

# AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### INTRODUCTION

#### **Part 7: Jurisdiction of the Land Court and the Resolution of Disputes**

##### *Section 75: Jurisdiction of the Land Court*

252. This section abolishes the present compulsory arbitration jurisdiction over questions between the landlord and tenant of an agricultural holding. A new section 60 of the 1991 Act is substituted to confer jurisdiction on the Land Court to determine such matters as are described in new section 60(2) and (3). This means that the Land Court will become the primary forum for the resolution of agricultural holdings disputes.
253. A wide jurisdiction is conferred on the Court, including any question as to whether a landlord and tenant relationship exists or whether the subject of that relationship is an agricultural holding – see section 60(2)(a) of the 1991 Act. In addition, an application can be made to the Land Court for its opinion on questions of law or fact relating to any type of agricultural tenancy or agriculture- see section 60(2)(d). Certain specific exceptions to the Land Court’s jurisdiction are listed in section 60(4). Jurisdiction over such matters remains with the sheriff court and the Court of Session.
254. [Section 60\(6\)](#) sets out who can apply to the Land Court for such a determination. In contrast to the present position under the 1991 Act, either party to a tenancy of an agricultural holding may refer a relevant matter to the Land Court for determination without the consent of the other party. Subsections (7) and (8) clarify the definition of “landlord” and “tenant” in matters of jurisdiction. The existing specific jurisdictions of the Land Court are preserved by virtue of section 60(9).
255. Section 60 of the 1991 Act requires to be read in conjunction with the parties' rights to refer matters to arbitration or any other means of determination they elect under new section 61(1) of the 1991 Act, substituted by section 76 of the 2003 Act .

##### *Section 76: Arbitrations etc.*

256. This section replaces the present procedure for the resolution of agricultural holdings disputes under the 1991 Act by compulsory arbitration. New sections 61, 61A and 61B are substituted for section 61 of the 1991 Act.
257. The Land Court has a very broad jurisdiction in agricultural disputes under the 1991 Act. Where jurisdiction to make a determination is not reserved to the Land Court under section 61(2), at or after the time when a dispute arises, a landlord and tenant may agree to refer a matter that could be determined by the Land Court under the 1991 Act to arbitration – see section 61(1). Alternatively, in such cases the parties can agree to select any other competent method of determination under section 61(3). Arbitration or alternative methods of dispute resolution are only permitted by way of a joint reference. Neither party can be required to submit to any procedure.

258. Schedule 7 to the 1991 Act (which sets out arbitration procedure) is repealed – see paragraph 40 of the Schedule. In its place section 61A makes general provision for the procedure to be followed at an arbitration under section 61(1). The parties are given a wide discretion to determine the procedure by which the arbitration is to be conducted, through section 61A(4). In the absence of any direction by the parties, the arbiter may determine the procedure. That discretion is however limited to matters of procedure. Neither the parties nor the arbiter may disapply any substantive provisions of the legislation which specify how an award is to be made – see section 61A(5).
259. Once the parties have agreed to refer a matter to arbitration, they lose their right to have the matter determined by the Land Court (at first instance) or by any other means – see section 61A(2). The parties may choose to submit their dispute to a single arbiter or to two arbiters (with or without an oversman) – section 61A(3) refers. The Arbitration (Scotland) Act 1894 will apply to arbitrations under section 61(1). Under sections 2 and 3 of the 1894 Act, the sheriff or the Court of Session may appoint an arbiter in the event of a failure of the parties to agree the nomination of a single arbiter, or in the case of a reference to two arbiters, of one party to nominate an arbiter. Section 4 of the 1894 Act provides that in a reference to more than one arbiter, unless the submission otherwise provides, the arbiters may appoint an oversman to determine the reference in the event of their failure to agree. The sheriff or the Court of Session may appoint such an oversman in the event of a dispute.
260. The existing rights of appeal against an arbiter's determination under the 1991 Act (to the Land Court under section 61(2) and by stated case to the sheriff under paragraph 20 of Schedule 7) are repealed. The right of appeal to the Court of Session under section 3 of the Administration of Justice (Scotland) Act 1972 is displaced by section 61A(6) which provides a right of appeal to the Land Court against an arbiter's determination on questions of law only. Such an appeal must be lodged within 28 days. Section 61A(6) also sets out the powers available to the Land Court in determining such an appeal. The decision of the Land Court is final – see section 72(2) of the 2003 Act.
261. In order to prevent the parties from circumventing the Land Court's jurisdiction by contractual provision in their lease or ancillary agreements, an anti-avoidance measure is contained in section 61B. Any contractual provision, whether in a lease or other agreement, which restricts a landlord's or tenant's right to apply to the Land Court for a reference to arbitration or other determination is null and void. This does not prejudice the right of the parties to choose that a dispute is determined by arbitration, on or after the time when the matter arises, within the scope of section 61(1).

### ***Section 77: Resolution of disputes by Land Court***

262. This section confers jurisdiction on the Land Court to hear and determine disputes in relation to SLDTs, LDTs and leases for grazing and mowing under section 3 of the 2003 Act. The extent of the Land Court's jurisdiction is set out in subsections (1), (2), (4) and (6). Certain specific exceptions to the Land Court's jurisdiction are listed in subsection (3). Jurisdiction over such matters remains with the sheriff court and the Court of Session. Either the landlord or the tenant may apply unilaterally to the Land Court or they may apply jointly – see subsection (5). Any specific Land Court jurisdictions in relation to such leases are preserved by subsection (7).

### ***Section 78: Agreement to refer matters to arbitration***

263. Except where the jurisdiction of the Land Court is reserved under subsection (2), at or after the time when a dispute arises, a landlord and tenant may agree to refer a matter that could be determined by the Land Court under the 2003 Act to arbitration or any alternative method of determination under subsection (1). An anti-avoidance measure is contained in section 81.

***Section 79: Arbitration: procedure etc.***

264. This section provides for the procedure to be followed in an arbitration under section 78(1)(a). The provisions are identical to those applied to an arbitration under section 61(1) of the 1991 Act by section 76 of the 2003 Act and section 61A. Section 79(4) clarifies for the avoidance of doubt that only the Land Court's powers of consideration and determination extend to an arbiter.

***Section 80: Other provisions as to the resolution of disputes***

265. This section applies certain provisions of the 1991 Act to the resolution of disputes relating to SLDTs, LDTs and grazing or mowing lets under section 3 of the 2003 Act.
266. Subsection (1) applies section 62 of the 1991 Act to any claim arising on the termination of a SLDT, LDT or lease for grazing or mowing under section 77(2)(c) of the 2003 Act. Section 62 of that Act sets out time limits within which claims must be intimated and an application to the Land Court made under section 77(4) or a reference to arbitration or other determination made under section 78(1) of the 2003 Act.
267. Subsection (2) applies section 65 of the 1991 Act to an award or agreement made under the 2003 Act. Section 65 of that Act makes provision for the recording of such an award for execution in the Books of Council and Session (a public register for deeds and documents) or sheriff court books for the purposes of enforcing the award or agreement.
268. Subsection (3) applies the Land Court's power under section 66 of the 1991 Act to modify the terms of a demand by a landlord that the tenant remedy a breach of the terms of the lease, to a determination of the Court under the 2003 Act.

***Section 81: Clauses in leases as to resolution of disputes***

269. This section is an anti-avoidance measure. It prevents the parties to an SLDT, LDT or lease for grazing or mowing from restricting their right to refer relevant disputes to the Land Court for determination. Any contractual provision that attempts to do so, except a valid reference to arbitration or other determination under section 78(1) of the 2003 Act, is of no effect.

***Section 82: Amendment of the Scottish Land Court Act 1993***

270. This section amends the Scottish Land Court Act 1993. The general jurisdiction of the Court is set out in section 1(6) of that Act and includes jurisdiction over matters arising under the 1991 or 2003 Acts. Paragraph (a) repeals the reference to the Court's jurisdiction over 1991 Act matters in section 1(6) of the 1993 Act. The Court's extended jurisdiction set out in section 60 of the 1991 Act now applies in its place - see section 75 of the 2003 Act.
271. Paragraph (b) inserts a new section 1(7A) in the 1993 Act which disapplies the existing procedure for appeals from the Land Court to the Inner House of the Court of Session by way of special case in relation to the Court's jurisdiction over matters under the 1991 Act. (Section 88 of the 2003 Act makes separate provision for a right of appeal against determinations by the Land Court, save where the Land Court is acting as a court of appeal.)
272. Paragraph (c) amends the requirement for a review by the full Court of a matter determined by a single member or two members of the Court under the Land Court's power of delegation in paragraph 6(2) of Schedule 1 to the 1993 Act. A new subparagraph 6(3) is added to the Schedule, which permits the Court to direct that there will be no such review in matters relating to its jurisdiction under the 1991 and 2003 Acts.

**Section 83: Power to amend Land Court's jurisdiction**

273. This section gives the Scottish Ministers a power to modify the matters which may be determined by the Land Court or excluded from a joint reference to arbitration or other means of determination in relation to matters arising under the 1991 and 2003 Acts

**Section 84: Power of the Land Court to grant remedies etc.**

274. This section sets out the Land Court's powers to grant remedies in relation to cases concerning its jurisdiction under the 1991 and 2003 Acts.
275. Subsection (1) gives the Court a very broad general power to make orders and grant such remedies as it considers appropriate to give effect to the rights of the parties. The remedies listed are not exhaustive, but include the power to grant interdict, interim interdict, final and interim orders *ad factum praestandum* or orders of specific implement (both of which are orders to the parties to take specific action), orders of restitution (restoring property), reduction or rectification (the striking down or amendment of deeds).
276. Subsection (2) provides further details in relation to orders *ad factum praestandum* or orders of specific implement that relate to the landlord's obligations to the tenant in respect of fixed equipment. It obliges the Court to specify the date by which the landlord is to comply with the order and permits the Court to extend this time limit on the application of the tenant in certain circumstances. Failure by the landlord to comply with the order within this timescale enables the tenant to apply to the Land Court for an order under section 15A(3) of the 1991 Act (inserted by section 64 of this Act).
277. The Court may also grant the remedy of removal but only on the final determination of the case. It may not remove parties from the subjects of the tenancy in the interim. Instead, under subsection (3) the Court may order the parties to give financial or other guarantees before proceeding to hear the case.

**Section 85: Remit from Land Court to the sheriff or Court of Session**

278. The jurisdiction of the Land Court overlaps that of the Court of Session and the sheriff court. This section and section 70 make provision for the transfer of cases between the courts with a view to the matter being determined by the most suitable forum. Disputes between landlords and tenants of agricultural tenancies which concern non-agricultural matters or which affect third parties may be better dealt with by the ordinary courts.
279. Subsection (1) makes provision for the transfer of applicable cases (i.e. where the relevant court has concurrent jurisdiction) from the Land Court to the sheriff court or the Court of Session. Under subsection (2) the parties to any Land Court action or any interested third party may request that the Land Court remit the matter to the Court of Session, or that the Court of Session requires the Land Court to do so. The courts are given a wide discretion as to whether cases should be remitted - see subsections (1) and (3). The parties are not entitled to require that their case be remitted. Remits are at the discretion of the courts, the primary jurisdiction to remit lying with the Court of Session.

**Section 86: Remit to the Land Court by the sheriff or Court of Session**

280. Subsection (1) inserts a new subsection (2D) in section 37 of the Sheriff Courts (Scotland) Act 1971 which makes provision for the transfer to the Land Court of sheriff court cases which fall within the Land Court's jurisdiction under the 1991 or 2003 Acts. Such cases may be remitted either on the sheriff's own motion or on the motion of any party to the action where the sheriff considers it appropriate.
281. Subsection (2) empowers the Court of Session to transfer any case before it falling within the Land Court's jurisdiction to the Land Court. The Court may do so at its own instance or on the application of any party to the action if it considers it appropriate.

***Section 87: Transmission of case where contingency***

282. This section makes provision for the transfer of cases under the 1991 or 2003 Acts where the same subject matter is being litigated simultaneously in two jurisdictions (a contingency).
283. Subsection (1) applies to contingencies between the sheriff court and the Land Court and enables the Land Court to require that the sheriff court case be transmitted to the Land Court. Subsection (2) applies to contingencies between the Court of Session and the Land Court. It inserts a new subsection (3) in section 33 of the Court of Session Act 1988 which empowers the Court of Session to require that the Land Court case be transmitted to it in the event of such a contingency.

***Section 88: Appeal from Land Court to Court of Session***

284. This section makes provision for a right of appeal from the Land Court in relation to cases concerning matters within its jurisdiction under the 1991 or 2003 Acts. It replaces section 1(7) of the Land Court Act 1993 in relation to 1991 Act cases - see section 66 of the 2003 Act.
285. Subsection (1) provides that such appeals can only be made on questions of law and must be lodged within 28 days of the Land Court's decision. It also specifies the powers available to the Court of Session in disposing of such appeals. Subsection (2) provides that there is no right of appeal to the Court of Session where the Land Court was acting as a court of appeal. Subsection (3) provides that there is no further appeal from the decision of the Court of Session.

***Section 89: Expenses in sheriff court and Court of Session***

286. [Section 73](#) makes express provision for the award of expenses in the sheriff court and Court of Session in cases which could have been determined by the Land Court under the 1991 or 2003 Acts. In addition to any other rules that apply, that fact must be taken into account in determining the award of expenses.

***Section 90: Conduct of arbiter and setting aside of arbiter's award***

287. This section transfers the existing jurisdiction of the sheriff to remove an arbiter or set aside the arbiter's award in relation to arbitrations under the 1991 or 2003 Acts to the Land Court. The Court of Session's common law jurisdiction over such matters is unaffected. Under subsection (1) any interested party may apply to the Land Court where an arbiter has misconducted himself or herself or the arbitration has been improperly procured. In either case, under subsection (2) the Court can set aside the award. Where the arbiter has misconducted himself or herself, the Court may remove them.