

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### *Schedule*

#### **Amendments to Enactments**

The 1991 Act

#### *Paragraphs 12, 14, 16, 21 – 34, 36, 37(c) and (d) and 45*

303. The amendments in paragraphs 12, 14, 16, 21 to 34, 37(c) and (d) and 45 are consequential on the amendments made by sections 59 and 60 of the 2003 Act.

#### *Paragraphs 13, 17 and 18*

304. The repeals in paragraphs 13, 17 and 18 are consequential on the amendments made to the 1991 Act by sections 75 and 76 of the 2003 Act.

#### *Paragraph 19*

305. Under section 20 of the 1991 Act a landlord can raise an action of removing in the sheriff court for non-payment of rent. This paragraph transfers jurisdictions over such actions from the sheriff court to the Land Court. The reference to sheriff court procedure in section 20 is therefore repealed. The form of procedure to be used in the Land Court will be regulated by the Land Court Rules.

#### *Paragraph 20*

306. This amendment clarifies that the scope of the notice to quit requirements within Part III of the 1991 Act is subject to sections 2 and 73 of the 2003 Act (relating to the conversion of a 1991 Act tenancy to an LDT and to the termination of tenancies with limited partnership tenants respectively).

#### *Paragraph 26*

307. The amendment in paragraph 26 is consequential on the amendments made to the 1991 Act by section 48 of the 2003 Act.

#### *Paragraph 35*

308. The repeal of sections 63 and 64 of the 1991 Act are consequential on the freedom of the parties to appoint an arbiter or arbiters under new section 61A of the 1991 Act.

***Paragraph 37(a)***

309. Section 68(1) of the 1991 Act defines sheep stock valuation. This amendment is consequential upon the extension of the jurisdiction of the Land Court to sheep stock valuations under section 75 of the 2003 Act and the repeal of sections 69 and 70 of the 1991 Act.

***Paragraph 37(b)***

310. A new section 68(1A) is inserted into the 1991 Act which applies the provisions of section 68 of that Act to the Land Court's determination of sheep stock valuations.

***Paragraph 37(e)***

311. Section 68(4) of the 1991 Act makes provision for the sheriff to set aside the arbiter's award where there is a failure to comply with the requirements of subsections (2) and (3). The repeal of this section is consequential on new section 61A(6) of the 1991 Act which provides for a right of appeal from the arbiter to the Land Court on questions of law.

***Paragraph 38***

312. Section 69 of the 1991 Act makes provision for the submission of questions of law in sheep stock valuations from the arbiter to the sheriff. This section is repealed and is consequential on section 61A(6) of the 1991 Act, which provides for a right of appeal from the arbiter to the Land Court on questions of law. Section 70(1) of the 1991 Act makes provision for the determination of sheep stock valuations by the Land Court instead of the manner provided for in the lease. The repeal of this sub-section is consequential on section 75 of the 2003 Act. Section 70(2) of the 1991 Act makes provision for the basis on which such determinations are to be made. The repeal of this sub-section is consequential on the amendments made to section 68 of that Act.

***Paragraph 39***

313. Section 71 of the 1991 Act makes provision for the submission of certain documents relating to sheep stock valuations. This amendment is consequential on the new section 61(1) of the 1991 Act.

***Paragraph 40***

314. Section 72(b) of the 1991 Act contains a specific definition of "arbiter" for the purposes of sheep stock valuations. Its repeal is consequential on the definition of "arbiter" in new section 61A(3) of the 1991 Act. The repeal of section 72(c) of the 1991 Act is consequential on paragraphs 37 to 39 of the schedule to the 2003 Act.

***Paragraph 41***

315. Section 80 of the 1991 Act makes provision for the determination of matters where the Scottish Ministers are a party to a lease. The repeal of section 80(2)(b) is consequential upon the abolition of the Scottish Ministers' role in relation to arbitration.

***Paragraphs 42 and 43***

316. The amendments to sections 85 and 86 of the 1991 Act are technical drafting amendments. The insertion of a definition for "enactment" ensures that the 1991 Act has regard to Acts of the Scottish Parliament and instruments made under such Acts.

**Paragraph 44**

317. Schedule 7 to the 1991 Act sets out the procedure to be followed in arbitrations under section 61(1) of the 1991 Act. The repeal of Schedule 7 is consequential on the new arbitration procedure set out in the new section 61A of the 1991 Act.

**Paragraph 46**

318. Schedule 9 to the 1991 Act makes provision for the method of sheep stock valuation in relation to leases entered into after 6 November 1946 but before 1 December 1986. The amendments to paragraph 1 of schedule 9 are consequential on sections 75 and 76 of the 2003 Act. Paragraph 4 of schedule 9 prescribes the method by which the Land Court is to determine the average price of certain stock in certain circumstances. It remains competent for the Land Court to determine such prices on the basis set out in paragraph 4, but only at the joint request of the parties. Where such a matter is submitted to the Court by one of the parties unilaterally, the valuation is to be carried out by the Court as valuer under paragraph 2 of Schedule 9.

**Paragraph 47**

319. Schedule 10 to the 1991 Act makes provision for the method of sheep stock valuation in relation to leases entered into on or after 1 December 1986. The amendments to paragraph 1 of schedule 10 are consequential on sections 75 and 76 of the 2003 Act. Paragraph 4 of schedule 10 prescribes the method by which the Land Court is to determine the average price of certain stock in certain circumstances. It remains competent for the Land Court to determine such prices on the basis set out in paragraph 4, but only at the joint request of the parties. Where such a matter is submitted to the Court by one of the parties unilaterally, the valuation is to be carried out by the Court as valuer under paragraph 2 of Schedule 10.