

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 6: Rights of Certain Persons Where Tenant is a Partnership

Section 72: Rights of certain persons where tenant is a limited partnership

239. This section (except for subsections (2) and (10)) and, for those purposes, section 70(7) and (8), was brought into force on 22nd May 2003 by the [Agricultural Holdings \(Scotland\) Act 2003 \(Commencement No. 1\) Order 2003 \(S.S.I. 2003/248\)](#). Subsection (10) and, for those purposes, section 70(7) and (8) and section 73, was brought into force on 1st July 2003 by the [Agricultural Holdings \(Scotland\) Act 2003 \(Commencement No. 2\) Order 2003 \(S.S.I. 2003/305\)](#). The [Agricultural Holdings \(Relevant Date and Relevant Period\) \(Scotland\) Order 2003 \(S.S.I. 2003/294\)](#) provided that, for the purposes of section 72(7) and (10), the relevant date is 1st July 2003 and, for the purposes of section 72(7), the relevant period ends on 29th July 2003 or the date 28 days after notice has been given under section 72(6), whichever is the later.
240. This section applies where the conditions of paragraphs (a) and (b) of subsection (1) are complied with.
241. Paragraph (a) is complied with where a limited partnership is the tenant of a 1991 Act tenancy where the lease constituting the tenancy was entered into before this section came into force (i.e. on 22nd May 2003).
242. Paragraph (b) is complied with where the limited partnership comprises at least one limited partner of a type representing the landlord's interests. A partner who represents the landlord's interests is defined as being the landlord, an associate of the landlord (section 70(8), read with section 71, identifies when a person is an associate of the landlord for the purposes of this section and section 70), or a partnership or company in which the landlord has a relevant interest (section 70(7) identifies when a landlord has a relevant interest in a partnership or company for the purposes of this section and section 70).
243. Where paragraphs (a) and (b) of subsection (1) are complied with this section confers the following rights on any general partner of the limited partnership (see subsection (12) for the meaning of "general partner"). First, it confers on any such general partner the right to exercise or enforce, as if tenant in their own right, any right of a tenant under Part 2 (tenant's right to buy land) of the 2003 Act (see subsection (2)). The right to buy under Part 2 can only be exercised where the owner is proposing to transfer land (unless the transfer is of a type that does not require notice under section 27, in which case the right to buy does not apply). Where land is valued for the purposes of a person exercising a right to buy under section 72, section 35 must be taken into account as well as section 34.

*These notes relate to the Agricultural Holdings (Scotland) Act
2003 (asp 11) which received Royal Assent on 17 April 2003*

244. Second, this section makes provision for general partners to become tenant of the tenancy in their own right in certain cases where a limited partner representing the landlord's interests (i.e. of the type specified in subsection (1)(b)) purports to terminate the tenancy by dissolving the partnership by serving a notice, or by renouncing or breaching the tenancy (see subsection (3)). Where any of those steps are taken on or after 16th September 2002 but before the relevant date, 1st July 2003, general partners can become tenant of the tenancy in their own right by serving notice in accordance with subsection (6), subject to two safeguards for landlords in such circumstances.
245. The first safeguard is that, in any case where a general partner gives notice under subsection (6) the landlord may, in accordance with subsection (7), apply to the Land Court before 29th July 2003 or the date 28 days after notice given by the general partner under subsection (6), whichever is the later, for an order that subsection (6) does not apply. The effect is that the tenancy is terminated and the general partner cannot become tenant in their own right. The Court may only make such an order where satisfied that the step specified in subsection (3) was taken other than for the purposes of depriving any general partner of a right deriving from this section.
246. The second safeguard is that, where the step taken was service of notice of dissolution of the partnership then subsection (6) is disapplied where the notice was served before 4th February 2003 by a limited partner of the type specified in subsection (1)(b), the partnership was dissolved in accordance with that notice and the land comprised in the lease has been transferred or let, or is to be transferred or let under, respectively, missives concluded, or a lease entered into, before 7th March 2003 (see subsection (5)).
247. Where a tenancy continues to have effect by virtue of notice given under subsection (6) and any of the steps specified in subsection (3) are taken after the relevant date, 1st July 2003, then section 73 applies (see subsection (10)).