



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 10

#### AGRICULTURAL HOLDINGS

### CHAPTER 6

#### ASSIGNATION OF AND SUCCESSION TO AGRICULTURAL TENANCIES

##### *Landlord's objection to tenant's successor*

#### **109 Objection by landlord to legatee or acquirer on intestacy**

- (1) The 1991 Act is amended as follows.
- (2) In section 11 (bequest of lease)—
  - (a) in subsection (1), for “subsections (2) to (8) below” substitute “ subsections (2) and (3) and to sections 12A to 12C ”,
  - (b) in subsection (2), after “this section” insert “ and in sections 12A to 12C ”,
  - (c) in subsection (3), for “subsection (4) below” substitute “ section 12A(2) or 12B(2) ”,
  - (d) subsections (4) to (7) are repealed,
  - (e) in subsection (8), “, or if the bequest is declared null and void under subsection (6) above,” is repealed.
- (3) In section 12 (right of landlord to object to acquirer of lease)—
  - (a) in subsection (1)—
    - (i) after “this section” insert “ and in sections 12A to 12C ”,
    - (ii) for “subsection (2) below” substitute “ section 12A(2) or 12B(2) ”,
  - (b) subsections (2) to (5) are repealed,
  - (c) the title of the section becomes “ **Transfer of lease on intestacy** ”.
- (4) After section 12 insert—

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**“12A Landlord's objection to legatee or acquirer on intestacy: near relative**

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is a near relative of the deceased.
- (2) The landlord may, within 1 month after the notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease.
- (3) The only grounds on which the landlord can object to receiving the person as tenant under the lease are the following—
  - (a) that the person is not of good character,
  - (b) that the person does not have sufficient resources to enable the person to farm the holding with reasonable efficiency,
  - (c) subject to subsection (4), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the holding with reasonable efficiency.
- (4) The ground of objection in subsection (3)(c) does not apply where the person—
  - (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under section 11(2) or 12(1), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.
- (5) If the landlord gives a counter-notice under subsection (2), the landlord may, within 1 month after the counter-notice is given, apply to the Land Court for an order—
  - (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease.
- (6) If, on the hearing of such an application, any ground of objection stated by the landlord is established to the satisfaction of the Land Court, it must make an order—
  - (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the court specifies.
- (7) In any other case, the Land Court must make an order declaring the legatee or, as the case may be, the acquirer to be the tenant under the lease and the lease to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.
- (8) Where the landlord does not apply to the Land Court under subsection (5)—
  - (a) the counter-notice ceases to have effect on the expiry of the period of 1 month mentioned in that subsection, and
  - (b) the lease is to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.

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### **12B Landlord's objection to legatee or acquirer on intestacy: other persons**

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is not a near relative of the deceased.
- (2) The landlord may, within 1 month after notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease and—
  - (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the landlord specifies, being a term at least 1 year but no more than 2 years from the date of the counter-notice.
- (3) If the landlord gives a counter-notice under subsection (2), the person may, within 1 month after the counter-notice is given, appeal to the Land Court.
- (4) If, on the hearing of such an appeal, any reasonable ground stated by the person—
  - (a) in the case of a legatee, for not declaring the bequest to be null and void,
  - (b) in the case of an acquirer, for not terminating the lease,is established to the satisfaction of the Land Court, it must make an order quashing the counter-notice.
- (5) In any other case, the Land Court must make an order confirming the counter-notice.

### **12C Landlord's objection to legatee or acquirer on intestacy: supplementary provision**

- (1) Pending any proceedings under section 12A or 12B, the legatee or acquirer is to have possession of the holding provided the executor in whom the lease is vested under section 14 of the Succession (Scotland) Act 1964 consents.
- (2) Subsection (1) does not apply where the Land Court, on the application of the landlord and on cause shown, directs otherwise.
- (3) In the case of a legatee, if the bequest is declared null and void—
  - (a) under section 12A(6)(a),
  - (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or
  - (c) by virtue of the Land Court confirming such a counter-notice on such an appeal,the right to the lease is to be treated as intestate estate of the deceased tenant in accordance with Part 1 of the Succession (Scotland) Act 1964.
- (4) In the case of an acquirer, if the lease is terminated—
  - (a) under section 12A(6)(b),
  - (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or

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(c) by virtue of the Land Court confirming such a counter-notice on such an appeal,

that termination is to be treated, for the purposes of Parts 4 and 5 of this Act (compensation), as termination of the acquirer's tenancy of the holding.

(5) But nothing in this section is to entitle the acquirer to compensation for disturbance.”.

(5) Section 25 (termination of tenancies acquired by succession) is repealed.

**Commencement Information**

**II** S. 109 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.S.I. 2017/299, regs. 5-14, by [S.S.I. 2017/370 reg. 34](#)