
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 300

The Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 and come into force on 30th November 2017.

(2) In these Regulations—

“the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991⁽¹⁾;

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

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

PART 2

Modern limited duration tenancies: new entrants to farming

Interpretation of Part 2

2. In this Part—

“relevant date” means the date on which a contract giving rise to a modern limited duration tenancy under which T is the tenant is concluded;

“shared lease” means—

(a) a lease where the tenants under that lease are tenants in common; or

(b) a lease where the tenants under that lease are joint tenants; and

“T” means a tenant under a lease to which regulation 3 applies.

New entrants to farming: non-shared lease

3.—(1) This regulation applies to a lease constituting a modern limited duration tenancy which is not a shared lease.

(2) T is a new entrant to farming for the purposes of section 5B of the 2003 Act unless paragraph (3), (4) or (5) applies to T.

(3) This paragraph applies to T if, at any point in the five years preceding the relevant date, T—

(1) 1991 c.55.

- (a) was—
 - (i) a tenant under a lease constituting a limited duration tenancy;
 - (ii) a tenant under a lease constituting a modern limited duration tenancy;
 - (iii) a tenant under a lease constituting a 1991 Act tenancy;
 - (iv) a small landholder (construed in accordance with section 124(3) of the 2016 Act); or
 - (v) a crofter (within the meaning of section 3(3) of the Crofters (Scotland) Act 1993⁽²⁾);
 - (b) was, for a continuous period of three years or more within the five years preceding the relevant date, a tenant under a lease constituting a short limited duration tenancy;
 - (c) owned more than three hectares of agricultural land in aggregate, wherever such land is located; or
 - (d) had control of a legal person to whom sub-paragraph (a), (b) or (c) would apply if that legal person were T.
- (4) This paragraph applies to T if—
- (a) T is a legal person; and
 - (b) paragraph (3) would apply to the person who has control of T on the relevant date if that person were T.
- (5) This paragraph applies to T if—
- (a) T is a legal person;
 - (b) no one person has control of T on the relevant date; and
 - (c) paragraph (3) applies to each of the persons who between them—
 - (i) hold or control, directly or indirectly, more than 50% of the voting rights in T;
 - (ii) hold or control, directly or indirectly, the right to appoint or remove the majority of the board of directors of T; or
 - (iii) have the right to exercise (or actually exercise) a greater degree of influence or control over T than persons to which paragraph (3) does not apply.
- (6) For the purposes of paragraph (5)(c), paragraph (3) is to be taken to apply to a person if paragraph (3) would apply to that person if that person were T.
- (7) In paragraph (3), “tenant” does not include—
- (a) the executor, guardian or legal representative (within the meaning of Part 1 of the Children (Scotland) Act 1995⁽³⁾) of a tenant, or the trustee or interim trustee in the sequestration of a tenant’s estate;
 - (b) a person to whom a lease constituting a 1991 Act tenancy is bequeathed in accordance with section 11(1)⁽⁴⁾ of the 1991 Act, where—
 - (i) that person does not accept the bequest;
 - (ii) the bequest is declared null and void under section 12A(6)(a) or 12B(2)(a) of the 1991 Act⁽⁵⁾; or
 - (iii) the will or other testamentary writing containing the bequest was made before 23rd December 2016 and the bequest is declared null and void under section 11(6) of the 1991 Act⁽⁶⁾; or

⁽²⁾ 1993 c.44. Section 3(3) was amended by section 22(1)(b) of the Crofting Reform (Scotland) Act 2010 (asp 14).

⁽³⁾ 1995 c.36.

⁽⁴⁾ Section 11(1) was amended by section 107(a) and 109(2)(a) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”).

⁽⁵⁾ Sections 12A and 12B were inserted into the Agricultural Holdings (Scotland) Act 1991 by section 109(4) of the 2016 Act.

⁽⁶⁾ Section 11(6) was repealed by section 109(2)(d) of the 2016 Act. That repeal was subject to the saving provision contained in regulation 5 of S.S.I. 2016/365.

- (c) a person to whom a lease constituting a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy is bequeathed in accordance with section 21(1)(7) of the 2003 Act, where—
 - (i) that person does not accept the bequest;
 - (ii) the bequest is declared null and void under section 12A(6)(a) or 12B(2)(a) of the 1991 Act; or
 - (iii) the will or other testamentary writing containing the bequest was made before 23rd December 2016 and the bequest is declared null and void under section 11(6) of the 1991 Act⁽⁸⁾.

New entrants to farming: shared lease

4.—(1) This regulation applies to a lease constituting a modern limited duration tenancy which is a shared lease.

(2) The tenants under a lease to which this regulation applies are new entrants to farming for the purposes of section 5B of the 2003 Act unless the majority of the tenants are disqualified.

(3) For the purposes of paragraph (2), a tenant is disqualified if regulation 3(3), (4) or (5) would apply to that tenant if that tenant were T.

New entrants to farming: supplemental

5.—(1) For the purposes of regulation 3, a person has control of a legal person (“L”) if that person—

- (a) holds or controls, directly or indirectly, more than 50% of the voting rights in L;
- (b) holds or controls the right, directly or indirectly, to appoint or remove more than 50% of the board of directors of L; or
- (c) otherwise has the right to exercise, or actually exercises, dominant influence or control over L.

(2) In this Part—

- (a) references to voting rights in L or T (as the case may be) are to the rights conferred on shareholders in respect of their shares (or, in the case of L or T not having a share capital, on members or equivalent persons) to vote at a general meeting of L or T on all or substantially all matters;
- (b) where L or T (as the case may be) does not have general meetings at which matters are decided by the exercise of voting rights, references to voting rights in L or T are to be read as references to rights in relation to L or T that are equivalent to those of a person entitled to exercise voting rights in a company;
- (c) references to the board of directors of L or T (as the case may be), where L or T does not have such a board, are to be read as references to the equivalent management body of L or T; and
- (d) references to the right to appoint or remove a majority of the board of directors of L or T (as the case may be) are to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

(7) Section 21(1) was amended by section 108(3)(a)(ii) of the 2016 Act.

(8) The repeal of section 11(6) by section 109(2)(d) of the 2016 Act was subject to the saving provision contained in regulation 7 of S.S.I. 2016/365.

PART 3

Land Reform (Scotland) Act 2016: consequential, transitory and saving provisions

Consequential modifications

6. Schedule 1 (consequential modifications) has effect.

Transitory and saving provisions

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

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