

# 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 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 Schedule 7 to the 1991 Act (which sets out arbitration procedure) is repealed – see paragraph 40 of the Schedule.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).