



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 1

#### AGRICULTURAL TENANCIES

### CHAPTER 1

#### TYPES OF TENANCY

##### *Tenancies under the 1991 Act*

## **1 Application of the 1991 Act to agricultural holdings**

- (1) This subsection applies where—
  - (a) a lease is entered into on or after the coming into force of this subsection; and
  - (b) the tenancy under the lease is a tenancy of an agricultural holding in relation to which the Agricultural Holdings (Scotland) Act 1991 (c. 55) (in this Act referred to as “the 1991 Act”) would have applied had the lease been entered into immediately before the coming into force of this subsection.
- (2) Where subsection (1) applies, the 1991 Act does not apply in relation to the tenancy (except in so far as this Act applies any provision of that Act to short limited duration tenancies or limited duration tenancies) unless the lease—
  - (a) is entered into in writing prior to the commencement of; and
  - (b) expressly states that the 1991 Act is to apply in relation to, the tenancy.
- (3) Section 2 (leases for less than year to year) of the 1991 Act is repealed.
- (4) Where, in respect of a tenancy of an agricultural holding—
  - (a) the lease is entered into before the coming into force of this subsection and the 1991 Act applies in relation to the tenancy; or
  - (b) the lease is entered into on or after the coming into force of this subsection and (by virtue of the conditions mentioned in paragraphs (a) and (b) of subsection (2) being fulfilled) the 1991 Act applies in relation to the tenancy,

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the tenancy under the lease is in this Act referred to as a “1991 Act tenancy”.

**Commencement Information**

**II** S. 1 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with [Sch.](#))

**2 Conversion from 1991 Act tenancy to limited duration tenancy**

- (1) The landlord and tenant under a 1991 Act tenancy may terminate the tenancy by agreement provided that—
  - (a) the agreement is—
    - (i) in writing and specifies the date on which the termination is to have effect; and
    - (ii) made not less than 30 days before that date; and
  - (b) subsection (2) is complied with.
- (2) This subsection is complied with if the landlord and tenant enter into a lease constituting a limited duration tenancy for a term of not less than 25 years which—
  - (a) comprises or includes the same land as that comprised in the tenancy being terminated under subsection (1); and
  - (b) has effect from the date on which the termination under that subsection has effect.
- (3) The landlord or tenant is entitled, at any time before the date on which the termination under subsection (1) has effect, to revoke (without penalty)—
  - (a) the agreement made under that subsection; and
  - (b) the lease mentioned in subsection (2),
 by giving notice in writing to the other of the revocation.
- (4) On termination of a 1991 Act tenancy under subsection (1), the tenant is entitled to—
  - (a) such compensation for improvements as the tenant would have been entitled to under Part IV (compensation for improvements) of the 1991 Act (or, as the case may be, under the lease); and
  - (b) such compensation as the tenant would have been entitled to under section 45A (compensation arising as a result of diversification and cropping of trees) of that Act,
 were the tenant quitting the holding at the termination of the tenancy.
- (5) Where a 1991 Act tenancy is terminated under subsection (1), section 21 (notice to quit and notice of intention to quit) of the 1991 Act does not apply in respect of the tenancy.

**Commencement Information**

**I2** S. 2 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with [Sch.](#))

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### *Leases for grazing or mowing*

#### **3 Leases for grazing or mowing**

- (1) This section applies to a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (whether or not the lease expressly so provides).
- (2) The tenancy is not to be constituted for a period of more than 364 days; and where the term of the tenancy has expired, the land may not be let for the same purpose to the same tenant before one clear day from the date of expiry of the tenancy has elapsed.

#### **Commencement Information**

**I3** S. 3 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

### *New types of tenancy*

#### **4 Short limited duration tenancies**

- (1) Where—
  - (a) agricultural land is let under a lease for a term of not more than five years;
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord; and
  - (c) the lease does not constitute—
    - (i) a 1991 Act tenancy; or
    - (ii) a tenancy to which section 3 applies,the tenancy under the lease is, by virtue of this subsection, a short limited duration tenancy.
- (2) Without prejudice to subsection (1), where the tenant remains in occupation of the land after the expiry of the term of a tenancy to which section 3 applies with the consent of the landlord, the tenancy continues to have effect as if it were for a term of—
  - (a) 5 years; or
  - (b) such period of less than 5 years as the landlord and tenant may agree to,and the tenancy is, by virtue of this subsection, a short limited duration tenancy.
- (3) Where the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of less than 5 years (including such a term fixed by virtue of subsection (2)) with the consent of the landlord, the tenancy continues to have effect as if it were for a term of—
  - (a) 5 years; or
  - (b) such period of less than 5 years as the landlord and tenant may agree to.
- (4) This subsection applies to a short limited duration tenancy where—
  - (a) the term of the tenancy has expired and the tenant has not remained in occupation of the land; or
  - (b) during the term of the tenancy, the landlord and tenant have terminated the tenancy by agreement.

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- (5) Where the landlord and tenant enter into a lease constituting a further short limited duration tenancy which—
- (a) comprises the same land as that comprised in the tenancy to which subsection (4) applies; and
  - (b) has effect less than one year from the expiry of the term of, or termination of, that tenancy,
- the expired period of the term of that tenancy counts as an expired period of the term of the further tenancy; but this is subject to subsection (3) of section 5.

#### Commencement Information

**I4** S. 4 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

## 5 Limited duration tenancies

- (1) Where—
- (a) agricultural land is let under a lease for a term of not less than [<sup>F1</sup>10] years;
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord; and
  - (c) the lease does not constitute a 1991 Act tenancy,
- the tenancy under the lease is, by virtue of this subsection, a limited duration tenancy.

[<sup>F2</sup>(2) Where—

- (a) at any time before the expiry of the term of a short limited duration tenancy, the landlord and tenant agree in writing to convert the tenancy to a limited duration tenancy; or
- (b) the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of 5 years (including such a term fixed by virtue of section 4(2) or (3)) with the consent of the landlord,

the tenancy has effect as if it were for a term of 10 years commencing at the start of the term of the short limited duration tenancy, and the tenancy is, by virtue of this subsection, a limited duration tenancy.]

- (3) Where subsection (5) of section 4 results in a short limited duration tenancy purporting to be for a term of more than 5 years, the tenancy has effect as if it were for a term of [<sup>F3</sup>10] years; and the tenancy is, by virtue of this subsection, a limited duration tenancy.
- (4) Without prejudice to subsections (2) and (3), where a lease constituting a tenancy of agricultural land, as described in paragraphs (b) and (c) of subsection (1), purports to be for a term of more than 5 years and less than [<sup>F3</sup>10] years, the tenancy has effect as if it were for a term of [<sup>F3</sup>10] years; and the tenancy is, by virtue of this subsection, a limited duration tenancy.

#### Textual Amendments

- F1** Word in s. 5(1)(a) substituted (22.3.2011) by [The Public Services Reform \(Agricultural Holdings\) \(Scotland\) Order 2011 \(S.S.I. 2011/232\)](#), arts. 1(1), [7\(1\)\(a\)](#) (with art. 10)
- F2** S. 5(2) substituted (22.3.2011) by [The Public Services Reform \(Agricultural Holdings\) \(Scotland\) Order 2011 \(S.S.I. 2011/232\)](#), arts. 1(1), [8](#) (with art. 10)

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**F3** Word in s. 5(3)(4) substituted (22.3.2011) by [The Public Services Reform \(Agricultural Holdings\) \(Scotland\) Order 2011 \(S.S.I. 2011/232\)](#), arts. 1(1), **7(1)(b)** (with art. 10)

#### Commencement Information

**I5** S. 5 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with Sch.)

### [<sup>F4</sup>5A Modern limited duration tenancies

- (1) Where—
- (a) agricultural land is let under a lease entered into on or after the coming into force of this section for a term of not less than 10 years,
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord, and
  - (c) the lease does not constitute a 1991 Act tenancy or a repairing tenancy,
- the tenancy under the lease is, by virtue of this subsection, a modern limited duration tenancy.
- (2) Where—
- (a) at any time before the expiry of the term of a short limited duration tenancy, the landlord and the tenant agree in writing to convert the tenancy to a modern limited duration tenancy, or
  - (b) the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of 5 years (including such a term fixed by virtue of section 4(2) or (3)) with the consent of the landlord,
- the tenancy has effect as if it were for a term of 10 years commencing at the start of the term of the short limited duration tenancy, and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.
- (3) Where subsection (5) of section 4 results in a short limited duration tenancy purporting to be for a term of more than 5 years, the tenancy has effect as if it were for a term of 10 years; and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.
- (4) Without prejudice to subsections (2) and (3), where a lease constituting a tenancy of agricultural land, as described in paragraphs (b) and (c) of subsection (1), purports to be for a term of more than 5 years and less than 10 years, the tenancy has effect as if it were for a term of 10 years; and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.
- (5) Section 5B does not apply to a modern limited duration tenancy created under subsection (2), (3) or (4).

#### Textual Amendments

**F4** Ss. 5A, 5B inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 85(3), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch.

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## **5B Modern limited duration tenancies: break clauses**

- (1) This section applies where the tenant under a lease constituting a modern limited duration tenancy is a new entrant to farming.
- (2) The lease may contain a provision that the tenancy may be terminated after 5 years in accordance with section 8D (a “break clause”).
- (3) The Scottish Ministers may by regulations make further provision about the tenants who are new entrants for the purposes of this section.]

### **Textual Amendments**

- F4** Ss. 5A, 5B inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 85\(3\)](#), [130\(1\)](#) (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#)

## **[<sup>F5</sup>5C Repairing tenancies: creation**

- (1) Where—
  - (a) agricultural land is let under a lease entered into on or after the coming into force of this section for a term of not less than 35 years,
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord,
  - (c) the lease does not constitute a 1991 Act tenancy,
  - (d) the lease requires the tenant, during the repairing period, to improve the land comprised in the lease in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry, and
  - (e) the lease expressly states that this section is to apply to the tenancy, the tenancy is, by virtue of this subsection, a repairing tenancy.
- (2) In this Part, the “repairing period” is the period, beginning with the commencement of the tenancy, of—
  - (a) 5 years, or
  - (b) such longer period—
    - (i) as the landlord and tenant may agree under this paragraph or, as the case may be, under subsection (3)(a), or
    - (ii) as the Land Court may determine under subsection (3)(b).
- (3) The repairing period may be extended at any time before its expiry—
  - (a) by the landlord and tenant by agreement, or
  - (b) by the Land Court on the application of either the landlord or the tenant.
- (4) On an application under subsection (3)(b), the Land Court may extend the repairing period—
  - (a) if it considers it appropriate in all the circumstances to do so, and
  - (b) by such period as it determines necessary in all the circumstances.
- (5) A lease constituting a repairing tenancy may contain a provision that the tenancy may be terminated in accordance with section 8G (a “break clause”).

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- (6) In this section and section 5D, what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

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**Textual Amendments**

- F5** Ss. 5C, 5D inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 92\(2\)](#), [130\(1\)](#) (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#)

**5D      Repairing tenancies: exemption from rules of good husbandry during repairing period**

- (1) Where a lease constituting a repairing tenancy does not include provision mentioned in subsection (2), such provision is incorporated.
- (2) The provision is that during the repairing period the tenant cannot be held liable for not farming the land comprised in the lease in accordance with the rules of good husbandry.]

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**Textual Amendments**

- F5** Ss. 5C, 5D inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 92\(2\)](#), [130\(1\)](#) (with [s. 128](#)); [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#)

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