

# **AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

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

##### ***Section 70: Rights of certain persons where tenant is a partnership***

231. This section applies where the conditions of subsections (1) and (2) are complied with.
232. Subsection (1) is complied with where a partnership is tenant of an SLDT, an LDT or a 1991 Act tenancy where the lease constituting that tenancy was entered into on or after this section came into force, namely 27<sup>th</sup> November 2003.
233. Subsection (2) is complied with where the partnership comprises at least one partner of a type representing the landlord's interests (see subsection (2)(a)) and at least one other partner who does not (see subsection (2)(b)).
234. Partners who represent the landlord's interests are defined in subsection (2)(a) as being the landlord, an associate of the landlord (subsection (8), read with section 71, identifies when a person is an associate of the landlord for the purposes of this section and section 72), or a partnership or company in which the landlord has a relevant interest (subsection (7) identifies when a landlord has a relevant interest in a partnership or company for the purposes of this section and section 72)).
235. Where both subsections (1) and (2) are complied with, then section 70 confers the following rights upon partners who do not represent the landlord's interests (i.e. the type specified in subsection (2)(b)). First, subsection (3) confers upon them the right to exercise or enforce, as if tenant in their own right, any right of a tenant under the 2003 Act and the 1991 Act.
236. Second, subsection (6) confers upon them the right to become tenant under the tenancy in their own right in circumstances where subsection (5) applies. This occurs where the tenancy is purportedly terminated as a consequence of dissolution of the partnership in accordance with the partnership agreement or due to the actings of, or renunciation or breach of the tenancy by, a partner of the type specified in subsection (2)(a).
237. Subsection (9) provides the means for the scope of subsections (7) and (8) to be modified as necessary by statutory instrument. Any such instrument would be by affirmative resolution.

##### ***Section 71: Meaning of "family"***

238. Subsections (1) to (3) of this section define the meaning of "family", as used in assessing the relationship of partners within a limited partnership to the landlord (section 70(8)(d) refers). Ministers may modify these subsections by order, by virtue of subsection (4). Any such instrument would be by affirmative resolution.

**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 22<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> July 2003 and, for the purposes of section 72(7), the relevant period ends on 29<sup>th</sup> 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 22<sup>nd</sup> 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.
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 16<sup>th</sup> September 2002 but before the relevant date, 1<sup>st</sup> 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 29<sup>th</sup> 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

4<sup>th</sup> 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 7<sup>th</sup> 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, 1<sup>st</sup> July 2003, then section 73 applies (see subsection (10)).

### ***Section 73: Termination of tenancy continued under section 72***

248. **Section 73** applies where any of the steps specified in section 72(3) are taken after the relevant date, 1<sup>st</sup> July 2003 (see the [Agricultural Holdings \(Relevant Date and Relevant Period\) \(Scotland\) Order 2003 \(S.S.I. 2003/294\)](#)), and the tenancy continues to have effect by virtue of a general partner having given notice under section 72(6) (see section 72(10)). Its effect is to ensure that a general partner obtains in most circumstances a guaranteed notice period before they are required to quit the land.

249. Such a tenancy can only be terminated by the landlord first intimating the intention to terminate the tenancy (under subsection (5)) and then serving a notice to quit (under subsection (4)). Subsections (5) and (4) regulate the periods of, respectively, intimation and notice required, although the minimum period in each case can be reduced by the Land Court on application of the landlord (see subsections (6) and (7)). The Land Court may only make such an order if satisfied that the step specified in section 72(3) was taken other than for the purposes of depriving any general partner of a right deriving from section 72 and that it is reasonable to make the order.

250. Subsections (4) and (5) require that the landlord must serve upon the tenant a notice to quit as if the tenancy were an LDT. The provisions therefore closely mirror section 8(4) and (5) of the 2003 Act. Intimation of intention to terminate the tenancy must be given in writing by the landlord to the tenant not less than 2 years nor more than 3 years before expiry of the stipulated endurance of the tenancy or expiry of the period of continuation of the tenancy, where the tenancy is continuing by tacit relocation. The notice to quit cannot be given until a minimum of 90 days have elapsed after intimation is given under subsection (4). Notice to quit must be given in writing and state that the tenant must quit the land on the expiry of the stipulated endurance of the lease or expiry of the period of continuation of the lease, where the lease is continuing by tacit relocation. The notice to quit must be given not less than 1 year nor more than 2 years before the expiry of the stipulated endurance of the lease or expiry of the period of continuation of the lease, where the lease is continuing on tacit relocation.

### ***Section 74: Application of right to buy provisions***

251. **Section 74** enables the Scottish Ministers to modify the application of Part 2 (tenant's right to buy land) of the 2003 Act insofar as it applies to partnerships who are tenants and to general partners and to make such further provisions in relation to such partnerships and general partners as they consider expedient. Such modifications may be made by regulations subject to affirmative resolution procedure.