



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 7

JURISDICTION OF THE LAND COURT AND THE RESOLUTION OF DISPUTES

1991 Act tenancies

75 Jurisdiction of the Land Court

For section 60 (questions between landlord and tenant) of the 1991 Act there is substituted—

“60 Resolution of disputes by Land Court

- (1) The Land Court shall have jurisdiction to hear and determine any of the matters referred to in subsection (2) below.
- (2) Those matters are—
 - (a) whether a tenancy of an agricultural holding in relation to which this Act applies exists or has been terminated;
 - (b) any question or difference between the landlord and tenant of such a holding arising out of the tenancy or in connection with the holding, whether such question or difference arises during the currency of or on or after the termination of the tenancy;
 - (c) any claim by the landlord or tenant of such a holding against the other which arises, under this Act or under any rule of law, custom or agreement, on or out of the termination of the tenancy (or part thereof);
 - (d) any other issue of fact or law relating to—
 - (i) a tenancy of such a holding or any other type of agricultural tenancy; or
 - (ii) agriculture,which the landlord or tenant reasonably require to have resolved.
- (3) Such matters include, in particular (and without prejudice to the generality of subsection (2) above), any question or difference between the landlord and

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tenant arising in relation to Part 2 of the Agricultural Holdings (Scotland) Act 2003 (asp 11) except any question or difference of fact relating to the determination of the price payable by the tenant for the purposes of that Part of that Act.

- (4) Such matters do not include any question as to—
- (a) who is entitled to succeed to the estate of a deceased person on intestacy by virtue of the Succession (Scotland) Act 1964 (c. 41);
 - (b) the validity of—
 - (i) any bequest; or
 - (ii) any transfer,
 of an interest under the lease; or
 - (c) whether any such transfer is in the best interests of the estate of a deceased person.
- (5) The Land Court shall also have jurisdiction to hear and determine any question or difference, between the tenant and any person with whom he has in pursuance of section 10A(1) of this Act entered into a contract assigning his interest under the lease, which arises out of or in connection with the assignment.
- (6) Any application to the Land Court for a matter to be determined by the Court under this Act may be made by either party or by them jointly.
- (7) In the application of this section to any question or difference arising in relation to Part 2 of the Agricultural Holdings (Scotland) Act 2003 (asp 11), “landlord” shall be construed as including a creditor in a standard security with a right to sell land (that expression being construed by reference to that Part of that Act) which comprises or forms part of an agricultural holding.
- (8) Any reference in this section to a landlord or tenant of an agricultural holding shall be construed as including a person who was formerly the landlord or tenant thereof.
- (9) Any other provision of an enactment which provides for the determination of a matter by the Land Court is without prejudice to this section.”.

76 Arbitrations etc.

For section 61 (arbitrations) of the 1991 Act there is substituted—

“61 Agreement to refer matters to arbitration

- (1) Subject to subsection (2) below, where this Act makes provision for any matter to be determined by the Land Court, the matter may, if the landlord and tenant so agree at or after the time when the matter arises, instead of being so determined, be determined by arbitration.
- (2) Subsection (1) above does not apply in relation to any matter which may be determined by the Land Court—
 - (a) in pursuance of section 8(6), 11, 12, 22, 26, 32, 39, 41(1), 55(7) or 66(2) or (2A) of this Act; or
 - (b) on appeal.

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- (3) In this Act, other than in section 61A, “arbitration” includes any other method of resolving the matter; and “arbiter” shall be construed accordingly.

61A Arbitration: procedure etc.

- (1) This section applies to any arbitration to which a matter is referred by the landlord and tenant under section 61(1) of this Act.
- (2) The agreement of the parties to refer the matter to arbitration shall have the effect of depriving each party of his right to—
- (a) have the matter heard (or any issue in relation to the matter determined) by the Land Court (other than on appeal); and
 - (b) agree under section 61(1) of this Act to another method of resolving the matter.
- (3) It shall be for the landlord and tenant to agree whether the arbitration is conducted by—
- (a) a single arbiter; or
 - (b) two arbiters (with or without an oversman),
- and the arbiter or, as the case may be, each arbiter, may be appointed by the parties or by a person nominated by them.
- (4) The procedure to be followed at arbitration (including any matters to be taken into account by the arbiter and the matters to be contained in his award) shall, subject to subsection (5) below, be as the parties agree or, in the absence of such agreement, as the arbiter considers appropriate.
- (5) Any provision of this Act that would apply to the Land Court as respects its consideration or determination of any matter had the matter not been referred to arbitration shall apply as respects the consideration or determination of the matter by arbitration.
- (6) Any party to the arbitration may appeal to the Land Court against the arbiter’s award on a question of law within 28 days of the award; and in an appeal under this subsection the Court may—
- (a) quash, confirm or vary the award or any part of it; and
 - (b) where the Court quashes the award or any part of it—
 - (i) remit the case to the arbiter for further procedure; and
 - (ii) direct the arbiter on any question of law relevant to the case.

61B Clauses in leases as to resolution of disputes

Any term of—

- (a) a lease of an agricultural holding in relation to which this Act applies; or
- (b) any agreement in connection with such a lease (other than an agreement under section 61(1) of this Act),

that makes provision restricting any right of a landlord or tenant to apply to the Land Court under this Act to have a matter determined by the Court shall, in so far as it makes that provision, be null and void.”