

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 5: Miscellaneous Amendments to the 1991 Act

Section 61: Making of records

196. Section 8(1) of the 1991 Act provides for either the landlord or the tenant under a 1991 Act tenancy, to be able to require the making of a record of the condition of the fixed equipment on the holding or a record of the cultivation of the holding. This can be done at any time during the tenancy. .
197. Subsection (1) inserts a new subsection (3) into section 8 of the 1991 Act. Recorders no longer require to be appointed by the Scottish Ministers. The parties may appoint their own choice of recorder by joint agreement. If they fail to agree, either party may apply to the Scottish Ministers to appoint the recorder. The Scottish Ministers may charge a reasonable fee for doing so, by virtue of new subsection (3A).
198. The record need no longer be in prescribed form. The parties are free to determine the form of the record by joint agreement. In the absence of agreement, the form of the record is a matter for the recorder (see new subsection (3B)) (eg. a record could take the form of a video recording). Disputes arising out of the making of a record are to be referred to the Land Court. Sections 8(8) and (9) are now restricted in application to recorders appointed by the Scottish Ministers. The remuneration of recorders appointed by the parties is a matter for private negotiation.
199. Subsection (2) makes special provision for the operation of section 8 of the 1991 Act where the Scottish Ministers are a party to the lease. Section 80 of the 1991 Act provides that where the Scottish Ministers are a party to a lease of an agricultural holding then where any provision of the 1991 Act provides that any matter concerning the holding falls to be decided by the Scottish Ministers it should, instead, fall to be decided by the Land Court. This subsection, however, makes special provision in respect of the operation of section 8, instead providing that where the Scottish Ministers are a party to the lease and those parties cannot agree on the appointment of a recorder under section 8(3) of the 1991 Act then the recorder is to be appointed by the sheriff, on the application of either party. It is not appropriate for the Land Court to exercise that power as that Court has jurisdiction over appeals against the recorder's findings by virtue of section 8(6).