

*These notes relate to the Agricultural Holdings (Scotland) Act 2003 (asp 11) which received Royal Assent on 17 April 2003*

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### *Schedule*

#### **Amendments to Enactments**

[Sheriff Courts \(Scotland\) Act 1907 \(c.51\)](#)

#### *Paragraph 1*

294. Section 37 of the Sheriff Courts (Scotland) Act provides for standard notice to quit periods that are to apply to leases. This provision disapplies section 37 to SLDTs and LDTs. No notice to quit will be required in relation to SLDTs, while section 8 of the 2003 Act sets out the notice to quit procedure that is to apply to LDTs.

[Succession \(Scotland\) Act 1964 \(c.41\)](#)

#### *Paragraph 2*

295. Sections 20 to 23 of the 2003 Act set out how succession to SLDTs and LDTs is to operate. This paragraph contains amendments consequent to those provisions.

[Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c.35\)](#)

#### *Paragraph 3*

296. Paragraph 5 of Schedule 1 to the 1970 Act excludes an obligation created or imposed in relation to a 1991 Act tenancy from the types of land obligation which may be subject to variation or discharge by the Lands Tribunal for Scotland under section 1 of that Act. This amendment extends that exclusion to SLDTs and LDTs.

[Land Tenure Reform \(Scotland\) Act 1974 \(c.38\)](#)

#### *Paragraph 4*

297. Section 8(5) of the 1974 Act excludes 1991 Act tenancies from the application of Part II of that Act, whereby long leases are not to be used as a private dwellinghouse. This exclusion is also to apply to LDTs and SLDTs.

[Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981 \(c.59\)](#)

#### *Paragraph 5*

298. Section 13 of the 1981 Act provides that a non-entitled spouse may not apply for an order transferring a 1991 Act tenancy to them. This provision extends this exclusion to SLDTs and LDTs.

[Rent \(Scotland\) Act 1984 \(c.58\)](#)

### **Paragraph 6**

299. Section 25 of the 1984 Act includes a definition of “statutorily protected tenancy”, which excludes 1991 Act tenancies from the application of Part II of that Act on protection for the tenant against harassment and eviction without due process of law. This exclusion is extended to LDTs. Agricultural holdings law allows the landlord to apply conventional irritancy to the lease and, in so doing, evict the tenant. Section 18 of the 2003 Act allows a landlord and tenant to provide within the lease grounds that would allow an LDT or SLDT lease to be irritated and the tenant evicted. The Scottish Law Commission has recently consulted on the law relating to the irritancy of leases (*SLC Discussion Paper No. 117: Irritancy in Leases of Land*).

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73)

### **Paragraph 7**

300. Section 7(2) of the 1985 Act excludes an agricultural holding as a type of lease which may not be irritated, except in compliance with the provisions of that Act. The amendment extends the definition of “agricultural holding” to include SLDTs and LDTs.

Agriculture Act 1986 (c.49)

### **Paragraphs 9 & 10**

301. The amendments in paragraphs 9 and 10 are consequential on the amendments made to the 1991 Act by sections 75 and 76 of the 2003 Act. These replace compulsory arbitration under the 1991 Act with the extended jurisdiction of the Land Court (under the new section 60 of that Act) and the right to make a joint reference to arbitration or other method of determination (under the new section 61(1) of that Act).

### **Paragraph 10(1)**

302. Schedule 2 of the 1986 Act makes provision for the tenants' rights to compensation for milk quotas. Paragraph 7(2) of that Schedule specifies certain matters which are to be disregarded for the purposes of a review of rent under section 13 of the 1991 Act. This amendment reflects the replacement of the system of compulsory arbitration which applied to section 13 by the universal jurisdiction of the Land Court provided for in the new section 60 of the 1991 Act.

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.

**Tribunals and Inquiries Act 1992 (c.53)**

**Paragraph 48**

320. This amendment is consequential to repeal of section 64 and Schedule 7 of the 1991 Act by paragraphs 33 and 40 above. Schedule 1, Part 2, paragraph 46 to the 1992 Act made provision in relation to agricultural arbiters which is now obsolete.

**Crofters (Scotland) Act 1993 (c.44)**

**Paragraph 49**

321. Section 29(1) of the 1993 Act provides that a sub-tenant of a croft is not a 1991 Act tenant. Paragraph 45(a) extends this exclusion to SLDTs and LDTs.
322. Section 30(5) of the 1993 Act states that nothing in that Act shall affect the provisions of the 1991 Act in relation to payment to outgoing tenants of compensation for improvement. Paragraph 45(b) extends this to include the 2003 Act as well as the 1991 Act.

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323. Crofting landlords are permitted by paragraph 11 of Schedule 2 to the 1993 Act to enter onto a crofter's land for a range of purposes. Paragraph 45(c) ensures that the crofter's right to compensation for game damage in these circumstances relates to both the 1991 and 2003 Acts. The reference to determination by arbitration is removed, given the universal jurisdiction that the Land Court is to acquire in agricultural holdings disputes.

[Criminal Justice and Public Order Act 1994 \(c.33\)](#)

**Paragraph 50**

324. Section 106 of the 1994 Act makes provision excluding the provisions of the 1991 Act from applying to leases granted by the Scottish Ministers in relation to contracted out prisons. This amendment extends the scope of the exclusion to LDTs and SLDTs.

[Town and Country Planning \(Scotland\) Act 1995 \(c.8\)](#)

**Paragraph 51**

325. Section 35 details notification requirements relating to applications for planning permission. The amendment applies these provisions to LDTs and SLDTs as they apply to 1991 Act tenancies.

[Immigration and Asylum Act 1999 \(c.33\)](#)

**Paragraph 52**

326. Section 149 of the 1999 Act makes provision excluding the provisions of the 1991 Act from applying to leases granted by the Secretary of State in relation to immigration detention centres. This amendment extends the scope of the exclusion to LDTs and SLDTs.

The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references to the Official Report of the proceedings and the dates on which Committee Reports were published and the references to those Reports.

<i>Proceedings and Reports</i>	<i>Reference</i>
<b>Introduction</b>	
16 September 2002	SP Bill 62
<b>Stage 1</b>	
<i>(a) Rural Development Committee</i>	
25 <sup>th</sup> Meeting, 2002	29 October 2002, cols 3641-3688
26 <sup>th</sup> Meeting, 2002	5 November 2002, cols 2696-3745
27 <sup>th</sup> Meeting, 2002	12 November 2002, cols 3478-3783
29 <sup>th</sup> Meeting, 2002	19 November 2002, cols 3823-3845
<i>(b) Subordinate Legislation Committee</i>	
32 <sup>nd</sup> Meeting, 2002	19 November 2002, cols 1091-1095
33 <sup>rd</sup> Meeting, 2002	26 November 2002, cols 1105-1107
<i>(c) Stage 1 Report on the Agricultural Holdings (Scotland) Bill</i>	
13 <sup>th</sup> Report, 6 December 2002	SP Paper 712
<i>(d) Consideration by Parliament</i>	
19 December 2002	Cols 16111-16642

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<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
<b>Stage 2</b>	
<b><i>Rural Development Committee</i></b>	
1 <sup>st</sup> Meeting, 2003	7 January 2003, cols 4020-4024
2 <sup>nd</sup> Meeting, 2003	14 January 2003, cols 4026-4056
3 <sup>rd</sup> Meeting, 2003	21 January 2003, cols 4058-4106
4 <sup>th</sup> Meeting, 2003	28 January 2003, cols 4109-4134
5 <sup>th</sup> Meeting, 2003	4 February 2003, cols 4159-4233
<b>Stage 3</b>	
<b><i>Consideration by Parliament</i></b>	
12 March 2003	Cols 19243-19402
<b>Royal Assent</b>	
22 April 2003	