

This draft Order replaces the one laid on 25th February 2014 and is being issued free of charge to all known recipients of that draft Order.

Draft Order laid before the Scottish Parliament under section 13(2) of the Convention Rights (Compliance) (Scotland) Act 2001 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

LANDLORD AND TENANT

**The Agricultural Holdings (Scotland) Act 2003 Remedial Order
2014**

Made - - - -

Coming into force - -

The Scottish Ministers make the following remedial Order in exercise of the powers conferred by section 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001(a) (“the 2001 Act”) and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this Order to be necessary or expedient in consequence of section 72(10) of the Agricultural Holdings (Scotland) Act 2003(b) being incompatible with a Convention right(c).

In accordance with section 12(2) of the 2001 Act the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 13(3) of the 2001 Act the Scottish Ministers laid before Parliament a copy of the proposed draft Order, together with a statement of their reasons for proposing to make the Order, gave such public notice of the proposed draft Order as they considered appropriate, invited observations on it and had regard to observations submitted.

In accordance with section 13(4) of the 2001 Act the Scottish Ministers laid before Parliament a statement summarising all the observations to which they had regard under section 13(3)(c) and specifying the changes which they made in the draft Order and the reasons for them.

(a) 2001 asp 7.

(b) 2003 asp 11.

(c) “Convention right” has the meaning given by section 1 of the Human Rights Act 1998 (c.42). In the case of *Salvesen v Riddell* [2013] UKSC 22, judgement 24th April 2013, the Supreme Court found that section 72(10) was outside the legislative competence of the Scottish Parliament and made an order under section 102(2)(b) of the Scotland Act 1998 suspending the effect of the finding for 12 months or such shorter period as may be required for the defect to be corrected and for that correction to take effect.

In accordance with section 13(2) of the 2001 Act a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014.

(2) This Order comes into force on the day after the day on which it is made.

Amendment of the Agricultural Holdings (Scotland) Act 2003

Amendment of the Agricultural Holdings (Scotland) Act 2003

2.—(1) The Agricultural Holdings (Scotland) Act 2003 (asp 11) (“the 2003 Act”) is amended as follows.

(2) In section 72 (rights of certain persons where tenant is a limited partnership)—

- (a) in subsection (2), the words “unless the conditions mentioned in subsection (5) are met” are repealed;
- (b) in subsection (3), in the closing words, the words “subject to subsection (4)” are repealed;
- (c) subsections (4), (5) and (7) to (11) are repealed.

(3) After section 72, insert—

“72A Application of section 73

(1) Section 73 applies to a tenancy continuing to have effect by virtue of section 72(6) unless the tenancy is a relevant tenancy.

(2) If—

- (a) the tenancy is a relevant tenancy,
 - (b) the circumstances described in subsection (3) do not apply, and
 - (c) the landlord gives an application notice to the tenant within the intimation period,
- section 73 applies to the tenancy from the date on which the application notice is given.

(3) The circumstances are that—

- (a) the landlord purchased the landlord’s interest in the tenancy at a time when it was no longer possible for an order under section 72(8) to be made in respect of the tenancy, or
- (b) the landlord acquired (by any means) the landlord’s interest in the tenancy from—
 - (i) the landlord who purchased that interest in the circumstances described in paragraph (a), or
 - (ii) a successor of such a landlord.

(4) In this section—

“application notice” means a notice, in writing, intimating that the landlord may bring the tenancy to an end in accordance with section 73,

“the intimation period” means the period of 12 months beginning on 28th November 2014,

“relevant tenancy” means a tenancy continuing to have effect by virtue of section 72(6) where—

- (a) the action taken by a limited partner in consequence of which the tenancy was purportedly terminated (being an action described in section 72(3)(a) to (c)) occurred before 1st July 2003,
- (b) notice was given to the landlord under section 72(6) before the coming into force of this section, and

- (c) there is no ongoing application for an order under section 72(8) in respect of the tenancy;

“successor” includes the executor, assignee, legatee, donee, guardian, legal representative (within the meaning of Part I of the Children (Scotland) Act 1995) or (in relation to a sequestration) trustee or interim trustee, of a landlord.

(5) For the purposes of this section, a reference to an ongoing application for an order under section 72(8) is a reference to an application made to the Land Court under section 72(7) before the coming into force of this section and which, at that time—

- (a) has not been finally determined by the Land Court, or
- (b) is subject to an appeal from that Court which has not been finally determined.”.

Ongoing cases

Effect of amendments on ongoing cases

3.—(1) The repeals in article 2(2)(c) are to apply in relation to any ongoing application for an order under section 72(8) of the 2003 Act.

(2) In consequence, the Scottish Land Court (or any other court considering the application on appeal) must make an order disposing of the application in such manner as it considers reasonable.

(3) An order under paragraph (2) may, in particular—

- (a) specify shorter periods for the purposes of section 73(4) and (5) of the 2003 Act,
- (b) specify the date on which the tenancy to which the application relates is to terminate,
- (c) deal with such other matters relating to the tenancy or its termination as the Court considers appropriate.

(4) An order under paragraph (2) is to be treated as a determination of a matter by virtue of the 2003 Act.

(5) In this article, a reference to an ongoing application for an order under section 72(8) of the 2003 Act is a reference to an application made to the Scottish Land Court under section 72(7) of that Act before the coming into force of this Order and which, at that time—

- (a) has not been finally determined by the Scottish Land Court, or
- (b) is subject to an appeal from that Court which has not been finally determined.

Transitional and saving provision

Preservation of landlord’s right to make an application

4.—(1) This article applies where—

- (a) a tenancy was purportedly terminated as a consequence of a limited partner mentioned in section 72(1)(b) of the 2003 Act taking an action described in section 72(3)(a) to (c) of that Act before 1st July 2003,
- (b) the landlord of the tenancy is given a notice under section 72(6) of that Act within the period of 28 days ending with the coming into force of this Order, and
- (c) no application has been made by the landlord under section 72(7) of that Act before the coming into force of this Order.

(2) The landlord may, within the period ending on the date 28 days after the date on which the notice was given under section 72(6) of the 2003 Act, apply to the Scottish Land Court for an order under article 3 of this Order.

(3) For the purposes of that article and section 72A of the 2003 Act, such an application is to be treated as being an ongoing application for an order under section 72(8) of that Act.

Continuing application of section 73 of the 2003 Act

5. Despite the repeal of section 72(10) of the 2003 Act, section 73 of that Act continues to apply in respect of any tenancy to which it applied immediately prior to that repeal.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”) to remove the incompatibility, arising from section 72(10) of that Act, with a Convention right.

Section 72(6) of the 2003 Act provides that if a landlord sought to bring an agricultural tenancy to an end by dissolving a limited partnership on or after 16th September 2002, then the tenancy continues in existence with the non-landlord partner, known as the general partner, as tenant in his or her own right (if the general partner gives notice that this is intended to happen). Section 73 of the 2003 Act is a counterpart to section 72(6). It entitles the landlord to bring the tenancy to an end by service of a notice to quit at a time of the landlord’s own choosing. However section 72(10) qualifies this position and provides that section 73 does not apply to landlords who served the dissolution notice between 16th September 2002 and 30th June 2003.

The Supreme Court in a judgement dated 24th April 2013, *Salvesen v Riddell* [2013] UKSC 22, held that the difference in treatment between those landlords who served a dissolution notice between 16th September 2002 and 30th June 2003 and those landlords who served notices on or after 1st July 2003 was unfair and disproportionate and did not pursue an aim that was reasonably related to the aim of the legislation as a whole. It therefore made a finding that section 72 (10) of the 2003 Act violated art. 1 of the First Protocol to the European Convention on Human Rights and that the provision was outside the legislative competence of the Scottish Parliament. The Supreme Court made an order under section 102(2)(b) that the effect of the finding should be suspended for 12 months or such shorter period as may be necessary to correct the defect. The 12 month period expires on 23rd April 2014.

In order to remove the incompatible effect of section 72(10) this Order inserts a new section (section 72A) into the 2003 Act. This applies section 73 unless the tenancy is a relevant tenancy (section 72A(1)). Where the tenancy is a relevant tenancy, section 73 only applies, other than in prescribed circumstances, where the landlord has given an application notice within 12 months from 28th November 2014 (section 72A(2)).

The prescribed circumstances (section 72A(3)) are where the landlord’s interest has been purchased after the section 72(6) notice was given and at a time when it was no longer possible to make an order under section 72(8) that section 72(6) does not apply and has never applied.

Section 72A(1) applies section 73 to those cases where there is an ongoing application to the Scottish Land Court under section 72(8) but, by virtue of article 3, in these cases the Land Court has a discretion on disposal of these ongoing applications including, but not limited to, specifying shorter periods of notice than in section 73(4) and (5) of the 2003 Act and specifying the date on the which the tenancy is to be terminated. A landlord who has been given notice under section 72(6) in the 28 days prior to the coming into force of this Order will have 28 days from the date of notice to apply to the Land Court and have his or her case treated in the same way as ongoing applications.

Articles 4 and 5 make transitional and savings provisions.

Section 72 (4) and (5) are repealed as spent and section 72(7)-(11) are repealed with the effect that a tenancy operating by virtue of section 72(6) can no longer be effectively annulled under section 72(8) on application to the Land Court.

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£4.00

S2014030673 03/2014 19585

<http://www.legislation.gov.uk/id/sdsi/2014/9780111022993>

ISBN 978-0-11-102299-3



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