to in subsection (4) must not be included in any instrument creating the tenancy.

- (7) If in any proceedings —
- (a) any question arises as to whether a tenancy was a farm business tenancy at any time, and
 - (b) it is proved that all or part of the land comprised in the tenancy was farmed for the purposes of a trade or business at that time,

it shall be presumed, unless the contrary is proved, that all or part of the land so comprised has been so farmed since the beginning of the tenancy.

(8) Any use of land in breach of the terms of the tenancy, any commercial activities carried on in breach of those terms, and any cessation of such activities in breach of those terms, shall be disregarded in determining whether at any time the tenancy meets the business conditions or the agriculture condition, unless the landlord or his or her predecessor in title has consented to the breach or the landlord has acquiesced in the breach.

2. (1) A tenancy cannot be a farm business tenancy for the purposes of this Act if —

Tenancies which cannot be farm business tenancies

(a) the tenancy begins before 12th November 2008, or

P1995/8/2

(b) it is a tenancy of an agricultural holding beginning on or after that date with respect to which, by virtue of section 4, the Agricultural Holdings Act 1969 applies.

[XXI p.134]

(2) In this section “agricultural holding” has the same meaning as in the Agricultural Holdings Act 1969.

3. (1) This section applies where —

Compliance with notice conditions in cases of surrender and re-grant

(a) a tenancy (“the new tenancy”) is granted to a person who, immediately before the grant, was the tenant under a farm business tenancy (“the old tenancy”) which met the notice conditions specified in section 1(4),

P1995/8/3

(b) the condition in subsection (2) or the condition in subsection (3) is met, and

(c) except as respects the matters mentioned in subsections (2) and (3) and matters consequential on them, the terms of the new tenancy are substantially the same as the terms of the old tenancy.

(2) The first condition referred to in subsection (1)(b) is that the land comprised in the new tenancy is the same as the land comprised in the old tenancy, apart from any changes in area which are small in relation to the size of the holding and do not affect the character of the holding.

(3) The second condition referred to in subsection (1)(b) is that the old tenancy and the new tenancy are both fixed term tenancies, but the term date under the new tenancy is earlier than the term date under the old tenancy.

(4) Where this section applies, the new tenancy shall be taken for the purposes of this Act to meet the notice conditions specified in section 1(4).

(5) In subsection (3), “the term date”, in relation to a fixed term tenancy, means the date fixed for the expiry of the term.

Exclusion of Agricultural Holdings Act 1969

Agricultural Holdings Act 1969 not to apply in relation to new tenancies except in special cases

P1995/8/4,
SI06/2805/12

4. (1) The Agricultural Holdings Act 1969 (“the 1969 Act”) shall not apply in relation to any tenancy beginning on or after 12th November 2008 (including any agreement to which section 2 of that Act would otherwise apply beginning on or after that date), except as provided in the following provisions of this section.

(2) The 1969 Act shall apply in relation to a tenancy of an agricultural holding which is granted by a written contract of tenancy indicating (in whatever terms) that the 1969 Act is to apply in relation to the tenancy.

(3) The 1969 Act shall apply in relation to a tenancy of an agricultural holding which is granted by the Land Court pursuant to section 4(8) of the 1969 Act.

(4) Subject to subsection (5), the 1969 Act shall apply in relation to a tenancy of an agricultural holding which is granted —

(a) to a person who, immediately before the grant of the tenancy, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, under a tenancy in relation to which the 1969 Act applied, and

(b) because an agreement between the parties (not being an agreement expressed to take effect as a new tenancy between the parties) has effect as an implied surrender followed by the grant of the tenancy.

(5) The 1969 Act shall not apply by virtue of subsection (4) in relation to the tenancy of an agricultural holding (“the current holding”) where —

(a) the whole or a substantial part of the land comprised in the current holding was comprised in an agricultural holding (“the previous holding”) which was subject to a tenancy granted after 12th November 2008 in relation to which the 1969 Act applied by virtue of subsection (4);

- (b) the whole or a substantial part of the land comprised in the previous holding was comprised in an agricultural holding (“the original holding”) which was on 12th November 2008 subject to a tenancy in relation to which the 1969 Act applied; and
- (c) the land comprised in the original holding does not, on the date of the grant of the tenancy of the current holding, comprise the whole or a substantial part of the land comprised in the current holding.

(6) The references in subsections (4) and (5) to a substantial part of the land comprised in the holding mean a substantial part determined by reference to either area or value.

(7) In this section “agricultural holding” and “contract of tenancy” have the same meanings as in the 1969 Act.

Termination of the tenancy

5. (1) A farm business tenancy for a term of more than 5 years shall, instead of terminating on the term date, continue (as from that date) as a tenancy from year to year, but otherwise on the terms of the original tenancy so far as applicable, unless at least 3 years before the term date a written notice has been given by either party to the other of his or her intention to terminate the tenancy.

Tenancies for more than 5 years to continue from year to year unless terminated by notice

(2) In subsection (1) “the term date”, in relation to a fixed term tenancy, means the date fixed for the expiry of the term.

P1995/8/5,
SI06/2805/13

(3) For the purposes of section 5 of the Conveyancing (Leases and Tenancies) Act 1954 (apportionment of conditions on severance of reversion), a notice under subsection (1) shall be taken to be a notice to quit.

[XVIII p.467]

(4) This section has effect notwithstanding any agreement to the contrary.

6. (1) Subject to subsection (2), where a farm business tenancy is a tenancy from year to year, a notice to quit the holding or part of the holding shall (notwithstanding any provision to the contrary in the tenancy) be invalid unless —

Length of notice to quit

P1995/8/6,
SI06/2805/13

- (a) it is in writing,
- (b) it is to take effect at the end of a year of the tenancy, and
- (c) it is given at least 12 months before the date on which it is to take effect.

(2) Where, by virtue of section 5(1), a farm business tenancy for a term of more than 5 years continues or is to continue (as from the term date) as a tenancy from year to year —

- (a) subsection (1)(c) has effect in relation to that tenancy with the substitution of “3 years” for “12 months”; and
- (b) a notice to quit which complies with subsection (1) and which is to take effect on an anniversary of the term date shall not be invalid merely because it is given before the term date;

and in this subsection “the term date” has the meaning given by section 5(2).

(3) Subsection (1) does not apply in relation to a counter-notice given by the tenant by virtue of section 5(2) of the Conveyancing (Leases and Tenancies) Act 1954 (apportionment of conditions on severance of reversion).

Notice required for exercise of option to terminate tenancy or resume possession of part

7. (1) Where a farm business tenancy is a tenancy for a term of more than 5 years, any notice to quit the holding or part of the holding given in pursuance of any provision of the tenancy shall (notwithstanding any provision to the contrary in the tenancy) be invalid unless it is in writing and is given at least 3 years before the date on which it is to take effect.

P1995/8/7,
SI06/2805/13

(2) Subsection (1) does not apply in relation to a counter-notice given by the tenant by virtue of section 5(2) of the Conveyancing (Leases and Tenancies) Act 1954 (apportionment of conditions on severance of reversion).

Tenant’s right to remove fixtures and buildings

Tenant’s right to remove fixtures and buildings

P1995/8/8

8. (1) Subject to the provisions of this section —

- (a) any fixture (of whatever description) affixed, whether for the purposes of agriculture or not, to the holding by the tenant under a farm business tenancy, and
- (b) any building erected by him or her on the holding,

may be removed by the tenant at any time during the continuance of the tenancy or at any time after the termination of the tenancy when he or she remains in possession as tenant (whether or not under a new tenancy), and shall remain his or her property so long as he or she may remove it by virtue of this subsection.

(2) Subsection (1) shall not apply —

- (a) to a fixture affixed or a building erected in pursuance of some obligation,
- (b) to a fixture affixed or a building erected instead of some fixture or building belonging to the landlord,
- (c) to a fixture or building in respect of which the tenant has obtained compensation under section 18 or otherwise, or
- (d) to a fixture or building in respect of which the landlord has given his or her consent under section 19 on condition that the tenant agrees not to remove it and which the tenant has agreed not to remove.

(3) In the removal of a fixture or building by virtue of subsection (1), the tenant shall not do any avoidable damage to the holding.

(4) Immediately after removing a fixture or building by virtue of subsection (1), the tenant shall make good all damage to the holding that is occasioned by the removal.

(5) This section applies to a fixture or building acquired by a tenant as it applies to a fixture or building affixed or erected by him or her.

(6) Except as provided by subsection (2)(d), this section has effect notwithstanding any agreement or custom to the contrary.

(7) No right to remove fixtures that subsists otherwise than by virtue of this section shall be exercisable by the tenant under a farm business tenancy.

Right of first refusal

9. (1) Where the landlord under a farm business tenancy proposes to sell the whole or any part of the land comprised in the tenancy (“the relevant land”), he or she shall first give a notice in writing to the tenant —

Right of
first refusal
XXI p.134/8

- (a) specifying the relevant land, and
- (b) offering to sell the relevant land to the tenant at a price specified in the notice.

(2) The landlord shall not sell the relevant land except to the tenant within 3 months of the service of a notice under subsection (1).

(3) If the landlord under a farm business tenancy sells the relevant land —

- (a) without giving notice in accordance with subsection (1), or
- (b) in contravention of subsection (2),

he or she is guilty of an offence and liable —

- (i) on summary conviction, to a fine not exceeding £5,000; or
- (ii) on conviction on information, to a fine.

Assignment on death of tenant

Assignment
on death of
tenant

XXI p.134/
4(8)

10. (1) Where the terms of a farm business tenancy include a restriction on assignment, on the death of the tenant under a farm business tenancy the personal representative of the deceased tenant may, notwithstanding the restriction, but only with the consent in writing of the landlord, assign the tenancy to the surviving spouse or any child or grandchild of the deceased tenant.

(2) The consent of the landlord under subsection (1) shall not be unreasonably withheld.

(3) The personal representative may, before the end of the period of 2 months beginning with the date of death, give a notice in writing to the landlord —

- (a) giving the name and address of the surviving spouse, child or grandchild of the deceased tenant to whom the tenancy is to be assigned (“the assignee”),
- (b) requiring the landlord, before the end of the period of 2 months beginning with the day on which the notice is given (“the notice period”), to give consent in writing to the assignment, and
- (c) demanding that, if such consent is not given within the notice period, the question whether it has been unreasonably withheld be determined in accordance with this section.

(4) Where the personal representative has given a notice under subsection (3) but at the end of the notice period —

- (a) the landlord has not consented in writing to the assignment, and

- (b) no arbitrator has been appointed under an agreement made before or within the notice period,

the tenant or the landlord may apply to the Land Court for the determination of the question.

(5) The arbitrator or the Land Court shall not determine that the landlord's consent has been unreasonably withheld unless it is satisfied that the assignee is capable of —

- (a) farming the land, and
- (b) carrying on any other commercial activities which, immediately before the death of the deceased tenant, were carried on on the land in accordance with the terms of the tenancy,

without detriment to the land.

(6) Subject to subsection (5), if the arbitrator or the Land Court considers, having regard to the terms of the tenancy and any other relevant circumstances (including the circumstances of the tenant and the landlord), that the landlord's consent has been unreasonably withheld, it shall give its consent to the assignment to the assignee, and that consent shall have effect for the purposes of this Act and the terms of the farm business tenancy as if it were the consent of the landlord.

(7) In this section —

“assignment”, in relation to a tenancy, includes an assent to the vesting of the tenancy;

“restriction on assignment” means a covenant, condition, agreement or other term contained or implied in a tenancy prohibiting or restricting the tenant from —

- (a) assigning the tenancy, or
- (b) parting with possession of the whole or part of the land comprised in the tenancy.

PART 2

RENT REVIEW UNDER FARM BUSINESS TENANCY

11. This Part applies in relation to a farm business tenancy (notwithstanding any agreement to the contrary) unless the tenancy is created by an instrument which —

Application
of Part 2

P1995/8/9,
SI06/2805/14

- (a) expressly states that the rent is not to be reviewed during the tenancy, or
- (b) provides that the rent is to be varied, at a specified time or times during the tenancy —
 - (i) by or to a specified amount, or
 - (ii) in accordance with a specified formula which does not preclude a reduction and which does not require or permit the exercise by any person of any judgment or discretion in relation to the determination of the rent of the holding,but otherwise is to remain fixed; or
- (c) does not contain any provision which precludes a reduction in the rent during the tenancy, and —
 - (i) expressly states that this Part does not apply, or
 - (ii) makes provision for the reference of rent reviews to an independent expert whose decision is final.

Notice
requiring
statutory
rent review
P1995/8/10

12. (1) The landlord or tenant under a farm business tenancy in relation to which this Part applies may by notice in writing given to the other (a “statutory review notice”) require that the rent to be payable in respect of the holding as from the review date shall be determined in accordance with this Act.

(2) In this Part “the review date”, in relation to a statutory review notice, means a date which —

- (a) is specified in the notice, and
- (b) complies with subsections (3) to (6).

(3) The review date must be at least 12 months but less than 24 months after the day on which the statutory review notice is given.

(4) If the parties have agreed in writing that the rent is to be, or may be, varied as from a specified date or dates, or at specified intervals, the review date must be a date as from which the rent could be varied under the agreement.

(5) If the parties have agreed in writing that the review date for the purposes of this Part is to be a specified date or dates, the review date must be that date or one of those dates.

- (6) If the parties have not agreed as mentioned in subsection (4) or (5), the review date —
- (a) must be an anniversary of the beginning of the tenancy or, where the landlord and the tenant have agreed in writing that the review date for the purposes of this Act is to be some other day of the year, that day of the year, and
 - (b) must not fall before the end of the period of 3 years beginning with the latest of any of the following dates —
 - (i) the beginning of the tenancy,
 - (ii) any date as from which there took effect a previous determination by an arbitrator or the Land Court as to the amount of the rent,
 - (iii) any date as from which there took effect a previous determination as to the amount of the rent made, otherwise than as arbitrator, by a person appointed under an agreement between the landlord and the tenant, and
 - (iv) any date as from which there took effect a previous agreement in writing between the landlord and the tenant, entered into since the grant of the tenancy, as to the amount of the rent.

13. (1) This section applies in any case where a farm business tenancy (“the new tenancy”) arises between —

- (a) a person who immediately before the date of the beginning of the tenancy was entitled to a severed part of the reversionary estate in the land comprised in a farm business tenancy (“the original tenancy”) in which the land to which the new tenancy relates was then comprised, and
- (b) the person who immediately before that date was the tenant under the original tenancy, and the rent payable under the new tenancy at its beginning represents merely the appropriate portion of the rent payable under the original tenancy immediately before the beginning of the new tenancy.

(2) In any case where this section applies —

- (a) references to the beginning of the tenancy in subsection (6) of section 12 shall be taken to be references to the beginning of the original tenancy, and

Review date
where new
tenancy of
severed part
of reversion

P1995/8/11

- (b) references to rent in that subsection shall be taken to be references to the rent payable under the original tenancy,

until the first occasion following the beginning of the new tenancy on which any such determination or agreement with respect to the rent of the new holding as is mentioned in that subsection takes effect.

Reference to
Land Court

P1995/8/12

14. Where a statutory review notice has been given in relation to a farm business tenancy, but —

- (a) no arbitrator has been appointed under an agreement made since the notice was given, and
- (b) no person has been appointed under such an agreement to determine the question of the rent (otherwise than as arbitrator) on a basis agreed by the parties,

either party may, at any time during the period of 6 months ending with the review date, apply to the Land Court for the determination of the rent.

Amount
of rent

P1995/8/13,
SI06/2805/15

15. (1) On any reference or application made in pursuance of a statutory review notice, the arbitrator or the Land Court, as the case may be, shall determine the rent properly payable in respect of the holding at the review date and accordingly shall, with effect from that date, increase or reduce the rent previously payable or direct that it shall continue unchanged.

(2) For the purposes of subsection (1), the rent properly payable in respect of a holding is the rent at which the holding might reasonably be expected to be let on the open market by a willing landlord to a willing tenant, taking into account (subject to subsections (3) and (4)) all relevant factors, including (in every case) the terms of the tenancy (including those which are relevant for the purposes of section 12(4) to (6), but not those which (apart from this section) preclude a reduction in the rent during the tenancy).

(3) The arbitrator or the Land Court shall disregard any increase in the rental value of the holding which is due to tenant's improvements other than —

- (a) any tenant's improvement provided under an obligation which was imposed on the tenant by the terms of his or her tenancy or any previous tenancy and which arose on or before the beginning of the tenancy in question,

- (b) any tenant's improvement to the extent that any allowance or benefit has been made or given by the landlord in consideration of its provision, and
 - (c) any tenant's improvement to the extent that the tenant has received any compensation from the landlord in respect of it.
- (4) The arbitrator or the Land Court —
- (a) shall disregard any effect on the rent of the fact that the tenant who is a party to the arbitration or application is in occupation of the holding, and
 - (b) shall not fix the rent at a lower amount by reason of any dilapidation or deterioration of, or damage to, buildings or land caused or permitted by the tenant.
- (5) In this section “tenant's improvement”, and references to the provision of such an improvement, have the meaning given by section 17.

16. In this Part —

Interpretation
of Part 2

“the review date”, in relation to a statutory review notice, has the meaning given by section 12(2);

P1995/8/14

“statutory review notice” has the meaning given by section 12(1).

PART 3

COMPENSATION ON TERMINATION OF FARM BUSINESS TENANCY

Tenant's entitlement to compensation

17. For the purposes of this Part a “tenant's improvement”, in relation to any farm business tenancy, means —

Meaning of
“tenant's
improvement”

(a) any physical improvement which is made on the holding by the tenant by his or her own effort or wholly or partly at his or her own expense, or

P1995/8/15

(b) any intangible advantage which —

(i) is obtained for the holding by the tenant by his or her own effort or wholly or partly at his or her own expense, and

(ii) becomes attached to the holding,

and references to the provision of a tenant's improvement are references to the making by the tenant of any physical improvement falling within paragraph (a) or the obtaining by the tenant of any intangible advantage falling within paragraph (b).

Tenant's
right to
compensation
for tenant's
improvement

P1995/8/16

18. (1) The tenant under a farm business tenancy shall, subject to the provisions of this Part, be entitled on the termination of the tenancy, on quitting the holding, to obtain from his or her landlord compensation in respect of any tenant's improvement.

(2) A tenant shall not be entitled to compensation under this section in respect of —

(a) any physical improvement which is removed from the holding, or

(b) any intangible advantage which does not remain attached to the holding.

Conditions of eligibility

Consent of
landlord as
condition of
compensation
for tenant's
improvement

P1995/8/17

19. (1) A tenant shall not be entitled to compensation under section 18 in respect of any tenant's improvement unless the landlord has given his or her consent in writing to the provision of the tenant's improvement.

(2) Any such consent may be given in the instrument creating the tenancy or elsewhere.

(3) Any such consent may be given either unconditionally or on condition that the tenant agrees to a specified variation in the terms of the tenancy.

(4) The variation referred to in subsection (3) must be related to the tenant's improvement in question.

(5) This section does not apply in any case where the tenant's improvement consists of planning approval.

Conditions
in relation to
compensation
for planning
approval

P1995/8/18

20. (1) A tenant shall not be entitled to compensation under section 18 in respect of a tenant's improvement which consists of planning approval unless —

(a) the landlord has given his or her consent in writing to the making of the application for planning approval,

- (b) that consent is expressed to be given for the purpose —
 - (i) of enabling a specified physical improvement falling within paragraph (a) of section 17 lawfully to be provided by the tenant, or
 - (ii) of enabling the tenant lawfully to effect a specified change of use, and
- (c) on the termination of the tenancy, the specified physical improvement has not been completed or the specified change of use has not been effected.

(2) Any such consent may be given either unconditionally or on condition that the tenant agrees to a specified variation in the terms of the tenancy.

(3) The variation referred to in subsection (2) must be related to the physical improvement or change of use in question.

21. (1) Where, in relation to any tenant's improvement, the tenant under a farm business tenancy is aggrieved by —

- (a) the refusal of his or her landlord to give consent under section 19(1),
- (b) the failure of the landlord to give such consent within 2 months of a written request by the tenant for such consent, or
- (c) any variation in the terms of the tenancy required by the landlord as a condition of giving such consent,

Reference to arbitration or Land Court of refusal or failure to give consent or of condition attached to consent

P1995/8/19

the tenant may by notice in writing given to the landlord demand that the question shall be determined in accordance with this section; but this subsection has effect subject to subsections (2) and (3).

(2) No notice under subsection (1) may be given in relation to any tenant's improvement which the tenant has already provided or begun to provide, unless that improvement is a routine improvement.

- (3) No notice under subsection (1) may be given —
 - (a) in a case falling within paragraph (a) or (c) of that subsection, after the end of the period of 2 months beginning with the day on which notice of the refusal or variation referred to in that paragraph was given to the tenant, or

(b) in a case falling within paragraph (b) of that subsection, after the end of the period of 4 months beginning with the day on which the written request referred to in that paragraph was given to the landlord.

(4) Where the tenant has given notice under subsection (1) but no arbitrator has been appointed under an agreement made since the notice was given, the tenant or the landlord may apply to the Land Court for the determination of the question.

(5) The arbitrator or the Land Court shall consider whether, having regard to the terms of the tenancy and any other relevant circumstances (including the circumstances of the tenant and the landlord), it is reasonable for the tenant to provide the tenant's improvement.

(6) Subject to subsection (9), the arbitrator or the Land Court may unconditionally approve the provision of the tenant's improvement or may withhold his, her or its approval, but may not give approval subject to any condition or vary any condition required by the landlord under section 19(3).

(7) If the arbitrator or the Land Court gives his, her or its approval, that approval shall have effect for the purposes of this Part and for the purposes of the terms of the farm business tenancy as if it were the consent of the landlord.

(8) In a case falling within subsection (1)(c), the withholding by the arbitrator or the Land Court of his, her or its approval shall not affect the validity of the landlord's consent or of the condition subject to which it was given.

(9) Where, at any time after giving a notice under subsection (1) in relation to any tenant's improvement which is not a routine improvement, the tenant begins to provide the improvement —

(a) no application may be made under subsection (4) after that time,

(b) where such an application has been made but the Land Court has not been constituted before that time, the application shall be ineffective, and

(c) no determination may be made by virtue of subsection (6) after that time except as to the costs of the application in a case where the Land Court was constituted before that time.

(10) For the purposes of this section —

“fixed equipment” includes any building or structure affixed to land and any works constructed on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or its produce, or amenity;

“routine improvement”, in relation to a farm business tenancy, means any tenant’s improvement which —

- (a) is a physical improvement made in the normal course of farming the holding or any part of the holding, and
- (b) does not consist of fixed equipment or an improvement to fixed equipment,

but does not include any improvement whose provision is prohibited by the terms of the tenancy.

Amount of compensation

22. (1) Subject to subsection (5), the amount of compensation payable to the tenant under section 18 in respect of any tenant’s improvement shall be an amount equal to the increase attributable to the improvement in the value of the holding at the termination of the tenancy as land comprised in a tenancy.

Amount of compensation for tenant’s improvement not consisting of planning approval

(2) Where the landlord and the tenant have entered into an agreement in writing whereby any benefit is given or allowed to the tenant in consideration of the provision of a tenant’s improvement, the amount of compensation otherwise payable in respect of that improvement shall be reduced by the proportion which the value of the benefit bears to the amount of the total cost of providing the improvement.

P1995/8/20,
SI06/2805/16

(3) Where a grant has been or will be made to the tenant out of public money in respect of a tenant’s improvement, the amount of compensation otherwise payable in respect of that improvement shall be reduced by the proportion which the amount of the grant bears to the amount of the total cost of providing the improvement.

(4) Where a physical improvement which has been completed or a change of use which has been effected is authorised by any planning approval granted on an application made by the tenant, section 20 does not prevent any value attributable to the fact that the physical improvement or change of use is so authorised from being taken into account under this section in determining the amount of compensation payable in respect of the physical

improvement or in respect of any intangible advantage obtained as a result of the change of use.

(5) Where the landlord and the tenant have agreed in writing to limit the amount of compensation payable under section 18 in respect of any tenant's improvement, that amount shall be the lesser of —

(a) the amount determined in accordance with subsections (1) to (4), and

(b) the compensation limit.

(6) In subsection (5), “the compensation limit” means —

(a) an amount agreed by the parties in writing, or

(b) where the parties are unable to agree on an amount, an amount equal to the cost to the tenant of making the improvement.

(7) This section does not apply where the tenant's improvement consists of planning approval.

Amount of
compensation
for planning
approval

P1995/8/21

23. (1) The amount of compensation payable to the tenant under section 18 in respect of a tenant's improvement which consists of planning approval shall be an amount equal to the increase attributable to the fact that the relevant development is authorised by the planning approval in the value of the holding at the termination of the tenancy as land comprised in a tenancy.

(2) In subsection (1), “the relevant development” means the physical improvement or change of use specified in the landlord's consent under section 20 in accordance with subsection (1)(b) of that section.

(3) Where the landlord and the tenant have entered into an agreement in writing whereby any benefit is given or allowed to the tenant in consideration of the obtaining of planning approval by the tenant, the amount of compensation otherwise payable in respect of that approval shall be reduced by the proportion which the value of the benefit bears to the amount of the total cost of obtaining the approval.

Settlement
of claims for
compensation

P1995/8/22

24. (1) Any claim by the tenant under a farm business tenancy for compensation under section 18 shall, subject to the provisions of this section, be determined in accordance with this section.

(2) No such claim for compensation shall be enforceable unless before the end of the period of 2 months beginning with

the date of the termination of the tenancy the tenant has given notice in writing to the landlord of his or her intention to make the claim and of the nature of the claim.

(3) Where —

- (a) the landlord and the tenant have not settled the claim by agreement in writing, and
- (b) no arbitrator has been appointed under an agreement made since the notice under subsection (2) was given,

either party may, after the end of the period of 4 months beginning with the date of the termination of the tenancy, apply to the Land Court for the determination of the claim.

(4) Where a tenant lawfully remains in occupation of part of the holding after the termination of a farm business tenancy, references in subsections (2) and (3) to the termination of the tenancy shall, in the case of a claim relating to that part of the holding, be construed as references to the termination of the occupation.

Supplementary provisions with respect to compensation

25. (1) Where the tenant under a farm business tenancy has remained in the holding during 2 or more such tenancies, he or she shall not be deprived of his or her right to compensation under section 18 by reason only that any tenant's improvement was provided during a tenancy other than the one at the termination of which he or she quits the holding.

Successive
tenancies

P1995/8/23

(2) The landlord and tenant under a farm business tenancy may agree that the tenant is to be entitled to compensation under section 18 on the termination of the tenancy even though at that termination the tenant remains in the holding under a new tenancy.

(3) Where the landlord and the tenant have agreed as mentioned in subsection (2) in relation to any tenancy ("the earlier tenancy"), the tenant shall not be entitled to compensation at the end of any subsequent tenancy in respect of any tenant's improvement provided during the earlier tenancy in relation to the land comprised in the earlier tenancy.

26. (1) Where —

- (a) the landlord under a farm business tenancy resumes possession of part of the holding in pursuance of any provision of the tenancy, or

Resumption
of possession
of part of holding

P1995/8/24,
SI06/2805/17

- (b) a person entitled to a severed part of the reversionary estate in a holding held under a farm business tenancy resumes possession of part of the holding by virtue of a notice to quit that part given to the tenant by virtue of section 5 of the Conveyancing (Leases and Tenancies) Act 1954,

the provisions of this Part shall, subject to subsections (2) and (3), apply to that part of the holding (“the relevant part”) as if it were a separate holding which the tenant had quitted in consequence of a notice to quit and, in a case falling within paragraph (b), as if the person resuming possession were the landlord of that separate holding.

(2) The amount of compensation payable to the tenant under section 18 in respect of any tenant’s improvement provided for the relevant part by the tenant and not consisting of planning approval shall, subject to section 22(2) to (5), be an amount equal to the increase attributable to the tenant’s improvement in the value of the original holding on the termination date as land comprised in a tenancy.

(3) The amount of compensation payable to the tenant under section 18 in respect of any tenant’s improvement which consists of planning approval relating to the relevant part shall, subject to section 23(3), be an amount equal to the increase attributable to the fact that the relevant development is authorised by the planning approval in the value of the original holding on the termination date as land comprised in a tenancy.

(4) In a case falling within paragraph (a) or (b) of subsection (1), sections 22 and 23 shall apply (subject to subsection (5)) on the termination of the tenancy, in relation to the land then comprised in the tenancy, as if the reference in subsection (1) of each of those sections to the holding were a reference to the original holding.

(5) Where —

- (a) the landlord and the tenant have agreed in writing to limit the amount of compensation payable under section 18 in respect of any tenant’s improvement not consisting of planning approval,
- (b) that improvement is provided for both the relevant part and the land comprised in the tenancy after the termination date,
- (c) the case falls within paragraph (a) or (b) of subsection (1),

- (d) the tenant has already received compensation in respect of the improvement, determined in accordance with subsection (2), and
- (e) further compensation in respect of the improvement is payable under section 18 on termination of the tenancy,

the compensation limit referred to in section 22(5) shall, for the purposes of determining that further compensation, be reduced by an amount equal to the amount of compensation already received by the tenant in respect of the improvement.

(6) In subsections (2) to (5) —

“the original holding” means the land comprised in the farm business tenancy —

- (a) on the date when the landlord gave consent under section 19 or 20 in relation to the tenant’s improvement, or
- (b) where approval in relation to the tenant’s improvement was given by an arbitrator or the Land Court, on the date on which that approval was given,

“the relevant development”, in relation to any tenant’s improvement which consists of planning approval, has the meaning given by section 23(2), and

“the termination date” means the date on which possession of the relevant part was resumed.

27. (1) Where the reversionary estate in the holding comprised in a farm business tenancy is for the time being vested in more than one person in several parts, the tenant shall be entitled, on quitting the entire holding, to require that any compensation payable to him or her under section 18 shall be determined as if the reversionary estate were not so severed.

Compensation where reversionary estate in holding is severed

P1995/8/25

(2) Where subsection (1) applies, the arbitrator or the Land Court, as the case may be, shall, where necessary, apportion the amount awarded between the persons who for the purposes of this Part together constitute the landlord of the holding, and any additional costs of the award caused by the apportionment shall be directed by the arbitrator or Court to be paid by those persons in such proportions as he, she or it shall determine.

28. (1) In any case for which apart from this section the provisions of this Part provide for compensation, a tenant shall be entitled to compensation in accordance with those provisions and

Extent to which compensation recoverable under agreements

P1995/8/26

not otherwise, and shall be so entitled notwithstanding any agreement to the contrary.

(2) Nothing in the provisions of this Part, apart from this section, shall be construed as disentitling a tenant to compensation in any case for which those provisions do not provide for compensation.

Interpretation
of Part 3

29. In this Part —

P1995/8/27
[c.9]

“planning approval” has the meaning given by section 45(1) of the Town and Country Planning Act 1999;

“tenant’s improvement”, and references to the provision of such an improvement, have the meaning given by section 17.

PART 4

MISCELLANEOUS AND SUPPLEMENTAL

Resolution of disputes

Resolution
of disputes

P1995/8/28

30. (1) Subject to subsections (4) and (5) and to section 31, any dispute between the landlord and the tenant under a farm business tenancy, being a dispute concerning their rights and obligations under this Act, under the terms of the tenancy or under any custom, shall be determined in accordance with this section.

(2) Where such a dispute has arisen, the landlord or the tenant may give notice in writing to the other specifying the dispute and stating that, unless before the end of the period of 2 months beginning with the day on which the notice is given the parties have appointed an arbitrator by agreement, he or she proposes to apply to the Land Court for the determination of the dispute.

(3) Where a notice has been given under subsection (2), but no arbitrator has been appointed by agreement, either party may, after the end of the period of 2 months referred to in that subsection, apply to the Land Court for the determination of the dispute.

[c.24]

(4) Subsection (1) does not affect the jurisdiction of the High Court, except to the extent provided by section 4(1) of the Arbitration Act 1976 (staying of court proceedings where there is submission to arbitration), as applied to statutory arbitrations by section 31 of that Act.

(5) Subsections (1) to (3) do not apply in relation to —

- (a) any case falling within section 10(1),
- (b) the determination of rent in pursuance of a statutory review notice (as defined in section 12(1)),
- (c) any case falling within section 21(1),
- (d) any claim for compensation under Part 3, or
- (e) any dispute relating to rent review, in any case where Part 2 is excluded by virtue of section 11(c)(ii).

31. (1) Section 30 does not apply in relation to any dispute if —

Cases where right to refer claim under section 30 does not apply

- (a) the tenancy is created by an instrument which includes provision for disputes to be resolved by any person other than —
 - (i) the landlord or the tenant, or
 - (ii) a third party appointed by either of them without the consent or concurrence of the other, and
- (b) either of the following has occurred —
 - (i) the landlord and the tenant have jointly referred the dispute to the third party under the provision, or
 - (ii) the landlord or the tenant has referred the dispute to the third party under the provision and notified the other in writing of the making of the reference, the period of 4 weeks beginning with the date on which the other was so notified has expired and the other has not given a notice under section 30(2) in relation to the dispute before the end of that period.

P1995/8/29

(2) For the purposes of subsection (1), a term of the tenancy does not provide for disputes to be “resolved” by any person unless that person (whether or not acting as arbitrator) is enabled under the terms of the tenancy to give a decision which is binding in law on both parties.

Miscellaneous

32. The landlord under a farm business tenancy, whatever his or her 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

Power of limited owners to give consents etc.

P1995/8/32

him or her any other act which he or she might give, make, do or have done to him or her if the landlord were owner in customary fee simple or, if his or her interest is an interest in a leasehold, were absolutely entitled to that leasehold.

Estimation of
best rent for
purposes of
Acts and other
instruments

P1995/8/34

33. (1) In estimating the best rent or reservation in the nature of rent of land comprised in a farm business tenancy for the purposes of a relevant instrument, it shall not be necessary to take into account against the tenant any increase in the value of that land arising from any tenant's improvements.

(2) In subsection (1) —

“a relevant instrument” means any enactment, deed or other instrument which authorises a lease to be made on the condition that the best rent or reservation in the nature of rent is reserved;

“tenant's improvement” has the meaning given by section 17.

Supplemental

Service of
notices

P1995/8/36

34. (1) This section applies to any notice or other document required or authorised to be given under this Act.

(2) A notice or other document to which this section applies is duly given to a person if —

- (a) it is delivered to him or her,
- (b) it is left at his or her proper address, or
- (c) it is given to him or her in a manner authorised by a written agreement made, at any time before the giving of the notice, between him or her and the person giving the notice.

(3) A notice or other document to which this section applies is not duly given to a person if its text is transmitted to him or her by facsimile or other electronic means otherwise than by virtue of subsection (2)(c).

(4) Where a notice or other document to which this section applies is to be given to a body corporate, the notice or document is duly given if it is given to the secretary or clerk of that body.

(5) Where —

- (a) a notice or other document to which this section applies is to be given to a landlord under a farm business

tenancy and an agent or servant of his or hers is responsible for the control of the management of the holding, or

- (b) such a document is to be given to a tenant under a farm business tenancy and an agent or servant of his or hers is responsible for the carrying on of a business on the holding,

the notice or document is duly given if it is given to that agent or servant.

(6) For the purposes of this section, the proper address of any person to whom a notice or other document to which this section applies is to be given is —

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and
- (b) in any other case, the last known address of the person in question.

(7) Unless or until the tenant under a farm business tenancy has received —

- (a) notice that the person who before that time was entitled to receive the rents and profits of the holding (“the original landlord”) has ceased to be so entitled, and
- (b) notice of the name and address of the person who has become entitled to receive the rents and profits,

any notice or other document given to the original landlord by the tenant shall be deemed for the purposes of this Act to have been given to the landlord under the tenancy.

35. (1) In this Act —

Interpretation

P1995/8/38

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

“building” includes any part of a building;

“fixed term tenancy” means any tenancy other than a periodic tenancy;

“holding”, in relation to a farm business tenancy, means the aggregate of the land comprised in the tenancy;

“the Land Court” means the Land Court established under the Agricultural Holdings Act 1969;

“landlord” includes any person from time to time deriving title from the original landlord;

“livestock” includes any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land;

“tenancy” means any tenancy other than a tenancy at will, and includes a sub-tenancy and an agreement for a tenancy or sub-tenancy;

“tenant” includes a sub-tenant and any person deriving title from the original tenant or sub-tenant;

“termination”, in relation to a tenancy, means the cesser of the tenancy by reason of effluxion of time or from any other cause.

(2) References in this Act to the farming of land include references to the carrying on in relation to land of any agricultural activity.

(3) A tenancy granted pursuant to a contract shall be taken for the purposes of this Act to have been granted when the contract was entered into.

(4) For the purposes of this Act a tenancy begins on the day on which, under the terms of the tenancy, the tenant is entitled to possession under that tenancy; and references in this Act to the beginning of the tenancy are references to that day.

(5) The designations of landlord and tenant shall continue to apply until the conclusion of any proceedings taken under this Act in respect of compensation.

Consequential
amendments

36. The Schedule (which contains consequential amendments) shall have effect.

Short title and
commencement

37. (1) This Act may be cited as the Agricultural Tenancies Act 2008.

(2) This Act shall come into operation on 12th November 2008.

Section 36

SCHEDULE

CONSEQUENTIAL AMENDMENTS

Agricultural Marketing (No. 2) Act 1948 (XVII p.348)

1. For clause 6 of Schedule 2 substitute —

“6. For the purposes of sub-clause (2) of Clause 1 of this Schedule, the expression “producer” means —

- (a) a person who is in occupation of an agricultural holding, or of land comprised in a farm business tenancy (within the meaning of the Agricultural Tenancies Act 2008), of not less than fifty acres, or
- (b) a person who has previously been in occupation of such a holding or such land for not less than three years.”

Landlord and Tenant Act 1954 (XVIII p.438)

2. For section 2 substitute —

“2. Where any of the provisions of this Act are inconsistent with —

- (a) the Agricultural Holdings Act 1969,
- (b) the Tenancy of Business Premises Act 1971, or
- (c) the Agricultural Tenancies Act 2008,

the provisions of those Acts shall prevail.”

Tenancies (Implied Terms) Act 1954 (XVIII p.448)

3. (1) For section 2 substitute —

“2. Where any of the provisions of this Act are inconsistent with —

- (a) the Agricultural Holdings Act 1969,
- (b) the Tenancy of Business Premises Act 1971, or
- (c) the Agricultural Tenancies Act 2008,

the provisions of those Acts shall prevail.”

(2) In section 3, for the definition of “agricultural holding” substitute —

““agricultural holding” means —

- (a) an agricultural holding within the meaning of the Agricultural Holdings Act 1969, or

- (b) the holding comprised in a farm business tenancy within the meaning of the Agricultural Tenancies Act 2008;”.

Conveyancing (Leases and Tenancies) Act 1954 (XVIII p.467)

4. For section 2 substitute —

“2. Where any of the provisions of this Act are inconsistent with —

- (a) the Agricultural Holdings Act 1969,
- (b) the Tenancy of Business Premises Act 1971, or
- (c) the Agricultural Tenancies Act 2008,

the provisions of those Acts shall prevail.”

Agricultural Holdings Act 1969 (XXI p.134)

5. (1) Schedule 2 is amended as follows.

(2) In paragraph 5 —

- (a) in sub-paragraph (1), after “under this Act” insert “or the Agricultural Tenancies Act 2008”;
- (b) after sub-paragraph (1) insert —

“(1A) In relation to proceedings under the said Act of 2008, references in sub-paragraph (1) to a landlord or a tenant shall be construed as references to the landlord or tenant, as the case may be, under a farm business tenancy.”.

(3) In paragraph 16, after “under this Act” insert “or the Agricultural Tenancies Act 2008”.

Tenancy of Business Premises Act 1971(c.17)

6. For section 1(2) substitute —

“(2) This Act shall not apply to —

- (a) a tenancy of any premises to which the Agricultural Holdings Act 1969 applies; or
- (b) a farm business tenancy (within the meaning of the Agricultural Tenancies Act 2008).”.

Agriculture (Safety, Health and Welfare Provisions) Act 1974 (c.29)

7. (1) For section 3(6)(a) substitute —

“(a) in the case of a notice requiring the execution, on land comprised in an agricultural holding or a farm business tenancy, of works involving the provision of fixed equipment, the landlord;”.

(2) In section 27(1) —

(a) for the definition of “agricultural holding” and “landlord” substitute —

“ “agricultural holding” has the same meaning as in the Agricultural Holdings Act 1969;”;

(b) at the appropriate places in alphabetical order insert —

“ “farm business tenancy” has the same meaning as in the Agricultural Tenancies Act 2008;”;

“ “landlord”, in relation to land comprised in an agricultural holding or farm business tenancy, has the same meaning as in the Agricultural Holdings Act 1969 or the Agricultural Tenancies Act 2008, as the case may be;”.

Property Service Charges Act 1989 (c.14)

8. In section 9A, at the end of subsection (4) insert “; or

(c) a farm business tenancy (within the meaning of the Agricultural Tenancies Act 2008).”.