STATUTORY INSTRUMENTS

1978 No. 257

LANDLORD AND TENANT

The Agricultural Holdings (Arbitration on Notices) Order 1978

Made - - - -	*27th February* 1978
Laid before Parliament	*6th March* 1978
Coming into Operation	*7th April* 1978

The Lord Chancellor, in exercise of the powers conferred upon him by sections 5 and 11(6) of the Agricultural Holdings (Notices to Quit) Act 1977(**a**) and all other powers enabling him in that behalf and after consultation with the Council on Tribunals as required by section 10 of the Tribunals and Inquiries Act 1971(**b**) hereby makes the following Order:—

PART I: PRELIMINARY

Citation and commencement

1. This Order may be cited as the Agricultural Holdings (Arbitration on Notices) Order 1978 and shall come into operation on 7th April 1978.

Interpretation

2.—(1) In this Order, unless the context otherwise requires:—

"the 1948 Act" means the Agricultural Holdings Act 1948(**c**);

"the 1977 Act" means the Agricultural Holdings (Notices to Quit) Act 1977;

"Case B", "Case D" and "Case E" refer severally to the Cases set out and so named in section 2(3) of the 1977 Act;

"notice to remedy" means a notice served on the tenant of an agricultural holding for the purposes of Case D requiring him to remedy a breach of a term or condition of his tenancy;

"notice to do work" means a notice to remedy requiring the doing of any work of repair, maintenance or replacement;

(a) 1977 c. 12. (b) 1971 c. 62. (c) 1948 c. 63.

"termination", in relation to an arbitration, means the date on which the arbitrator's award is delivered to the tenant.

(2) Any reference in this Order to any enactment or instrument shall, unless the context otherwise requires, be construed as a reference to that enactment or instrument as amended, extended or applied by any other enactment or instrument.

(3) The Interpretation Act 1889(**a**) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

PART II: NOTICES TO DO WORK

NOTICES REQUIRING ARBITRATION

Notice where arbitration is available at the notice to remedy stage only

3.—(1) Where a tenant on whom a notice to do work has been served wishes to have determined by arbitration under the 1948 Act any of the following questions, namely—

(*a*) his liability under the terms or conditions of his tenancy to do any of the work specified in the notice;

(*b*) the deletion from the notice of any item or part of an item of work on the ground that it is unnecessary or unjustified; or

(*c*) the substitution, in the case of any item or part of an item of work, of a different method or material for the method or material which the notice would otherwise require to be followed or used,

he shall do so by service of a notice requiring the question or questions to be determined by arbitration under the 1948 Act.

(2) A notice under paragraph (1) shall be in writing, and shall be served on the landlord within one month after the service on the tenant of the notice to do work.

(3) A notice under paragraph (1) shall specify, as the case may be,—

(*a*) any items in respect of which the tenant denies liability;

(*b*) any items or parts of items which the tenant claims to be unnecessary or unjustified, and

(*c*) any method or material in respect of which the tenant desires a substitution to be made.

Notice on other questions or in other cases

4.—(1) Where the tenant on whom a notice to do work has been served wishes to have determined by arbitration under the 1948 Act any question arising under that notice other than or in addition to any of those specified in Article 3(1), he shall do so by serving on the landlord within one month after the service of the notice to do work a notice in writing requiring the question to be so determined.

(2) A tenant who has not required arbitration under Article 3(1) or

(a) 1889 c. 63.

paragraph (1) shall not be precluded from requiring arbitration under Article 9 in respect of any questions other than those specified in Article 3(1).

(3) Nothing in this Article shall preclude a tenant who has required arbitration under this Article and who has been found liable to comply with a notice to do work or with any part of it from subsequently requiring arbitration under Article 9 on the ground that, in consequence of anything happening before the expiration of the time for doing the work as extended by the arbitrator in pursuance of Article 6(2), it would have been unreasonable to require the tenant to do the work within that time.

POWERS OF ARBITRATOR

Power to modify notice

5. In addition to any powers otherwise available to him, an arbitrator may—

(*a*) in relation to any question specified in Article 3(1)(*b*), modify a notice to do work by deleting therefrom any item or part of an item of work specified in the notice as to which, having due regard to the interests of good husbandry as respects the agricultural holding to which the notice relates and of sound management of the estate of which that holding forms part or which that holding constitutes, the arbitrator is satisfied that it is unnecessary or unjustified, and

(*b*) in relation to a question specified in Article 3(1)(*c*), modify a notice to do work by substituting, in the case of any item or part of an item of work specified in the notice, a different method or material for the method or material which the notice would otherwise require to be followed or used where, having regard to the purpose which that item or part is intended to achieve, the arbitrator is satisfied that the last-mentioned method or material would involve undue difficulty or expense, that the first-mentioned method or material would be substantially as effective for that purpose, and that in all the circumstances the substitution is justified.

SUPPLEMENTARY

Extension of time for doing work

6.—(1) Where a tenant requires any question to be determined by arbitration under Articles 3 or 4, the time specified for doing the work which is the subject of the arbitration shall be extended until the termination of the arbitration.

(2) Where the arbitrator finds that the tenant is liable to comply with a notice to do work or with any part of it, he shall extend the time for doing that work by such further period as he thinks fit.

Date of termination of tenancy on failure to do work

7.—(1) Where the time specified for doing any work is extended under Article 6(2), the arbitrator may, either of his own motion or on the application

of the landlord made not later than fourteen days after the termination of the arbitration, specify a date for the termination of the tenancy by notice to quit in the event of the tenant's failure to do the work within the extended time.

(2) A date specified under paragraph (1) shall not be earlier than—

(*a*) the date on which the tenancy could have been terminated by notice to quit served on the expiration of the time originally specified in the notice to do work, or

(*b*) six months after the expiration of the extended time,

whichever is the later.

(3) Where the landlord applies to the arbitrator under paragraph (1) he shall at the same time give written notice of the application to the tenant (except where the application is made at the arbitration) and the tenant shall be entitled to be heard on the application.

(4) A notice to quit on a date specified under paragraph (1) shall be served on the tenant within one month after the expiration of the extended time, and shall (subject to any right to contest its effectiveness available to the tenant) be valid notwithstanding that it is served less than twelve months before the date on which the tenancy is to be terminated or that that date is not the end of a year of the tenancy.

Recovery of cost of work

8. Where, on an arbitration relating in whole or in part to the question specified in Article 3(1)(*a*), it appears to the arbitrator that the tenant has done work required by a notice to do work which he was under no obligation to do, the arbitrator shall determine the reasonable cost of such work, which shall be recoverable from the landlord by the tenant in accordance with section 71 of the 1948 Act.

PART III: NOTICES TO QUIT

ARBITRATION CONCERNING NOTICES TO QUIT

Notice requiring arbitration

9. Where it is stated in a notice to quit an agricultural holding or part thereof that the notice is given for one or more of the reasons specified in Case B, D or E, and the tenant wishes to contest any of the reasons so stated, he shall within one month after the service of the notice serve on the landlord notice in writing requiring the question to be determined by arbitration under the 1948 Act.

Service of counter-notice

10. Where there has been an arbitration under Article 9 in respect of a notice to quit which is capable of taking effect as a notice to quit to which section 2(1) of the 1977 Act applies and, in consequence of the arbitration, the notice to quit takes effect accordingly, the time within which a counter-notice may be served by the tenant on the landlord under that subsection shall be one month from the termination of the arbitration.

POSTPONEMENT OF OPERATION OF NOTICE TO QUIT

During arbitration

11. Where a tenant requires a question arising out of a notice to quit to be determined by arbitration under Article 9, the operation of the notice shall be suspended until the termination of the arbitration.

After arbitration or proceedings

12.—(1) Where—

(*a*) a notice to quit has effect in consequence of an arbitration under Article 9, or the Agricultural Land Tribunal has consented to the operation of the notice under the 1977 Act, and

(*b*) the notice would, but for the provisions of this Article, come into operation on or within six months after the termination of the arbitration, or the giving of the consent,

the arbitrator or the Tribunal may, either of his or their own motion or on the application of the tenant made not later than fourteen days after the termination of the arbitration or the giving of the consent, postpone the termination of the tenancy for a period not exceeding twelve months.

(2) Where the tenant applies to the arbitrator or the Tribunal under paragraph (1), he shall at the same time give written notice of the application to the landlord (except where the application is made at the arbitration or at the hearing before the Tribunal) and the landlord shall be entitled to be heard on the application.

EXTENSION OF TIME UNDER NOTICE TO REMEDY AFTER NOTICE TO QUIT

Extension by arbitrator

13. Where—

(*a*) notice to quit is stated to be given by reason of the tenant's failure to remedy a breach of any term or condition of his tenancy—

(i) within the time specified in a notice to remedy, or

(ii) within that time as extended by the landlord, or in pursuance of Article 6 or of this Article, and

(*b*) it appears to the arbitrator on an arbitration under Article 9 that, notwithstanding that the time originally specified or extended was reasonable, it would, in consequence of anything happening before the expiration of that time, have been unreasonable to require the tenant to remedy the breach within that time,

the arbitrator may treat the time as having been extended, or further extended, and may make his award as if the time had not expired; and where the breach has not been remedied at the date of the award, the arbitrator may extend the time by such period as he considers reasonable, having regard to the length of time which has elapsed since the service of the notice to remedy.

Termination of tenancy following extension

14.—(1) Where the time specified for doing any work is extended under Article 13, the arbitrator may, either of his own motion or on the application

of the landlord made not later than fourteen days after the termination of the arbitration, specify a date for the termination of the tenancy by a subsequent notice to quit in the event of the tenant's failure to do the work within the extended time.

(2) A date specified under paragraph (1) shall not be earlier than—

(*a*) the date on which the tenancy could have been terminated by the original notice to quit (that is, the notice which was the subject of the arbitration), or

(*b*) six months after the expiration of the extended time,

whichever is the later.

(3) Where the landlord applies to the arbitrator under paragraph (1), he shall at the same time give written notice of the application to the tenant (except where the application is made at the arbitration) and the tenant shall be entitled to be heard on the application.

(4) A notice to quit on a date specified under paragraph (1) shall be served on the tenant within one month after the expiration of the extended time, and, subject to paragraph (5), shall be valid notwithstanding it is served less than twelve months before the date on which the tenancy is to be terminated or that that date is not the end of a year of the tenancy.

(5) Where a subsequent notice to quit is given in accordance with paragraph (1) in a case where the original notice to quit included a statement in accordance with Case D to the effect that it was given by reason of the tenant's failure to comply with a notice to do work, then, if the tenant serves on the landlord a counter-notice in writing within one month after the giving of the subsequent notice to quit (or, if the date specified in that notice for the termination of the tenancy is earlier, before that date), the subsequent notice to quit shall not have effect unless the Agricultural Land Tribunal consent to the operation thereof.

(6) On an application made for the consent of the Tribunal under paragraph (5) on the part of the landlord, the Tribunal shall consent to the operation of the notice to quit unless in all the circumstances it appears to them that a fair and reasonable landlord would not insist on possession.

SUPPLEMENTARY

Notice to sub-tenants

15.—(1) Section 2(1) of the 1977 Act shall not apply where notice to quit an agricultural holding or part thereof is given to a sub-tenant by a tenant who has himself been given notice to quit that holding or part thereof and the fact that the tenant has been given such notice is stated in the notice given to the sub-tenant.

(2) Such a notice given to a sub-tenant shall have effect only if the notice to quit given to the tenant by the landlord itself has effect.

(3) Where a tenant accepts notice to quit part of a holding as notice to quit the whole under section 9 of the 1977 Act, then, for the purpose of this Article, the notice given by him shall be deemed to be a notice to quit the entire holding.

Service men

16.—(1) In any case to which, notwithstanding the existence of any such circumstances as are mentioned in the Cases set out in section 2(3) of the 1977 Act, subsection (1) thereof applies by virtue of the modification of that section by section 11(3) of that Act, the following provisions of this Article shall have effect.

(2) Where, on an application by the landlord for the consent of the Agricultural Land Tribunal to the operation of a notice to quit, it appears to the Tribunal that the notice to quit was given for one or more of the reasons specified in Case B, D or E, and that it is expedient that any question arising out of those reasons should be determined by arbitration between the landlord and tenant under the 1948 Act before the Tribunal consider whether to grant or withhold consent to the operation of the notice to quit, they may require that the question be determined accordingly.

(3) Article 9 shall apply with the addition of the following words:—

"so, however, that the tenant's failure to serve such a notice shall not affect his right to contest the reason in proceedings before the Agricultural Land Tribunal consequent upon the service of a counter-notice under section 2(1) of the 1977 Act or in any arbitration by which the Tribunal may require any question arising out of the reason to be determined."

(4) Article 10 shall not apply, but where a tenant requires a question to be determined by arbitration in pursuance of Article 9, the time within which a counter-notice under section 2(1) of the 1977 Act may be served by the tenant on the landlord under that subsection shall be one month from the termination of the arbitration.

PART IV: REVOCATION

Revocation of orders

17. The Agriculture (Notices to Remedy and Notices to Quit) Order 1964(**a**), and the Agriculture (Notices to Quit) (Miscellaneous Provisions) Order 1972(**b**) are hereby revoked, so, however, that those Orders shall continue to apply to notices to do work and notices to quit which have been served before the commencement of this Order, and to any proceedings relating to or consequent upon any such notices.

Elwyn-Jones, C.

Dated 27th February 1978.

(**a**) S.I. 1964/706. (**b**) S.I. 1972/1207.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order consolidates the Agriculture (Notices to Remedy and Notices to Quit) Order 1964, with amendments necessitated by section 5(1)(*f*) and (*i*) of the Agricultural Holdings (Notices to Quit) Act 1977 (originally enacted as sections 11 and 12(5) of the Agriculture (Miscellaneous Provisions) Act 1976). The new questions to be determined by arbitration are specified at Article 3(1)(*b*) and (*c*), and the corresponding powers of the arbitrator are conferred by Article 5. Article 14(5) and (6) confer fresh jurisdiction on the Agricultural Land Tribunal in accordance with section 5(1)(*i*) of the Act of 1977. The other amendments made by the Order are minor or consequential.

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