

2003 No. 548 (C. 29)

LANDLORD AND TENANT

**The Agricultural Holdings (Scotland) Act 2003
(Commencement No. 3, Transitional and Savings Provisions)
Order 2003**

Made - - - - *12th November 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 91(2) and 95(3) and (4) of the Agricultural Holdings (Scotland) Act 2003(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Agricultural Holdings (Scotland) Act 2003 (Commencement No. 3, Transitional and Savings Provisions) Order 2003.

(2) In this Order “the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003.

Appointed day for certain provisions

2. 27th November 2003 is appointed as the day for the coming into force of the following provisions of the 2003 Act:—

- (a) Part 1 (agricultural tenancies);
- (b) in Part 2 of the 2003 Act (tenant’s right to buy land)—
 - (i) section 25(3) and (7) (notice of tenant’s interest, information prescribed and Keeper’s fee);
 - (ii) section 26(2) (form of notice of proposal to transfer land);
 - (iii) section 27(5) (modification of transfers not requiring notice);
 - (iv) section 28(5) (modification of right to buy in relation to creditors);
 - (v) section 34(6) (valuation guidance); and
 - (vi) section 36(7) (further provision for appointment and valuation etc.);
- (c) Part 3 (use of agricultural land: diversification);
- (d) Part 4 (compensation under agricultural tenancies);
- (e) Part 5 (miscellaneous amendments to the 1991 Act);
- (f) Part 6 (rights of certain persons where tenant is a partnership) insofar as not already in force;

- (g) Part 7 (jurisdiction of the Land Court and the resolution of disputes);
- (h) Part 8 (general provisions) insofar as not already in force; and
- (i) the Schedule.

Transitional and savings provisions

3. The Schedule to this Order has effect.

St Andrew's House,
Edinburgh
12th November 2003

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE

Article 3

Transitional and Savings Provisions

Lets approved by the Scottish Ministers

1. An approval of a lease of land by the Scottish Ministers under section 2(1) of the 1991 Act which has effect on 27th November 2003 shall continue to have effect until the expiry of that approval as if—

- (a) that section had not been repealed by section 1(3) of the 2003 Act; and
- (b) any other provisions of the 2003 Act which would have effect in relation to that land had not commenced.

Grazing or mowing lets

2.—(1) Any lease of land to which section 2(2)(a) of the 1991 Act applies on 27th November 2003 shall continue to have effect until the expiry of that lease as if—

- (a) that section had not been repealed by section 1(3) of the 2003 Act; and
- (b) section 3 of the 2003 Act and any other provisions of that Act which would have effect in relation to that land had not commenced.

(2) After the expiry of any lease to which paragraph (1) above applies, sections 1(3) and 3 of the 2003 Act shall apply in relation to the land under such a lease, notwithstanding any contract for successive leases of that land which has effect on 27th November 2003.

Interdict against or damages for cropping or disposal of produce

3. Where a landlord has raised proceedings before 27th November 2003 to—

- (a) obtain an interdict restraining the exercise of the right of a tenant to dispose of produce or practise a system of cropping under section 7(1) of the 1991 Act; or
- (b) recover damages under section 7(3)(b) of the 1991 Act,

those proceedings shall continue as if section 62 of the 2003 Act, and any other provisions of the 2003 Act which otherwise would have effect in relation to those proceedings, had not been commenced.

Record of condition, etc., of holding

4. Any record made before 27th November 2003 by a person appointed by the Scottish Ministers under section 8(3) of the 1991 Act shall be deemed to be a record made by such a person notwithstanding the amendment of that section by section 61(1) of the 2003 Act.

Notices to quit and notices of intention to quit

5.—(1) Where a landlord has applied for the consent of the Land Court under section 22 of the 1991 Act before 27th November 2003 that application shall be dealt with by the Land Court as if sections 65, 67(2) and 69 of the 2003 Act, and any other provisions of the 2003 Act which otherwise would have effect in relation to that application, had not been commenced.

(2) Where a tenant has served a notice of intention to quit under section 21(1) of the 1991 Act before 27th November 2003, that notice shall have effect in relation to the termination of the tenancy of that tenant as if section 67(2) of the 2003 Act and any other provisions of the 2003 Act

which otherwise would have effect in relation to the termination of that tenancy by virtue of that notice of intention to quit did not apply.

Compensation claims

6.—(1) Where a 1991 Act tenancy (within the meaning of the 2003 Act) has terminated before 27th November 2003, the provisions of the 2003 Act which would affect a claim for compensation on termination of that tenancy under Part IV or V of the 1991 Act shall not apply to such a claim.

(2) Where an entitlement to compensation has arisen under section 52(1) of the 1991 Act before 27th November 2003, notice in writing, together with the particulars, of that claim may be given by the tenant for the purposes of section 52(2)(b) of the 1991 Act as if that paragraph had not been amended by section 50(2) of the 2003 Act.

Ongoing arbitrations

7.—(1) Any question or difference arising between the landlord and tenant of an agricultural holding under section 60 of the 1991 Act in relation to which under paragraph 1 of Schedule 7 to the 1991 Act—

- (a) an arbiter has been appointed but no award has been made by 27th November 2003; or
- (b) an application by either party in writing for the purposes of that paragraph has been received by the Scottish Ministers before that date,

shall continue to be determined as if the provisions of the 2003 Act had not been commenced in relation to that question or difference.

(2) The repeal of section 63 of the 1991 Act by paragraph 35 of the Schedule to the 2003 Act shall not have effect for the purposes of the determination of any question or difference to which sub-paragraph (1) above applies.

Sheep Stock valuations

8. Any sheep stock valuation (within the meaning of section 68(1) of the 1991 Act) commenced before 27th November 2003, any question of law arising from such a valuation, or any determination by the Land Court of questions which fall to be decided by sheep stock valuation, which have not been determined, shall be determined as if paragraphs 37 to 40 of the Schedule to the 2003 Act and any other provisions of the 2003 Act which would have effect in relation to that determination had not been commenced.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings the Agricultural Holdings (Scotland) Act 2003 (“the Act”) into force on 27th November 2003, except for–

- Part 2 of the Act (tenant’s right to buy land) other than those provisions which allow the Scottish Ministers to make orders or regulations or issue guidance under that Part;
- the provisions already in force under Part 6 of the Act (rights of certain persons where tenant is a partnership); and
- the provisions already in force under Part 8 of the Act (general provisions).

The Act received Royal Assent on 22nd April 2003.

The Order also makes transitional and savings provision in relation to the amendments in the Act which affect agricultural holdings under the Agricultural Holdings (Scotland) Act 1991 (article 3 and the Schedule). Provision is made for things done under provisions of that Act relating to lets approved by the Scottish Ministers, grazing or mowing lets, interdict against or damages for cropping or disposal of produce, records of the condition of holdings, notices to quit and notices of intention to quit, compensation claims, ongoing arbitrations and sheep stock valuations.

The following provisions of the Act have been brought into force by commencement order made before the date of this Order–

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.S.I. No.</i> |
|---|-----------------------------|-------------------|
| s. 72 (partially); s. 70(7) and (8) (partially). | 22nd May 2003 | 2003/248 |
| s. 72(10); s. 73; s. 70(7) and (8) (partially). | 1st July 2003 | 2003/305 |

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