



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 10

#### AGRICULTURAL HOLDINGS

### CHAPTER 5

#### RENT REVIEW

##### *1991 Act tenancies: rent review*

#### **101 1991 Act tenancies: rent review**

- (1) The 1991 Act is amended as follows.
- (2) For section 13 (variation of rent) substitute—

*“Rent review*

#### **13 Rent review**

Schedule 1A makes provision for review of the rent payable in respect of an agricultural holding.”.

- (3) After schedule 1 insert—

“SCHEDULE 1A  
(introduced by section 13)

RENT REVIEW

*Rent review: service of rent review notice*

- 1
- (1) The landlord of an agricultural holding to which this paragraph applies may initiate a review of the rent that is to be payable in respect of the holding by serving a notice in writing on the tenant of the holding.
  - (2) The tenant of such an agricultural holding may initiate such a review by serving a notice in writing on the landlord of the holding.
  - (3) A notice served under sub-paragraph (1) or (2) is a “rent review notice”.
  - (4) This paragraph applies to an agricultural holding in respect of which—
    - (a) the lease was entered into before 27 November 2003, or
    - (b) the lease—
      - (i) was entered into in writing on or after that date but prior to the commencement of the tenancy, and
      - (ii) expressly states that this Act is to apply in relation to the tenancy.

*Form and content of rent review notice*

- 2
- (1) A rent review notice must be dated and state the following—
    - (a) the names and designations of the landlord and the tenant of the agricultural holding,
    - (b) the name (if any) and the address of the holding or such other description of the holding as will identify it,
    - (c) the rent currently payable in respect of the holding,
    - (d) the rent that the person serving the notice proposes should be payable,
    - (e) the date by which the landlord and the tenant must reach agreement as to what the rent payable should be (the “rent agreement date”).
  - (2) The rent review notice must be accompanied by information in writing explaining the basis on which the rent proposed by the person serving the notice has been calculated.
  - (3) For the purposes of sub-paragraph (1)(e), the rent agreement date stated in the rent review notice must not fall—
    - (a) earlier than 12 months from the date on which the notice is served, or
    - (b) later than 2 years from that date.
  - (4) The Scottish Ministers may by regulations make further provision about—

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- (a) the form and content of rent review notices,
  - (b) the information that must or may accompany them.
- (5) Regulations under sub-paragraph (4) are subject to the negative procedure.

#### *Timing of rent review notice*

- 3 (1) A rent review notice may not be served under paragraph 1 if the rent agreement date stated in the notice would fall before the end of the period of 3 years beginning with the latest of—
- (a) the commencement of the tenancy,
  - (b) the date as from which a previous variation of rent (under paragraph 7(2)(a) or otherwise) took effect,
  - (c) the date as from which a previous determination under paragraph 7(2)(b) that the rent should continue unchanged took effect.
- (2) For the purposes of sub-paragraph (1)(b), the following are to be disregarded—
- (a) a variation of rent under section 14,
  - (b) an increase of rent under section 15(1),
  - (c) a reduction of rent under section 31,
  - (d) a variation of rent arising under—
    - (i) the exercise or revocation of an option to tax under schedule 10 of the Value Added Tax Act 1994, or
    - (ii) a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.

#### *Withdrawal of rent review notice*

- 4 (1) This paragraph applies where—
- (a) a rent review notice is served under paragraph 1,
  - (b) no agreement has been reached between the landlord and the tenant as to the rent that is to be payable in respect of the holding, and
  - (c) no determination has been made by the Land Court under paragraph 7(2) as to the rent that is to be payable in respect of the holding.
- (2) The person who served the rent review notice may withdraw it but only with the consent of the recipient of the notice.

#### *Termination of rent review notice*

- 5 A rent review notice ceases to have effect on the earliest of the following—
- (a) the date it is withdrawn,
  - (b) the date the landlord and the tenant reach agreement as to the rent that is to be payable in respect of the holding,
  - (c) where no referral is made to the Land Court under paragraph 6(2), the day after the rent agreement date,

- (d) where a referral is made to the Land Court under paragraph 6(2), the date on which the Land Court determines under paragraph 7(2) the question of what the rent payable in respect of the holding is to be.

*Referral of rent to the Land Court*

- 6 (1) This paragraph applies where—
- (a) a rent review notice is served under paragraph 1, and
  - (b) no agreement has been reached between the landlord and the tenant as to the rent that is to be payable in respect of the holding.
- (2) The landlord or the tenant of the holding may (whether the sender of the notice or not) refer the question of what the rent payable in respect of the holding should be to the Land Court.
- (3) The landlord or the tenant may not make such a referral after the rent agreement date.

*Powers of Land Court on referral under paragraph 6*

- 7 (1) This paragraph applies where a landlord or a tenant makes a referral to the Land Court under paragraph 6(2).
- (2) The Land Court must determine what the rent payable in respect of the holding is to be as from the rent agreement date and may—
- (a) vary the rent currently payable in respect of the holding, or
  - (b) determine that the rent should continue unchanged.
- (3) The rent that is to be payable in respect of the holding is the rent that the Land Court, taking account of all the circumstances, considers is the fair rent for the holding.
- (4) In determining the fair rent for the holding, the Land Court must have regard, in particular, to—
- (a) the productive capacity of the holding,
  - (b) the open market rent of any surplus residential accommodation on the holding provided by the landlord, and
  - (c) the open market rent of—
    - (i) any fixed equipment on the holding provided by the landlord, or
    - (ii) any land forming part of the holding, used for a purpose that is not an agricultural purpose.

*New rent to take effect from rent agreement date*

- 8 The rent agreed between the landlord and the tenant or, as the case may be, determined in accordance with paragraph 7 is to take effect from the rent agreement date.

*Productive capacity*

- 9 (1) The Scottish Ministers may by regulations make provision for the purposes of paragraph 7(4)(a) about the productive capacity of agricultural holdings, including—
- (a) how the productive capacity of an agricultural holding is to be determined,
  - (b) the information to be provided by the landlord and the tenant of a holding to the Land Court to enable the court to have regard to the productive capacity of the holding.
- (2) Regulations under sub-paragraph (1) are subject to the affirmative procedure.

*Surplus residential accommodation*

- 10 (1) Residential accommodation on an agricultural holding is surplus to the extent that it exceeds what is necessary to provide accommodation for the standard labour requirement of the holding.
- (2) In determining, for the purposes of paragraph 7(4)(b), whether residential accommodation is surplus the Land Court—
- (a) may take into account whether the standard labour requirement of the holding varies (seasonally or otherwise),
  - (b) must disregard —
    - (i) any accommodation all or part of which is occupied by the tenant of the holding,
    - (ii) any accommodation if the tenant is prohibited (by the lease or otherwise) from subletting it.
- (3) But any such prohibition as is mentioned in sub-paragraph (2)(b)(ii) is to be ignored if the tenant has sublet the accommodation by virtue of section 39(3) of the Agricultural Holdings (Scotland) Act 2003.
- (4) In having regard for the purposes of paragraph 7(4)(b) to the open market rent for any surplus residential accommodation, the Land Court—
- (a) must take into account all the circumstances, including—
    - (i) the condition of the accommodation and its location, and
    - (ii) where accommodation is occupied by a retired agricultural worker, under an arrangement or agreement between the landlord and the tenant of the holding, at no rent or at a rent that is below what the open market rent for that accommodation would otherwise be, that fact,
  - (b) where the accommodation is not currently let, must disregard that fact.
- (5) Where regard is had to the open market rent for surplus residential accommodation for the purposes of paragraph 7(4)(b), that accommodation is to be disregarded for the purposes of paragraph 7(4)(c).
- (6) The Scottish Ministers may by regulations make provision about the standard labour requirement of agricultural holdings, including—

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- (a) how the standard labour requirement of an agricultural holding is to be determined,
  - (b) the information to be provided by the landlord and the tenant of a holding to the Land Court to enable the court to determine the standard labour requirement of the holding.
- (7) Regulations under sub-paragraph (6) are subject to the affirmative procedure.

*Open market rent*

- 11 For the purposes of paragraphs 7(4) and 10(4)(a)(ii), the “open market rent” means the rent at which—
- (a) any surplus residential accommodation, or
  - (b) any fixed equipment or land used for a purpose that is not an agricultural purpose,
- might reasonably be expected to be let on the open market by a willing landlord to a willing tenant.

*Power of Land Court to phase in new rent*

- 12 (1) This paragraph applies where the Land Court determines under paragraph 7(2) that the rent payable in respect of an agricultural holding (the “new rent”) is to be—
- (a) 30% or more higher, or
  - (b) 30% or more lower,
- than the rent currently payable in respect of the holding (the “original rent”).
- (2) The tenant or the landlord may apply to the Land Court to have the new rent phased in.
- (3) The Land Court may, if it considers that it would cause the tenant or, as the case may be, the landlord undue hardship were the new rent to be payable from the rent agreement date, order that the new rent be phased in over a 3 year period in accordance with sub-paragraphs (4) to (6).
- (4) The rent payable in the first year after the rent agreement date is—
- (a) where sub-paragraph (1)(a) applies, the sum of the original rent and one third of the difference between the new rent and the original rent, or
  - (b) where sub-paragraph (1)(b) applies, the original rent less one third of the difference between the original rent and the new rent.
- (5) The rent payable in the second year after the rent agreement date is—
- (a) where sub-paragraph (1)(a) applies, the sum of the original rent and two thirds of the difference between the new rent and the original rent, or
  - (b) where sub-paragraph (1)(b) applies, the original rent less two thirds of the difference between the original rent and the new rent.
- (6) The rent payable from the third year after the rent agreement date is the new rent.

### *Interpretation*

- 13 In this schedule—
- “open market rent” has the meaning given by paragraph 11,
  - “rent agreement date” has the meaning given by paragraph 2(1)(e),
  - “rent review notice” has the meaning given by paragraph 1(3),
  - “surplus residential accommodation” has the meaning given by paragraph 10.”.

### *Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review*

## **102 Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review**

- (1) The 2003 Act is amended as follows.
- (2) In section 9 (review of rent under limited duration tenancies)—
- (a) in subsection (A1), after “tenancy” insert “, a modern limited duration tenancy or a repairing tenancy”,
  - (b) in subsection (1), after “tenancy” insert “or a modern limited duration tenancy”,
  - (c) after subsection (1) insert—
    - “(1A) The rent due as payable under a lease constituting a repairing tenancy is to be reviewed and determined in accordance with this section.”,
  - (d) for subsections (2) to (8) substitute—
    - “(2) The landlord may initiate a review of the rent that is to be payable under the lease by serving a notice in writing on the tenant.
    - (3) The tenant may initiate such a review by serving a notice in writing on the landlord.
    - (4) A notice served under subsection (2) or (3) is a “rent review notice”.
  - (e) the title of the section becomes “**Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies**”.
- (3) After section 9 insert—

### **“9A Form and content of rent review notice**

- (1) A rent review notice must be dated and state the following—
- (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the land comprised in the lease or such other description of the land as will identify it,
  - (c) the rent currently payable in respect of the land,
  - (d) the rent that the person serving the notice proposes should be payable,
  - (e) the date by which the landlord and the tenant must reach agreement as to what the rent payable should be (the “rent agreement date”).

- (2) The rent review notice must be accompanied by information in writing explaining the basis on which the rent proposed by the person serving the notice has been calculated.
- (3) The Scottish Ministers may by regulations make further provision about—
  - (a) the form and content of rent review notices,
  - (b) the information that must or may accompany them.

### **9B Determination of rent**

- (1) On review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having regard, in particular, to—
  - (a) the productive capacity of the land comprised in the lease,
  - (b) the open market rent of any surplus residential accommodation on the land provided by the landlord, and
  - (c) the open market rent of—
    - (i) any fixed equipment on the land provided by the landlord, or
    - (ii) any land comprised in the lease,
 used for a purpose that is not an agricultural purpose.
- (2) In this section and section 9C(4)(a)(ii), the “open market rent” means the rent at which—
  - (a) any surplus residential accommodation, or
  - (b) any fixed equipment or land used for a purpose that is not an agricultural purpose,
 might reasonably be expected to be let on the open market by a willing landlord to a willing tenant.
- (3) The Scottish Ministers may by regulations make provision for the purposes of this section about the productive capacity of land comprised in leases of limited duration tenancies, modern limited duration tenancies and repairing tenancies, including how the productive capacity of such land is to be determined.
- (4) The rent determined in accordance with this section is to take effect from the rent agreement date.

### **9C Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies: surplus residential accommodation**

- (1) Residential accommodation on land comprised in the lease of a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy is surplus to the extent that it exceeds what is necessary to provide accommodation for the standard labour requirement of the land.
- (2) In determining whether residential accommodation is surplus—
  - (a) whether the standard labour requirement of the holding varies (seasonally or otherwise) may be taken into account,
  - (b) any accommodation—
    - (i) all or part of which is occupied by the tenant, or



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- (ii) which the tenant is prohibited (by the lease or otherwise) from subletting,  
is to be disregarded.
- (3) But any such prohibition as is mentioned in subsection (2)(b)(ii) is to be ignored if the tenant has sublet the accommodation by virtue of section 39(3).
- (4) In having regard for the purposes of section 9B(1)(b) to the open market rent for any surplus residential accommodation—
  - (a) all the circumstances must be taken into account, including—
    - (i) the condition of the accommodation and its location, and
    - (ii) where accommodation is occupied by a retired agricultural worker, under an arrangement or agreement between the landlord and the tenant, at no rent or at a rent that is below what the open market rent for that accommodation would otherwise be, that fact,
  - (b) the fact that the accommodation is not currently let is to be disregarded.
- (5) Where regard is had to the open market rent for surplus residential accommodation for the purposes of section 9B(1)(b), that accommodation is to be disregarded for the purposes of section 9B(1)(c).
- (6) The Scottish Ministers may by regulations make provision about the standard labour requirement of land comprised in leases of limited duration tenancies, modern limited duration tenancies or repairing tenancies, including how the standard labour requirement of such land is to be determined.”.