

DISPUTE RESOLUTION

Agricultural Tenancies 1991 Act Tenancy

JURISDICTION OF THE SCOTTISH LAND COURT

The Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”) shifted the primary jurisdiction for the resolution of disputes between landlords and tenants of agricultural holdings away from arbitration to the Scottish Land Court. In particular, the Land Court has jurisdiction to decide upon the following matters –

- whether or not a tenancy of an agricultural holding exists
- questions or differences between the landlord and the tenant arising out of the tenancy of an agricultural holding
- claims by landlords or tenants against the other arising out of the Agricultural Holdings (Scotland) Act 1991 or any rule of law, custom or agreement on or out of the termination of the tenancy
- any other issue of fact or law relating to an agricultural tenancy or agriculture which the landlord and tenant reasonably require to have resolved

It should also be noted that the Scottish Land Court also has primary jurisdiction in relation to sheep stock valuations.

REMEDIES OF THE SCOTTISH LAND COURT

The Scottish Land Court has the following remedies available to it –

- a decree of interdict (including an interim decree)
- an order *ad factum praestandum* or an order of specific implement (including an interim order)
- an order of specific restitution
- an order of reduction or rectification
- an order of removal or ejection
- an order for damages or substitutionary redress
- a declarator.

Before the 2003 Act came into force the party concerned had to go through an arbitration process to determine what it was which required to be done and then go to the ordinary courts for decree in order to obtain the right of enforcement. Now the whole process can be dealt with in the Scottish Land Court. This is likely to be an advantage to tenants seeking to enforce their rights against landlords. Under the previous regime, they were substantially discouraged by virtue of the time and cost of doing so.

An application to the Land Court for a decision can be made by either party or by them jointly.

The Agricultural Holdings legislation provides for the transfer of cases from and to the Scottish Land Court where there is concurrent jurisdiction. This will be either between the Scottish Land Court and the Court of Session or between the Scottish Land Court and the Sheriff Court (the Sheriff Court and the Court of Session are collectively referred to as "the ordinary courts").

Where there is contingency between a case in the Scottish Land Court and one of the ordinary courts then provisions exist for the case to be dealt with by one court. In determining which court deals with the matter a decision of the Scottish Land Court overrides the Sheriff Court and a decision of the Court of Session overrides the Scottish Land Court.

A general appeal from decisions of the Scottish Land Court to the Court of Session is permitted, but only on questions of law. The Court of Session may quash, confirm or vary a Scottish Land Court decision. Where the Court of Session has quashed a decision or any part of it, the case is referred back to the Scottish Land Court for further procedure, subject to the direction of the Court of Session on any question of law relevant to the case. A decision by the Scottish Land Court on appeal is final.

ARBITRATION

Whereas before the 2003 Act came into force the principal method of dispute resolution between landlord and tenant was by arbitration, this option is now only available if –

- the parties agree, and
- such agreement occurs at or after the time (but not before) the dispute arises.

The parties must agree whether the arbitration is carried out by one or two arbiters and the procedure to be followed. Prior to the 2003 Act coming into force, the legislation provided a procedure for arbitration which is no longer operative. It is, however, perfectly competent for the parties to adopt the former legislative procedure should they wish to do so.

Within 28 days of the arbiter's award either party may appeal to the Scottish Land Court on a question of law.

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