



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 7

#### JURISDICTION OF THE LAND COURT AND THE RESOLUTION OF DISPUTES

##### *Jurisdiction of the Land Court: further provision*

#### 82 Amendment of the Scottish Land Court Act 1993

In the Scottish Land Court Act 1993 (c. 45)—

- (a) in subsection (6) of section 1 (the Land Court)—
  - (i) after the word “enactment” there is inserted “, or under the Agricultural Holdings (Scotland) Act 2003 (asp 11)”;
  - (ii) for the words “1993,” there is substituted “1993 or”;
  - (iii) the words “or the Agricultural Holdings (Scotland) Act 1991” are repealed; and
  - (iv) after “any” in the third place where it appears there is inserted “such”;
- (b) after subsection (7) of that section there is inserted—

“(7A) Subsection (7) above does not apply in respect of proceedings in connection with any matter which may be determined by the Land Court by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003.”; and
- (c) in Schedule 1 (the Land Court)—
  - (i) in sub-paragraph (2) of paragraph 6, after the word “shall” in the first place where it appears there is inserted “, subject to sub-paragraph (3) below”; and
  - (ii) after that sub-paragraph there is inserted—

“(3) There shall be no such review if the Court, when making a delegation in pursuance of this paragraph in relation to a matter before it in pursuance of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11), so orders.”.

### **83      Power to amend Land Court's jurisdiction**

The Scottish Ministers may by order modify (any or all)—

- (a) sections 77(2) and 78(2); and
- (b) sections 60(2) and 61(2) (which make provision as to the resolution of disputes) of the 1991 Act.

### **84      Power of Land Court to grant remedies etc.**

- (1) Where the Land Court has by virtue of the 1991 Act or this Act determined any matter, it may, in relation to the rights of any party, make such order or grant such remedy as it considers appropriate and, in particular, it may make or grant (any or all)—
  - (a) a decree of interdict (including an interim decree);
  - (b) an order *ad factum praestandum* or an order of specific implement (including in either case an interim order);
  - (c) an order of specific restitution;
  - (d) an order of reduction or rectification;
  - (e) an order of removal or ejection (but not an interim order);
  - (f) an order for damages or other substitutionary redress;
  - (g) a declarator.
- (2) Where the Land Court makes an order under subsection (1)(b) in relation to a failure of the landlord to fulfil any obligation the landlord has towards the tenant in respect of fixed equipment, the Court—
  - (a) must specify the date by which the landlord is to comply with the order; and
  - (b) may, following an application by the landlord, specify a later date (in place of the date specified under paragraph (a)) by which the landlord is to comply with the order if it is satisfied that the landlord intends to comply with the order but reasonably requires more time to do so.
- (3) Where a matter before the Land Court by virtue of the 1991 Act or this Act concerns the removal or ejection of the tenant from the land to which the tenancy relates, the Court may order the finding of caution, or the giving of such undertaking as the Court considers appropriate, in relation to any liability of the landlord or tenant to the other which may arise from the landlord or, as the case may be, tenant remaining on the land pending the Court's determination of the matter.

### **85      Remit from Land Court to sheriff or Court of Session**

- (1) Where—
  - (a) a matter is before the Land Court for determination by virtue of the 1991 Act or this Act; and
  - (b) an action in respect of the matter could competently have been brought before a sheriff or in the Court of Session,
 the Land Court may (at its own instance or following a request under subsection (2) (a) below) remit the case to the sheriff within whose jurisdiction the action could have been brought, or to the Court of Session, if it considers that to be appropriate.
- (2) Any person with an interest in a matter that is before the Land Court for determination under this Act may make an application—

- (a) to the Land Court requesting that it remit the matter to the Court of Session under subsection (1) above; or
  - (b) to the Court of Session craving it to require the Land Court so to remit the matter.
- (3) Where an application is made under subsection (2)(b) above, the Court of Session may require the Land Court to remit the matter to it if it considers that it would be appropriate for it to determine the matter.

## **86 Remit to Land Court by sheriff or Court of Session**

- (1) In the Sheriff Courts (Scotland) Act 1971 (c. 58), after subsection (2C) of section 37 (remits) there is inserted—
  - “(2D) In the case of any action in the sheriff court where the matter to which the action relates could competently be determined by the Land Court by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11), the sheriff may (of his own accord or on the motion of any of the parties) at any stage remit the case to the Land Court if he is of the opinion that it is appropriate to do so.”.
- (2) Where an action is before the Court of Session and the matter to which the action relates could competently be determined by the Land Court by virtue of the 1991 Act or this Act, it may (at its own instance or on the application of any party to the action) remit the case to the Land Court if it considers that to be appropriate.

## **87 Transmission of case where contingency**

- (1) The Land Court may, on an application by any of the parties, if it considers that there is contingency between a cause depending before the sheriff and a matter before the Court for determination by virtue of the 1991 Act or this Act, grant warrant to the clerk of the sheriff court for transmission of the case to the Land Court.
- (2) In the Court of Session Act 1988 (c. 36), after subsection (2) of section 33 (transmissions to Court on ground of contingency) there is inserted—
  - “(3) The Court may, on an application by any of the parties, if it is of the opinion that there is contingency between a matter before the Land Court for determination by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11) and a cause depending before the Court, grant warrant to the clerk of the Land Court for transmission of the case to the Court from the Land Court.”.

## **88 Appeal from Land Court to Court of Session**

- (1) Subject to subsection (2), any party to a matter determined by the Land Court by virtue of the 1991 Act or this Act may appeal to the Court of Session against the determination on a question of law within 28 days of the determination; and in an appeal under this section the Court of Session may—
  - (a) quash, confirm or vary the determination or any part of it; and
  - (b) where the Court quashes the determination or any part of it—
    - (i) remit the case to the Land Court for further procedure; and
    - (ii) direct the Land Court on any question of law relevant to the case.

- (2) A determination by the Land Court in an appeal may not be appealed against under subsection (1).
- (3) The decision of the Court of Session in any appeal made under subsection (1) is final.

## **89 Expenses in sheriff court and Court of Session**

Where the matter to which an action in the sheriff court or before the Court of Session relates could competently be or have been determined by the Land Court by virtue of the 1991 Act or this Act, the sheriff or, as the case may be, the Court must, without prejudice to any rule of law, take account of that fact in deciding what (if any) expenses to award.

## **90 Conduct of arbiter and setting aside of arbiter's award**

- (1) Any person with an interest in a matter determined by an arbitration to which section 61A of the 1991 Act applies or conducted by virtue of section 78(1)(a) of this Act who has reasonable grounds for believing that—
  - (a) the arbiter has misconducted himself during the course of the arbitration; or
  - (b) the arbitration has been improperly procured,may make an application to the Land Court for an order under subsection (2).
- (2) Where, on such an application, the Land Court is satisfied that—
  - (a) the arbiter has so misconducted himself, or the arbitration has been improperly procured, it may make an order setting aside the arbiter's award;
  - (b) the arbiter has so misconducted himself, it may make an order removing the arbiter.