



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 6

RIGHTS OF CERTAIN PERSONS WHERE TENANT IS A PARTNERSHIP

70 Rights of certain persons where tenant is a partnership

- (1) Subsection (2) applies to—
- (a) a 1991 Act tenancy if the lease constituting the tenancy is entered into on or after the coming into force of this section; and
 - (b) a tenancy under a lease constituting a short limited duration tenancy or a limited duration tenancy,
- where the tenant is a partnership.
- (2) Where this subsection applies and—
- (a) any partner is—
 - (i) the landlord or an associate of the landlord; or
 - (ii) a partnership or a company in which the landlord has a relevant interest; and
 - (b) there is any other partner,
- subsections (3) and (4) apply.
- (3) Where this subsection applies, any partner not mentioned in subsection (2)(a) may exercise or enforce any right of a tenant conferred by virtue of this Act or the 1991 Act as if the partner were the tenant in the partner's own right.
- (4) Where this subsection applies, if the tenancy purports to be terminated as a consequence of—
- (a) the dissolution of the partnership—
 - (i) in accordance with the partnership agreement; or
 - (ii) due to the actings of any partner mentioned in subsection (2)(a);
 - (b) the renunciation of the tenancy by such a partner; or
 - (c) a breach of the tenancy by such a partner,
- subsection (5) applies.

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- (5) Where this subsection applies, notwithstanding the purported termination of the tenancy—
- (a) the tenancy continues to have effect; and
 - (b) any partner not mentioned in subsection (2)(a) becomes the tenant (or a joint tenant) under the tenancy in the partner’s own right,
- if the partner gives notice to the landlord in accordance with subsection (6).
- (6) Notice is given in accordance with this subsection if—
- (a) it is in writing;
 - (b) it is given within 28 days of the purported termination of the tenancy; and
 - (c) it states that the partner intends to become the tenant (or a joint tenant) under the tenancy in the partner’s own right.
- (7) For the purposes of this section and section 72, a landlord has a relevant interest in a partnership or company if the landlord or an associate of the landlord is—
- (a) a partner in the partnership;
 - (b) a partner in a partnership which forms part of the partnership;
 - (c) a shareholder in the company; or
 - (d) the holder of a standard security or floating charge over an interest in a tenancy where the partnership or the company is a partner in the tenant.
- (8) For the purposes of this section and section 72, a person is an associate of a landlord if the person is—
- (a) where the landlord is a partnership or a company, a partner in the landlord or, as the case may be, a shareholder of the landlord;
 - (b) where an associate of the landlord is a partnership or a company, a partner in or, as the case may be, a shareholder of that associate;
 - (c) an agent of the landlord or of an associate of the landlord; or
 - (d) a member of the landlord’s family.
- (9) The Scottish Ministers may by order modify (either or both) subsections (7) and (8).

71 Meaning of “family”

- (1) For the purposes of section 70(8)(d), who the members of a person’s family are is to be construed in accordance with subsections (2) and (3).
- (2) A person (“AG”) is a member of another person’s family if—
- (a) AG is the person’s spouse or AG and the person live together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that AG and the person are of the same sex; or
 - (b) AG is the person’s parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, niece or cousin.
- (3) For the purposes of subsection (2)(b)—
- (a) a relationship by marriage is to be treated as a relationship by blood;
 - (b) a relationship of the half-blood is to be treated as a relationship of the whole blood;
 - (c) if AG is—
 - (i) the stepchild of the person, AG is to be treated as the person’s child;

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- (ii) the step-parent of the person, AG is to be treated as the person's parent;
 - (d) if AG is brought up or treated by the person as if the person's child, AG is to be treated as the person's child.
- (4) The Scottish Ministers may by order modify (any or all) subsections (1) to (3).

72 Rights of certain persons where tenant is a limited partnership

- (1) Subsections (2) and (3) apply to a 1991 Act tenancy where the lease constituting the tenancy is entered into before the coming into force of this section and—
- (a) the tenant is a limited partnership; and
 - (b) any limited partner is—
 - (i) the landlord or an associate of the landlord; or
 - (ii) a partnership or a company in which the landlord has a relevant interest.
- (2) Where this subsection applies, any general partner may exercise or enforce any right of a tenant conferred by virtue of Part 2 of this Act as if the partner were the tenant in the partner's own right unless the conditions mentioned in subsection (5) are met.
- (3) Where this subsection applies and the tenancy purports to be terminated as a consequence of—
- (a) the dissolution of the partnership by notice served on or after 16th September 2002 by a limited partner mentioned in subsection (1)(b);
 - (b) the renunciation of the tenancy on or after that date by such a partner; or
 - (c) a breach of the tenancy on or after that date by such a partner,
- subsection (6) applies subject to subsection (4).
- (4) Subsection (6) does not apply if—
- (a) the conditions mentioned in subsection (5) are met; or
 - (b) the Land Court makes an order under subsection (8).
- (5) For the purposes of subsections (2) and (4)(a), the conditions are—
- (a) that—
 - (i) a (or the) notice of dissolution of the partnership has been (or was) served before 4th February 2003 by a limited partner mentioned in subsection (1)(b); and
 - (ii) the partnership has been dissolved in accordance with the notice; and
 - (b) that the land comprised in the lease—
 - (i) has been transferred or let;
 - (ii) under missives concluded before 7th March 2003, is to be transferred; or
 - (iii) under a lease entered into before that date, is to be let, to any person.
- (6) Where this subsection applies, notwithstanding the purported termination of the tenancy—
- (a) the tenancy continues to have effect; and
 - (b) any general partner becomes the tenant (or a joint tenant) under the tenancy in the partner's own right,

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if the general partner gives notice to the landlord within 28 days of the purported termination of the tenancy or within 28 days of the coming into force of this section (whichever is the later) stating that the partner intends to become the tenant (or a joint tenant) under the tenancy in the partner's own right.

(7) Where—

- (a) a tenancy continues to have effect by virtue of subsection (6); and
- (b) the—
 - (i) notice mentioned in paragraph (a) of subsection (3) was served before the relevant date; or
 - (ii) thing mentioned in paragraph (b) or (c) of that subsection occurred before that date,the landlord may, within the relevant period, apply to the Land Court for an order under subsection (8).

(8) An order under this subsection—

- (a) is an order that subsection (6) does not apply; and
- (b) has effect as if that subsection never applied.

(9) The Land Court is to make such an order if (but only if) it is satisfied that—

- (a) the—
 - (i) notice mentioned in paragraph (a) of subsection (3) was served otherwise than for the purposes of depriving any general partner of any right deriving from this section; or
 - (ii) thing mentioned in paragraph (b) or (c) of that subsection occurred otherwise than for that purpose; and
- (b) it is reasonable to make the order.

(10) Where—

- (a) a tenancy continues to have effect by virtue of subsection (6); and
- (b) the—
 - (i) notice mentioned in paragraph (a) of subsection (3) was served on or after the relevant date; or
 - (ii) thing mentioned in paragraph (b) or (c) of that subsection occurred on or after that date,section 73 applies.

(11) For the purposes of—

- (a) subsections (7) and (10), the relevant date is such date as the Scottish Ministers may by order specify; and
- (b) subsection (7), the relevant period is the period from the relevant date to such date as they may so specify.

(12) In this section, the expressions, “limited partnership”, “limited partner” and “general partner” are to be construed in accordance with the Limited Partnerships Act 1907 (c. 24).

73 Termination of tenancy continued under section 72

- (1) Where this section applies, subsections (1) to (3) and (5) of section 21 (notice to quit and notice of intention to quit) of the 1991 Act do not apply in relation to the bringing of the tenancy to an end by the landlord.
- (2) Subsections (4), (6) and (7) of that section apply in relation to subsections (3) to (5) as they apply in relation to subsections (1) to (3) and (5) of that section.
- (3) The tenancy may be brought to an end by the landlord if the landlord gives a notice under this subsection to the tenant.
- (4) Subject to subsection (7), a notice under subsection (3) must—
 - (a) be in writing and state that the tenant shall quit the land on the expiry of the stipulated endurance of the lease constituting the tenancy (or, where the lease has continued in force by tacit relocation, on the expiry of a period of continuation); and
 - (b) be given not less than one year nor more than two years before the expiry of the stipulated endurance of the lease (or expiry of the period of continuation), provided that not less than 90 days have elapsed from the date on which the intimation mentioned in subsection (5) is given.
- (5) Subject to subsection (7), a notice under subsection (3) is of no effect unless the landlord has given written intimation of the landlord's intention to terminate the tenancy to the tenant not less than two years nor more than three years before the expiry of the stipulated endurance of the lease (or expiry of the period of continuation).
- (6) The landlord may apply to the Land Court for an order under subsection (7).
- (7) An order under this subsection is an order that, instead of the periods of time mentioned in subsections (4) and (5), such shorter periods as the Land Court may specify are to apply.
- (8) The Land Court is to make such an order if (but only if) it is satisfied that—
 - (a) service of the notice mentioned in paragraph (a) of subsection (3) of section 72, or the thing mentioned in paragraph (b) or (c) of that subsection, occurred otherwise than for the purposes of depriving the tenant (being then a general partner) of any right deriving from section 72; and
 - (b) it is reasonable to make the order.

74 Application of right to buy provisions

The Scottish Ministers may by regulations—

- (a) provide that Part 2, in its application in relation to—
 - (i) partnerships who are tenants; and
 - (ii) such partners of partnerships as may exercise or enforce any right of tenants conferred by that Part,has effect with or subject to such modifications as the regulations may specify; and
- (b) make such further provision in relation to such partnerships and partners as they consider necessary or expedient for the purposes of that Part.