

2003 No. 583

LANDLORD AND TENANT

**The Agricultural Holdings (Consequential Amendments)
(Scotland) Order 2003**

Made

26th November 2003

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred by sections 91(2)(b) and 92 of the Agricultural Holdings (Scotland) Act 2003^(a) and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 91(5) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 and shall come into force on the day after the day on which it is made.

Amendments consequential to the Agricultural Holdings (Scotland) Act 2003

2. The Schedule to this Order, which makes amendments to enactments in consequence of the Agricultural Holdings (Scotland) Act 2003, has effect.

St Andrew's House,
Edinburgh
26th November 2003

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE

Consequential Amendments

Opencast Coal Act 1958 (c.69)

1. The Opencast Coal Act 1958 is amended in accordance with paragraphs 2 to 7 below.
2. In section 14A (provisions as to agricultural tenancies in Scotland)(a)–
 - (a) in subsections (3), (4) and (5), in each place where it appears, for “the Scottish Act of 1991”(b), substitute “the Scottish Acts of 1991 and 2003”;
 - (b) in subsection (6), immediately after “paragraph (b) of that subsection”(c), insert “or (as the case may be) section 17(1)(a) of the Scottish Act of 2003”;
 - (c) in subsection (7), immediately after “shall not be treated as satisfied”, insert “, or (as the case may be) the resumption shall not be considered to be for a non-agricultural purpose under section 17(1)(a) of the Scottish Act of 2003,”;
 - (d) in subsection (8)–
 - (i) for “On a reference to arbitration under section 13 of the Scottish Act of 1991”(d), substitute “On a determination under section 13 of the Scottish Act of 1991 or (as the case may be) under section 9 of the Scottish Act of 2003,”; and
 - (ii) for “arbiter”, substitute “Scottish Land Court or arbiter (as the case may be)”;
 - (e) in subsection (9), immediately after “section 15 of the Scottish Act of 1991 (which relates to increases of rent for improvements carried out by the landlord)”(e), insert “, or (as the case may be) section 10 of the Scottish Act of 2003 (increase in rent: landlord’s improvements),”.
3. In section 24 (tenant’s right to compensation for improvements and other matters), for paragraphs (a) and (b) of subsection (10)(f), substitute–
 - “(a) to the Act of 1986 and to sections 70 and 83(4) of that Act there shall be substituted respectively references–
 - (i) in the case of a 1991 Act tenancy within the meaning of the Scottish Act of 2003, to the Scottish Act of 1991 and to sections 44 and 62(3) of that Act; or
 - (ii) in the case of a short limited duration tenancy or a limited duration tenancy, (within the meaning of the Scottish Act of 2003) to the Scottish Act of 2003 and to section 53(1) of that Act;
 - (b) to subsections (1), (2) and (3) of section 69 of the Act of 1986 there shall be substituted respectively references–
 - (i) in the case of a 1991 Act tenancy within the meaning of the Scottish Act of 2003, to sections 34(5) and 35(4) and (5) of the Scottish Act of 1991 (as they apply to new improvements); or
 - (ii) in the case of a short limited duration tenancy or a limited duration tenancy (within the meaning of the Scottish Act of 2003), to sections 45(4) and 46 of the Scottish Act of 2003;”.
4. In section 26 (compensation for short-term improvements and related matters), for paragraph (b) of subsection (6)(g), substitute–
 - “(b) in subsection (3) of this section for the reference to the Act of 1986 there shall be substituted a reference to the Scottish Act of 1991 or, as the case may be, to the Scottish Act of 2003; and”.

(a) Section 14A was inserted by the Housing and Planning Act 1986 (c. 63), section 39(3) and Schedule 8, paragraph 5.
 (b) These words were substituted by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 12(a) to (c).
 (c) These words were amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 12(d).
 (d) These words were amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 12(f).
 (e) These words were amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 12(g).
 (f) Subsections (10)(a) and (b) were substituted by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 13.
 (g) Subsection (6)(b) was substituted by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 15.

5. In subsection (2) of section 52 (general application to Scotland)–
- (a) for the definition of “agricultural holding”(a), substitute–
 ““agricultural holding” means the land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Scottish Act of 2003 or the land comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);” and
 - (b) immediately after “the Scottish Act of 1991”(b), insert–
 “the Scottish Act of 2003” means the Agricultural Holdings (Scotland) Act 2003 (asp 11).”;
6. In paragraph 31 of the Sixth Schedule (application of compensation provisions to special cases), for the words from “and to section 2 of the Act of 1986 there shall be substituted respectively”(c) to the end of that paragraph, substitute “and to approval under section 2 of the Act of 1986 there shall be substituted respectively references to a lease falling within section 2(2)(a) of the Scottish Act of 1991 or (as the case may be) to section 3 of the Scottish Act of 2003, to a lease and to any short limited duration tenancy (within the meaning of the Scottish Act of 2003) of less than a year.”.
7. In paragraph 25 of the Seventh Schedule (adjustments between landlords and tenants and in respect of mortgages and mining leases and orders)–
- (a) for paragraph (i) of sub-paragraph (a)(d), substitute–
 “(i) to the Act of 1986 and to sections 12, 13 and 84 of that Act there shall be substituted respectively references to (as the case may be)–
 (A) the Scottish Act of 1991 and to sections 13, 15 and 61 of that Act; or
 (B) the Scottish Act of 2003 and to sections 9, 10 and 77 or 78 of that Act; and
 (ia) to section 23 of the Act of 1986 there shall be substituted a reference to section 10 of the Scottish Act of 1991; and”;
 - (b) for sub-paragraph (b), substitute–
 “(b) for references to an arbitrator there shall be substituted references to an arbiter or, as the case may be, to the Scottish Land Court.”.

Land Compensation (Scotland) Act 1973 (c.56)

8. In the Land Compensation (Scotland) Act 1973–
- (a) for paragraph (c) of subsection (3) of section 31(right to farm loss payment where person displaced from agricultural unit)(e), substitute–
 “(c) where the acquiring authority permit him to remain in possession of the land under a lease, or a right or permission relating to land but not amounting to an estate or interest therein, of a kind not making him–
 (i) where the owner’s interest for the purposes of subsections (1) and (2) above was that of tenant under a lease constituting a short limited duration tenancy or a limited duration tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11), a tenant of such a tenancy with a duration not less than that of the unexpired term of the tenancy which constituted the owner’s interest as at the date on which he gave up possession; or
 (ii) in any other case, a tenant of a lease constituting a 1991 Act tenancy within the meaning of that Act,”;
 - (b) in section 44 (compensation in respect of agricultural holdings)–

(a) This definition was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 18(a).
 (b) This definition was substituted by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 18(b).
 (c) These words were substituted by the Agricultural Holdings Act 1986 (c. 5), Schedule 14, paragraph 32, and amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 20.
 (d) Sub-paragraph (a) was substituted by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 21.
 (e) Section 31(3)(c) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 33.

- (i) immediately after paragraph (a) of subsection (2), insert–
 - “(aa) there shall be disregarded any right of the landlord to serve a notice of intention to resume land which would not be or have been effective if in section 17(1)(a) of the Agricultural Holdings (Scotland) Act 2003 (asp 11) (resumption of land by landlord) the reference to the resumption being for a non-agricultural purpose did not include a reference to its being required by an acquiring authority; and”;
 - (ii) in subsection (3)(a), immediately after “sections 22(2)(b) and 24(1)(e)”**(a)** insert “of the Agricultural Holdings (Scotland) Act 1991 or section 17(1)(a) of the Agricultural Holdings (Scotland) Act 2003”; and
 - (iii) at the end of subsection (4)**(b)**, insert “or, as the case may be, under section 54(1) to (3) of the Agricultural Holdings Act (Scotland) 2003 (compensation where compulsory acquisition of land)”;
- (c) in section 52(3)(d)**(e)**, immediately after “the Agricultural Holdings (Scotland) Act 1991”, insert “, the Agricultural Holdings (Scotland) Act 2003”;
- (d) in section 55–
 - (i) in subsection (1), immediately after “notice to quit the holding” insert “or (as the case may be) notice of intention to resume land”;
 - (ii) in paragraph (b) of subsection (1)**(d)**, after “the Act”, insert–
 - “;
 - or the resumption is for a non-agricultural purpose under section 17(1)(a) of the Agricultural Holdings (Scotland) Act 2003.”;
 - (iii) in subsection (2), immediately after “notice to quit” insert “or (as the case may be) notice of intention to resume land”;
 - (iv) in subsection (2)(a), for “section 56 of the Agricultural Holdings (Scotland) Act 1991”**(e)**, substitute “either section 56 of the Agricultural Holdings (Scotland) Act 1991 or (as the case may be) section 54(1) to (3) of the Agricultural Holdings (Scotland) Act 2003”;
 - (v) for subsection (2)(b)**(f)**, substitute–
 - “(b) either (as the case may be)–
 - (i) the provisions of the Agricultural Holdings (Scotland) Act 1991 relating to the compensation to a tenant on the termination of his tenancy and sections 54 and 58(1) and (2) of that Act (additional payment and compensation in cases of notice to quit); or
 - (ii) the provisions of the Agricultural Holdings (Scotland) Act 2003 relating to compensation to a tenant on the termination of his tenancy, shall not have effect in relation to the termination of the tenancy by reason of the notice to quit or (as the case may be) the notice of intention to resume land”;
 - (vi) in subsection (5), immediately after “notice to quit” in each place where it appears, insert “or (as the case may be) notice of intention to resume land”;
 - (vii) at the end of subsection (6)**(g)**, insert “or, as the case may be, to give notice under section 17(3) of the Agricultural Holdings (Scotland) Act 2003 (resumption of land by landlord)”;
 - (viii) in subsection (8), immediately after “notice to quit”, there is inserted “or (as the case may be) a notice of intention to resume land”;
- (e) in section 80 (interpretation)–

(a) Section 44(3)(a) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 34(c).

(b) Section 44(4) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 34(d).

(c) Section 52(3)(d) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 35(a).

(d) Section 55(1)(b)(ii) was substituted by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 36(a).

(e) Section 55(2)(a) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 36(b).

(f) Section 55(2)(b) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 36(c).

(g) Section 55(6) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 36(d).

- (i) for the definition of “agricultural holding”(a), substitute–
 ““agricultural holding” means the land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11), or the land comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act); and “landlord” and “tenant”, in relation to an agricultural holding, have the same meaning as in section 85 of the Agricultural Holdings (Scotland) Act 1991 or (as the case may be) section 93 of the Agricultural Holdings (Scotland) Act 2003;”;
 and
- (ii) immediately after the definition of “local roads authority”(b), insert–
 ““notice of intention to resume land”, in relation to a short limited duration tenancy or a limited duration tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) means notice under section 17(2) of that Act;
 “notice to quit”, in relation to a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11), means a notice to quit within the meaning of the Agricultural Holdings (Scotland) Act 1991;”.

Agriculture Act 1986 (c.49)

- 9.** Immediately after the definition of “the relevant quota” in sub-paragraph (2) of paragraph 2 of Schedule 2 to the Agriculture Act 1986, insert–

““termination of the lease” shall include termination of the lease under section 2(1) of the Agricultural Holdings (Scotland) Act 2003 (asp 11) (conversion from 1991 Act tenancy to limited duration tenancy).”.

Housing (Scotland) Act 1987 (c.26)

- 10.** In the Housing (Scotland) Act 1987–
- (a) in section 256 (application of this Part to agricultural tenants etc), in each place where it appears, for “the Agricultural Holdings (Scotland) Act 1991”(c), substitute “the Agricultural Holdings (Scotland) Act 1991 or the Agricultural Holdings (Scotland) Act 2003 (asp 11) (as the case may be)”;
 - (b) for the definition of “agricultural holding” in section 338(d), substitute–
 “ “agricultural holding” means the land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or the land comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);”
 - (c) in sub-paragraph (1) of paragraph 13 of Schedule 8(e)–
 - (i) immediately after “(increases of rent for improvements carried out by landlord)”, insert “or section 10 of the Agricultural Holdings (Scotland) Act 2003 (increase in rent: landlord’s improvements)”;
 - (ii) for “that section”, substitute “the respective section applying (as the case may be)”;
 and
 - (iii) immediately after “the said section 15”, insert “or (as the case may be) the said section 10”; and
 - (d) in sub-paragraph (2) of paragraph 13 of Schedule 8(f)–
 - (i) immediately after “(which make that right to compensation subject to certain conditions)” insert “or (as the case may be) section 49 (notice required for certain improvements) of the Agricultural Holdings (Scotland) Act 2003”; and
 - (ii) for “section 36 of that Act” substitute “section 36 of the Agricultural Holdings (Scotland) Act 1991 or section 47 of the Agricultural Holdings (Scotland) Act 2003”.

(a) This definition was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 37.
 (b) The definition of “local roads authority” was inserted by the Roads (Scotland) Act 1984 (c. 54), s. 156(1), Schedule 9, paragraph 72(9)(a)(i).
 (c) This reference was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 54.
 (d) This definition was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 55.
 (e) Paragraph 13(1) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 56(a).
 (f) Paragraph 13(2) was amended by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 56(b).

Housing (Scotland) Act 1988 (c.43)

11. In Schedule 4 (tenancies which cannot be Assured Tenancies) to the Housing (Scotland) Act 1988–

- (a) for sub-paragraph (a) of paragraph 6(a), substitute–
 - “(a) is on or comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act); and”; and
- (b) in sub-paragraph (b) of paragraph 6, for “holding”, substitute “land comprised in the lease”.

Children (Scotland) Act 1995 (c.36)

12. In section 76 (exclusion orders) of the Children (Scotland) Act 1995, for paragraph (a) of subsection (11), substitute–

- “(a) is on or comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act); or”.

(a) Paragraph (6)(a) was substituted by the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 57.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for additional amendments to enactments as a consequence of the Agricultural Holdings (Scotland) Act 2003 (asp 11).

It extends provisions of those enactments which applied to agricultural holdings under the Agricultural Holdings (Scotland) Act 1991 (c.55) to the types of tenancy of agricultural land created under Part 1 of the Agricultural Holdings (Scotland) Act 2003, short limited duration tenancies and limited duration tenancies.

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