



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

VALID FROM 27/11/2003

PART 7 **S**

JURISDICTION OF THE LAND COURT AND THE RESOLUTION OF DISPUTES

1991 Act tenancies

75 Jurisdiction of the Land Court **S**

For section 60 (questions between landlord and tenant) of the 1991 Act there is substituted—

“60 Resolution of disputes by Land Court

- (1) The Land Court shall have jurisdiction to hear and determine any of the matters referred to in subsection (2) below.
- (2) Those matters are—
 - (a) whether a tenancy of an agricultural holding in relation to which this Act applies exists or has been terminated;
 - (b) any question or difference between the landlord and tenant of such a holding arising out of the tenancy or in connection with the holding, whether such question or difference arises during the currency of or on or after the termination of the tenancy;
 - (c) any claim by the landlord or tenant of such a holding against the other which arises, under this Act or under any rule of law, custom or agreement, on or out of the termination of the tenancy (or part thereof);
 - (d) any other issue of fact or law relating to—
 - (i) a tenancy of such a holding or any other type of agricultural tenancy; or
 - (ii) agriculture,

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which the landlord or tenant reasonably require to have resolved.

- (3) Such matters include, in particular (and without prejudice to the generality of subsection (2) above), any question or difference between the landlord and tenant arising in relation to Part 2 of the Agricultural Holdings (Scotland) Act 2003 (asp 11) except any question or difference of fact relating to the determination of the price payable by the tenant for the purposes of that Part of that Act.
- (4) Such matters do not include any question as to—
 - (a) who is entitled to succeed to the estate of a deceased person on intestacy by virtue of the Succession (Scotland) Act 1964 (c. 41);
 - (b) the validity of—
 - (i) any bequest; or
 - (ii) any transfer,
 of an interest under the lease; or
 - (c) whether any such transfer is in the best interests of the estate of a deceased person.
- (5) The Land Court shall also have jurisdiction to hear and determine any question or difference, between the tenant and any person with whom he has in pursuance of section 10A(1) of this Act entered into a contract assigning his interest under the lease, which arises out of or in connection with the assignation.
- (6) Any application to the Land Court for a matter to be determined by the Court under this Act may be made by either party or by them jointly.
- (7) In the application of this section to any question or difference arising in relation to Part 2 of the Agricultural Holdings (Scotland) Act 2003 (asp 11), “landlord” shall be construed as including a creditor in a standard security with a right to sell land (that expression being construed by reference to that Part of that Act) which comprises or forms part of an agricultural holding.
- (8) Any reference in this section to a landlord or tenant of an agricultural holding shall be construed as including a person who was formerly the landlord or tenant thereof.
- (9) Any other provision of an enactment which provides for the determination of a matter by the Land Court is without prejudice to this section.”.

76 Arbitrations etc. S

For section 61 (arbitrations) of the 1991 Act there is substituted—

“61 Agreement to refer matters to arbitration

- (1) Subject to subsection (2) below, where this Act makes provision for any matter to be determined by the Land Court, the matter may, if the landlord and tenant so agree at or after the time when the matter arises, instead of being so determined, be determined by arbitration.
- (2) Subsection (1) above does not apply in relation to any matter which may be determined by the Land Court—

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- (a) in pursuance of section 8(6), 11, 12, 22, 26, 32, 39, 41(1), 55(7) or 66(2) or (2A) of this Act; or
 - (b) on appeal.
- (3) In this Act, other than in section 61A, “arbitration” includes any other method of resolving the matter; and “arbiter” shall be construed accordingly.

61A Arbitration: procedure etc.

- (1) This section applies to any arbitration to which a matter is referred by the landlord and tenant under section 61(1) of this Act.
- (2) The agreement of the parties to refer the matter to arbitration shall have the effect of depriving each party of his right to—
 - (a) have the matter heard (or any issue in relation to the matter determined) by the Land Court (other than on appeal); and
 - (b) agree under section 61(1) of this Act to another method of resolving the matter.
- (3) It shall be for the landlord and tenant to agree whether the arbitration is conducted by—
 - (a) a single arbiter; or
 - (b) two arbiters (with or without an oversman),and the arbiter or, as the case may be, each arbiter, may be appointed by the parties or by a person nominated by them.
- (4) The procedure to be followed at arbitration (including any matters to be taken into account by the arbiter and the matters to be contained in his award) shall, subject to subsection (5) below, be as the parties agree or, in the absence of such agreement, as the arbiter considers appropriate.
- (5) Any provision of this Act that would apply to the Land Court as respects its consideration or determination of any matter had the matter not been referred to arbitration shall apply as respects the consideration or determination of the matter by arbitration.
- (6) Any party to the arbitration may appeal to the Land Court against the arbiter’s award on a question of law within 28 days of the award; and in an appeal under this subsection the Court may—
 - (a) quash, confirm or vary the award or any part of it; and
 - (b) where the Court quashes the award or any part of it—
 - (i) remit the case to the arbiter for further procedure; and
 - (ii) direct the arbiter on any question of law relevant to the case.

61B Clauses in leases as to resolution of disputes

Any term of—

- (a) a lease of an agricultural holding in relation to which this Act applies; or
- (b) any agreement in connection with such a lease (other than an agreement under section 61(1) of this Act),

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that makes provision restricting any right of a landlord or tenant to apply to the Land Court under this Act to have a matter determined by the Court shall, in so far as it makes that provision, be null and void.”.

Short limited duration tenancies and limited duration tenancies etc.

77 Resolution of disputes by Land Court **S**

- (1) The Land Court has jurisdiction to hear and determine any of the matters referred to in subsection (2).
- (2) Those matters are—
 - (a) whether—
 - (i) a short limited duration tenancy;
 - (ii) a limited duration tenancy; or
 - (iii) a tenancy to which section 3 applies,
 exists or has been terminated;
 - (b) any question or difference between the landlord and tenant arising out of or in connection with any such tenancy, whether the question or difference arises during the currency of or on or after the termination of the tenancy;
 - (c) any claim by the landlord or tenant of any such tenancy against the other which arises, by virtue of this Act or under any rule of law, custom or agreement, on or out of the termination of the tenancy or of any part of it;
 - (d) any other issue of fact or law relating to—
 - (i) any such tenancy or a 1991 Act tenancy; or
 - (ii) agriculture,
 which the landlord or tenant reasonably require to have resolved.
- (3) Such matters do not include any question as to—
 - (a) who is entitled to succeed to the estate of a deceased person on intestacy by virtue of the Succession (Scotland) Act 1964 (c. 41);
 - (b) the validity of
 - (i) any bequest; or
 - (ii) any transfer,
 of any interest under the lease constituting the tenancy; or
 - (c) whether any such transfer is in the best interests of the estate of a deceased person.
- (4) The Land Court also has jurisdiction to hear and determine any question or difference, between the tenant under a limited duration tenancy and any person with whom the tenant has in pursuance of section 7(1) entered into a contract assigning the tenant’s interest under the lease constituting the tenancy, which arises out of or in connection with the assignment.
- (5) Any application to the Land Court for a matter to be determined by the Court by virtue of this Act may be made by either party or by them jointly.
- (6) Any reference in this section to a landlord or tenant of a tenancy is to be construed as including a person who was formerly the landlord or tenant of the tenancy.

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- (7) Any other provision of an enactment which provides for the determination of any matter by the Land Court is without prejudice to this section.

78 Agreement to refer matters to arbitration **S**

- (1) Subject to subsection (2), where by virtue of this Act any matter may be determined by the Land Court, the matter may, if the landlord and tenant so agree at or after the time when the matter arises, instead of being so determined, be determined by—
- (a) arbitration; or
 - (b) any other method of resolving the matter.
- (2) Subsection (1) does not apply in relation to any matter which may be determined by the Land Court—
- (a) in pursuance of section 21, 22 or 49(2); or
 - (b) on appeal.

79 Arbitration: procedure etc. **S**

- (1) This section applies to any arbitration to which a matter is referred by the landlord and tenant under section 78(1)(a).
- (2) The agreement of the parties to refer the matter to arbitration has the effect of depriving each party of the right to—
- (a) have the matter heard (or any issue in relation to the matter determined) by the Land Court (other than on appeal); and
 - (b) agree under section 78(1)(b) to another method of resolving the matter.
- (3) It is for the landlord and tenant to agree whether the arbitration is conducted by—
- (a) a single arbiter; or
 - (b) two arbiters (with or without an oversman),
- and the arbiter or, as the case may be, each arbiter may be appointed by the parties or by a person nominated by them.
- (4) The procedure to be followed at arbitration (including any matters to be taken into account by the arbiter and the matters to be contained in the arbiter's award) is, subject to subsection (5), to be as the parties agree or, in the absence of such agreement, as the arbiter considers appropriate.
- (5) Any provision by virtue of this Act that would apply to the Land Court as respects its consideration or determination of any matter had the matter not been referred to arbitration applies as respects the consideration or determination of the matter by arbitration.
- (6) Any party to the arbitration may appeal to the Land Court against the arbiter's award on a question of law within 28 days of the award; and in an appeal under this subsection the Court may—
- (a) quash, confirm or vary the award or any part of it; and
 - (b) where the Court quashes the award or any part of it—
 - (i) remit the case to the arbiter for further procedure; and
 - (ii) direct the arbiter on any question of law relevant to the case.

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80 Other provisions as to the resolution of disputes **S**

- (1) Section 62 (claims on termination of tenancy) of the 1991 Act applies to any claim referred to in section 77(2)(c) as it does to any claim referred to in section 60(2)(c) of that Act.
- (2) Section 65 (recovery of compensation and other sums due) of that Act applies to any award or agreement by virtue of this Act as it does to any award or agreement under that Act.
- (3) In section 66 (power to enable demand to remedy breach to be modified) of that Act, subsection (1) applies in relation to a matter which may be determined by the Land Court by virtue of this Act as it does in relation to a matter which may be determined by the Land Court under that Act.

81 Clauses in leases as to resolution of disputes **S**

Any term of—

- (a) a lease constituting a short limited duration tenancy, a limited duration tenancy or a tenancy to which section 3 applies; or
- (b) any agreement in connection with such a lease (other than an agreement under section 78(1)),

that makes provision restricting any right of the landlord or tenant to apply to the Land Court by virtue of this Act to have a matter determined by the Court is, so far as it makes that provision, of no effect.

Jurisdiction of the Land Court: further provision

82 Amendment of the Scottish Land Court Act 1993 **S**

In the Scottish Land Court Act 1993 (c. 45)—

- (a) in subsection (6) of section 1 (the Land Court)—
 - (i) after the word “enactment” there is inserted “, or under the Agricultural Holdings (Scotland) Act 2003 (asp 11) ”;
 - (ii) for the words “1993,” there is substituted “ 1993 or ”;
 - (iii) the words “or the Agricultural Holdings (Scotland) Act 1991” are repealed; and
 - (iv) after “any” in the third place where it appears there is inserted “ such ”;
- (b) after subsection (7) of that section there is inserted—

“(7A) Subsection (7) above does not apply in respect of proceedings in connection with any matter which may be determined by the Land Court by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003.”; and
- (c) in Schedule 1 (the Land Court)—
 - (i) in sub-paragraph (2) of paragraph 6, after the word “shall” in the first place where it appears there is inserted “, subject to sub-paragraph (3) below ”; and
 - (ii) after that sub-paragraph there is inserted—

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“(3) There shall be no such review if the Court, when making a delegation in pursuance of this paragraph in relation to a matter before it in pursuance of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11), so orders.”.

83 Power to amend Land Court’s jurisdiction **S**

The Scottish Ministers may by order modify (any or all)—

- (a) sections 77(2) and 78(2); and
- (b) sections 60(2) and 61(2) (which make provision as to the resolution of disputes) of the 1991 Act.

84 Power of Land Court to grant remedies etc. **S**

(1) Where the Land Court has by virtue of the 1991 Act or this Act determined any matter, it may, in relation to the rights of any party, make such order or grant such remedy as it considers appropriate and, in particular, it may make or grant (any or all)—

- (a) a decree of interdict (including an interim decree);
- (b) an order *ad factum praestandum* or an order of specific implement (including in either case an interim order);
- (c) an order of specific restitution;
- (d) an order of reduction or rectification;
- (e) an order of removal or ejection (but not an interim order);
- (f) an order for damages or other substitutionary redress;
- (g) a declarator.

(2) Where the Land Court makes an order under subsection (1)(b) in relation to a failure of the landlord to fulfil any obligation the landlord has towards the tenant in respect of fixed equipment, the Court—

- (a) must specify the date by which the landlord is to comply with the order; and
- (b) may, following an application by the landlord, specify a later date (in place of the date specified under paragraph (a)) by which the landlord is to comply with the order if it is satisfied that the landlord intends to comply with the order but reasonably requires more time to do so.

(3) Where a matter before the Land Court by virtue of the 1991 Act or this Act concerns the removal or ejection of the tenant from the land to which the tenancy relates, the Court may order the finding of caution, or the giving of such undertaking as the Court considers appropriate, in relation to any liability of the landlord or tenant to the other which may arise from the landlord or, as the case may be, tenant remaining on the land pending the Court’s determination of the matter.

85 Remit from Land Court to sheriff or Court of Session **S**

(1) Where—

- (a) a matter is before the Land Court for determination by virtue of the 1991 Act or this Act; and

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(b) an action in respect of the matter could competently have been brought before a sheriff or in the Court of Session,

the Land Court may (at its own instance or following a request under subsection (2) (a) below) remit the case to the sheriff within whose jurisdiction the action could have been brought, or to the Court of Session, if it considers that to be appropriate.

(2) Any person with an interest in a matter that is before the Land Court for determination under this Act may make an application—

(a) to the Land Court requesting that it remit the matter to the Court of Session under subsection (1) above; or

(b) to the Court of Session craving it to require the Land Court so to remit the matter.

(3) Where an application is made under subsection (2)(b) above, the Court of Session may require the Land Court to remit the matter to it if it considers that it would be appropriate for it to determine the matter.

86 Remit to Land Court by sheriff or Court of Session S

(1) In the Sheriff Courts (Scotland) Act 1971 (c. 58), after subsection (2C) of section 37 (remits) there is inserted—

“(2D) In the case of any action in the sheriff court where the matter to which the action relates could competently be determined by the Land Court by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11), the sheriff may (of his own accord or on the motion of any of the parties) at any stage remit the case to the Land Court if he is of the opinion that it is appropriate to do so.”

(2) Where an action is before the Court of Session and the matter to which the action relates could competently be determined by the Land Court by virtue of the 1991 Act or this Act, it may (at its own instance or on the application of any party to the action) remit the case to the Land Court if it considers that to be appropriate.

87 Transmission of case where contingency S

(1) The Land Court may, on an application by any of the parties, if it considers that there is contingency between a cause depending before the sheriff and a matter before the Court for determination by virtue of the 1991 Act or this Act, grant warrant to the clerk of the sheriff court for transmission of the case to the Land Court.

(2) In the Court of Session Act 1988 (c. 36), after subsection (2) of section 33 (transmissions to Court on ground of contingency) there is inserted—

“(3) The Court may, on an application by any of the parties, if it is of the opinion that there is contingency between a matter before the Land Court for determination by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11) and a cause depending before the Court, grant warrant to the clerk of the Land Court for transmission of the case to the Court from the Land Court.”

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88 Appeal from Land Court to Court of Session S

- (1) Subject to subsection (2), any party to a matter determined by the Land Court by virtue of the 1991 Act or this Act may appeal to the Court of Session against the determination on a question of law within 28 days of the determination; and in an appeal under this section the Court of Session may—
 - (a) quash, confirm or vary the determination or any part of it; and
 - (b) where the Court quashes the determination or any part of it—
 - (i) remit the case to the Land Court for further procedure; and
 - (ii) direct the Land Court on any question of law relevant to the case.
- (2) A determination by the Land Court in an appeal may not be appealed against under subsection (1).
- (3) The decision of the Court of Session in any appeal made under subsection (1) is final.

89 Expenses in sheriff court and Court of Session S

Where the matter to which an action in the sheriff court or before the Court of Session relates could competently be or have been determined by the Land Court by virtue of the 1991 Act or this Act, the sheriff or, as the case may be, the Court must, without prejudice to any rule of law, take account of that fact in deciding what (if any) expenses to award.

90 Conduct of arbiter and setting aside of arbiter's award S

- (1) Any person with an interest in a matter determined by an arbitration to which section 61A of the 1991 Act applies or conducted by virtue of section 78(1)(a) of this Act who has reasonable grounds for believing that—
 - (a) the arbiter has misconducted himself during the course of the arbitration; or
 - (b) the arbitration has been improperly procured,may make an application to the Land Court for an order under subsection (2).
- (2) Where, on such an application, the Land Court is satisfied that—
 - (a) the arbiter has so misconducted himself, or the arbitration has been improperly procured, it may make an order setting aside the arbiter's award;
 - (b) the arbiter has so misconducted himself, it may make an order removing the arbiter.

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