

Draft Regulations laid before the Scottish Parliament under section 126(3)(m) of the Land Reform (Scotland) Act 2016, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

LANDLORD AND TENANT

The Land Reform (Scotland) Act 2016
(Supplementary, Consequential, Transitory
and Saving Provisions) Regulations 2017

Made - - - - 2017

Coming into force - - 30th November 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 127(1) and (2) of the Land Reform (Scotland) Act 2016(1) and all other powers enabling them to do so.

In accordance with section 126(3)(m) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017 and come into force on 30th November 2017.

(2) In these Regulations—

“1991 Act tenancy” has the same meaning as in section 93 of the 2003 Act (interpretation)(2);

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003;

“the 2016 Act” means the Land Reform (Scotland) Act 2016;

“limited duration tenancy” has the same meaning as in section 93 of the 2003 Act(3); and

“modern limited duration tenancy” has the same meaning as in section 93 of the 2003 Act(4).

(1) [2016 asp 18](#) (“the 2016 Act”).

(2) The Agricultural Holdings (Scotland) Act [2003 \(asp 11\)](#) (“the 2003 Act”).

(3) The definition of “limited duration tenancy” in section 93 of the 2003 Act is substituted by paragraph 7(30)(a) of schedule 2 of the 2016 Act. That paragraph is commenced by [S.S.I. 2017/299](#).

(4) The definition of “modern limited duration tenancy” in section 93 of the 2003 Act is inserted by paragraph 7(30)(a) of schedule 2 of the 2016 Act.

Modifications

2. Schedule 1 (consequential modifications and supplementary provision) has effect.

Transitory and saving provisions

3. Schedule 2 (transitory and saving provisions) has effect.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE 1

Regulation 2

CONSEQUENTIAL MODIFICATIONS AND SUPPLEMENTARY PROVISION

The Opencast Coal Act 1958

- 1.—(1) The Opencast Coal Act 1958⁽⁵⁾ is modified as follows.
- (2) In section 24(10) (tenant’s right to compensation for improvements and other matters)⁽⁶⁾—
 - (a) in paragraph (a)(ii), for “or a limited duration tenancy” substitute “, a limited duration tenancy or a modern limited duration tenancy”; and
 - (b) in paragraph (b)(ii), for “or a limited duration tenancy” substitute “, a limited duration tenancy or a modern limited duration tenancy”.
- (3) In section 52(2) (general application to Scotland)⁽⁷⁾, in the definition of “agricultural holding”, for “or a limited duration tenancy” substitute “a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”.

The Land Compensation (Scotland) Act 1973

- 2.—(1) The Land Compensation (Scotland) Act 1973⁽⁸⁾ is modified as follows.
- (2) In section 31(3)(c) (right to farm loss payment where person displaced from agricultural unit)⁽⁹⁾, in sub-paragraph (i) for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”.
- (3) In section 80(1) (general interpretation)⁽¹⁰⁾, in the definition of “agricultural holding”, for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”.

The Land Tenure Reform (Scotland) Act 1974

- 3.—(1) The Land Tenure Reform (Scotland) Act 1974⁽¹¹⁾ is modified as follows.
- (2) In section 8(5) (property let under future long lease, etc. not to be used as private dwelling-house)⁽¹²⁾, in paragraph (aa), for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”.

The Matrimonial Homes (Family Protection) (Scotland) Act 1981

- 4.—(1) The Matrimonial Homes (Family Protection) (Scotland) Act 1981⁽¹³⁾ is modified as follows.
- (2) In section 13(8) (transfer of tenancy)⁽¹⁴⁾, in the definition of “agricultural lease”, for “or a short limited duration tenancy” substitute “, a short limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”.

⁽⁵⁾ 1958 c.69.

⁽⁶⁾ Section 24(10) was amended by paragraph 15(3) of schedule 1 of the Agricultural Tenancies Act 1995 (c.8) and by S.S.I. 2003/583.

⁽⁷⁾ The definition of “agricultural holding” in section 52(2) was substituted by S.S.I. 2003/583.

⁽⁸⁾ 1973 c.56.

⁽⁹⁾ Section 31(3)(c) was substituted by S.S.I. 2003/583.

⁽¹⁰⁾ Section 80(1) was relevantly amended by S.S.I. 2003/583.

⁽¹¹⁾ 1974 c.38.

⁽¹²⁾ Section 8(5) was amended by paragraph 4 of the schedule of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”).

⁽¹³⁾ 1981 c.59.

⁽¹⁴⁾ Section 13(8) was relevantly amended by paragraph 5(b) of the schedule of the 2003 Act.

The Rent (Scotland) Act 1984

- 5.—(1) The Rent (Scotland) Act 1984(15) is modified as follows.
- (2) In section 25(1) (interpretation)(16) in the definition of “statutorily protected tenancy”—
- (a) in paragraph (iv), omit “, or a limited duration tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11))”; and
 - (b) after paragraph (iv) insert—
 - “(v) the Agricultural Holdings (Scotland) Act 2003 (that is a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy).”.

The Agriculture Act 1986

- 6.—(1) The Agriculture Act 1986(17) is modified as follows.
- (2) In paragraph 2(2) of schedule 2 (tenant’s right to compensation)(18), in the definition of “termination of the lease”—
- (a) for “section 2(1)” substitute “2A(1)”; and
 - (b) after “to” insert “modern”.

The Housing (Scotland) Act 1988

- 7.—(1) The Housing (Scotland) Act 1988(19) is modified as follows.
- (2) In paragraph 6 of schedule 4 (tenancies of agricultural holdings)(20), in sub-paragraph (a), for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”.

The Agricultural Holdings (Scotland) Act 2003

- 8.—(1) The 2003 Act is modified as follows.
- (2) In section 10A(1) (landlord improvement notices)(21), in paragraph (b), omit “within the meaning of section 5”.

SCHEDULE 2

Regulation 3

TRANSITORY AND SAVING PROVISIONS

Transitory provision: The Opencast Coal Act 1958

1. Until the coming into force of section 92 of the 2016 Act (repairing tenancies: creation) for all purposes, section 52(2) of the Opencast Coal Act 1958 has effect as if the reference to “a repairing tenancy” in the definition of “agricultural holding” was omitted.

(15) 1984 c.58.

(16) Section 25(1) was relevantly amended by paragraph 6 of the schedule of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”).

(17) 1986 c.49.

(18) Paragraph 2(2) of schedule 2 was relevantly amended by S.S.I. 2003/583.

(19) 1988 c.43.

(20) Paragraph 6 of schedule 4 was relevantly amended by paragraph 11 of the schedule of the 2003 Act.

(21) Section 10A of the 2003 Act was inserted by section 119(4) of the Land Reform (Scotland) Act 2016.

Transitory provision: The Land Compensation (Scotland) Act 1973

2. Until the coming into force of section 92 of the 2016 Act for all purposes, the following provisions of the Land Compensation (Scotland) Act 1973 have effect as if references to “a repairing tenancy” were omitted—

- (a) section 31(3)(c)(i); and
- (b) section 80(1).

Transitory provision: The Land Tenure Reform (Scotland) Act 1974

3. Until the coming into force of section 92 of the 2016 Act for all purposes, section 8(5) of the Land Tenure Reform (Scotland) Act 1974 has effect as if the reference in paragraph (aa) to “a repairing tenancy” was omitted.

Transitory provision: The Matrimonial Homes (Family Protection) (Scotland) Act 1981

4. Until the coming into force of section 92 of the 2016 Act for all purposes, section 13 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 has effect as if the reference in subsection (8) to “a repairing tenancy” was omitted.

Transitory provision: The Rent (Scotland) Act 1984

5. Until the coming into force of section 92 of the 2016 Act for all purposes, section 25(1) of the Rent (Scotland) Act 1984 has effect as if the reference to “a repairing tenancy” in paragraph (v) of the definition of “statutorily protected tenancy” was omitted.

Saving provision: The Agriculture Act 1986

6. The modifications made by paragraph 6 of schedule 1 have no effect in respect of—
- (a) an agreement between a landlord and a tenant under a 1991 Act tenancy to terminate that tenancy, where—
 - (i) that agreement is in accordance with section 2(1)(a) of the 2003 Act⁽²²⁾;
 - (ii) that agreement was made before 30th November 2017; and
 - (iii) the date specified in that agreement as being the date on which the termination is to have effect is on or after 30th November 2017; and
 - (b) a lease constituting a limited duration tenancy entered into in order to comply with section 2(1)(b) of the 2003 Act, which—
 - (i) is for a term of not less than 25 years;
 - (ii) comprises or includes the same land as that comprised in the 1991 Act tenancy being terminated by an agreement to which paragraph (1)(a) applies; and
 - (iii) has effect from the date on which the termination under that agreement has effect.

Transitory provision: The Housing (Scotland) Act 1988

7. Until the coming into force of section 92 of the 2016 Act for all purposes, paragraph 6 of schedule 4 of the Housing (Scotland) Act 1988 has effect as if the reference in sub-paragraph (a) to “a repairing tenancy” was omitted.

(22) Section 2(1) of the Agricultural Holdings (Scotland) Act 2003 is repealed by section 90(2) of the Land Reform (Scotland) Act 2016, subject to saving provision in [S.S.I. 2017/299](#).

Transitory Provision: Modern limited duration tenancies: rent review

8. Until the coming into force of section 102 of the 2016 Act (limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review) in respect of modern limited duration tenancies, section 9 of the 2003 Act (review of rent under limited duration tenancies) has effect as if—

- (a) in subsection (A1), after “tenancy” there were inserted “or a modern limited duration tenancy”; and
- (b) in subsection (1), after “tenancy” there were inserted “or a modern limited duration tenancy”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for modifications of certain enactments in consequence of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). They also make supplementary, transitory and savings provision.

The 2016 Act provides for the creation of two new types of agricultural tenancies: modern limited duration tenancies and repairing tenancies. The provisions of the 2016 Act which provide for the creation of modern limited duration tenancies are being commenced with effect on 30th November 2017 by [S.S.I. 2017/299](#). Paragraphs 1 to 5 and 7 of schedule 1 insert references to modern limited duration tenancies and (in some instances) repairing tenancies into various enactments.

The relevant provisions of the 2016 Act which provide for the creation of repairing tenancies are not yet in force. Paragraphs 1 to 5 and 7 of schedule 2 make transitory provision so that the references to “a repairing tenancy” inserted into various enactments by the provisions of schedule 1 are to be ignored until such time as section 92 of the 2016 Act comes into force for all purposes. That section provides for the creation of repairing tenancies, and it is currently only in force for the purpose of making regulations in relation to repairing tenancies.

Section 2 of the 2003 Act provides for the conversion of 1991 Act tenancies into limited duration tenancies. Section 90(2) of the 2016 Act repeals section 2 of the 2003 Act. Section 90(3) of the 2016 Act inserts new section 2A into the 2003 Act. Section 2A of the 2003 Act will enable the conversion of 1991 Act tenancies into modern limited duration tenancies. Section 90 of the 2016 Act is commenced with effect on 30th November 2017 by [S.S.I. 2017/299](#), subject to saving provision. Paragraph 6 of schedule 1 modifies the Agriculture Act 1986 (“the 1986 Act”) to take into account the repeal of section 2 of the 2003 Act and the introduction of section 2A to that Act. Paragraph 6 of schedule 2 makes saving provision to the effect that paragraph 2(2) of the 1986 Act will continue to refer to section 2(1) and to limited duration tenancies in certain circumstances related to conversion of a 1991 Act tenancy to a limited duration tenancy.

Paragraph 8 of schedule 1 modifies section 10A(1) of the 2003 Act to remove a reference to section 5 of the 2003 Act. This is supplemental to the repeal of section 5 by section 85(2) of the 2016 Act. Section 85(2) is commenced with effect on 30th November 2017, subject to saving provision, by [S.S.I. 2017/299](#).

Paragraph 8 of schedule 2 temporarily modifies section 9 of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”). The effect of the modifications are to apply the existing rent review

system, that applies to limited duration tenancies under the 2003 Act, to modern limited duration tenancies. The modifications are temporary and will cease to have effect when section 102 of the 2016 Act comes into force in relation to modern limited duration tenancies.