
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”) to remove the incompatibility, arising from section 72(10) of that Act, with a Convention right.

Section 72(6) of the 2003 Act provides that if a landlord sought to bring an agricultural tenancy to an end by dissolving a limited partnership on or after 16th September 2002, then the tenancy continues in existence with the non-landlord partner, known as the general partner, as tenant in his or her own right (if the general partner gives notice that this is intended to happen). Section 73 of the 2003 Act is a counterpart to section 72(6). It entitles the landlord to bring the tenancy to an end by service of a notice to quit at a time of the landlord’s own choosing. However section 72(10) qualifies this position and provides that section 73 does not apply to landlords who served the dissolution notice between 16th September 2002 and 30th June 2003.

The Supreme Court in a judgement dated 24th April 2013, *Salvesen v Riddell* [2013] UKSC 22, held that the difference in treatment between those landlords who served a dissolution notice between 16th September 2002 and 30th June 2003 and those landlords who served notices on or after 1st July 2003 was unfair and disproportionate and did not pursue an aim that was reasonably related to the aim of the legislation as a whole. It therefore made a finding that section 72 (10) of the 2003 Act violated art. 1 of the First Protocol to the European Convention on Human Rights and that the provision was outside the legislative competence of the Scottish Parliament. The Supreme Court made an order under section 102(2)(b) that the effect of the finding should be suspended for 12 months or such shorter period as may be necessary to correct the defect. The 12 month period expires on 23rd April 2014.

In order to remove the incompatible effect of section 72(10) this Order inserts a new section (section 72A) into the 2003 Act. This applies section 73 unless the tenancy is a relevant tenancy (section 72A(1)). Where the tenancy is a relevant tenancy, section 73 only applies, other than in prescribed circumstances, where the landlord has given an application notice within 12 months from 28th November 2014 (section 72A(2)).

The prescribed circumstances (section 72A(3)) are where the landlord’s interest has been purchased after the section 72(6) notice was given and at a time when it was no longer possible to make an order under section 72(8) that section 72(6) does not apply and has never applied.

Section 72A(1) applies section 73 to those cases where there is an ongoing application to the Scottish Land Court under section 72(8) but, by virtue of article 3, in these cases the Land Court has a discretion on disposal of these ongoing applications including, but not limited to, specifying shorter periods of notice than in section 73(4) and (5) of the 2003 Act and specifying the date on which the tenancy is to be terminated. A landlord who has been given notice under section 72(6) in the 28 days prior to the coming into force of this Order will have 28 days from the date of notice to apply to the Land Court and have his or her case treated in the same way as ongoing applications.

Articles 4 and 5 make transitional and savings provisions.

Section 72 (4) and (5) are repealed as spent and section 72(7)-(11) are repealed with the effect that a tenancy operating by virtue of section 72(6) can no longer be effectively annulled under section 72(8) on application to the Land Court.