
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Land Reform (Scotland) 2016 Act (“the 2016 Act”) amends the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”) to provide for the creation of a new type of agricultural tenancy to be known as a modern limited duration tenancy (“MLDT”). New section 5B of the 2003 Act enables the Scottish Ministers to make provision about the tenants who are new entrants to farming for the purposes of section 5B. Under section 5B(1) of the 2003 Act, where the tenant under a lease constituting an MLDT is a new entrant to farming, the lease may contain provision that the tenancy may be terminated after five years in accordance with section 8D of the 2003 Act (a “break clause”). Section 5B of the 2003 Act is inserted by section 85(3) of the 2016 Act. That section was commenced for the purposes of making regulations under the new section 5B(3) of the 2003 Act on 23rd December 2016, by [S.S.I. 2016/365](#). Section 5B is being commenced for all remaining purposes with effect on 30th November 2017, by [S.S.I. 2017/299](#).

Regulations 2 to 5 of these Regulations make provision as to who is a new entrant to farming for these purposes. Regulation 3 applies where a lease of an MLDT is entered into by a single tenant (“T”). T is a new entrant to farming unless one of the exclusions in regulation 3(3), (4) or (5) apply to T. Where T is a legal person, the question as to whether or not T is a new entrant to farming turns on the status of the person controlling T. Regulation 5(1) makes provision as to what is meant by control. Where no one person controls T, the question as to whether or not T is a new entrant to farming or not turns on the status of the persons who between them control T. Regulation 3(5) makes provision as to how this is to be determined.

Regulation 4 makes provision where a lease of an MLDT is entered into jointly or in common. If the majority of the joint tenants or tenants in common (as the case may be) are disqualified then the tenants are not new entrants to farming. A person is disqualified if they would not be a new entrant to farming if they alone were the tenant.

As well as providing for the creation of MLDTs, the 2016 Act also provides for the creation of another new type of agricultural tenancy to be known as a repairing tenancy. The relevant provisions of the 2016 Act which provide for the creation of a repairing tenancy are not yet in force. Schedule 1 contains provisions which modify various instruments to insert references to MLDTs and repairing tenancies. Paragraph 2 of schedule 1 modifies the Organic Aid (Scotland) Regulations 2004 to insert references to MLDTs and repairing tenancies. That paragraph also modifies those Regulations to update references to the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”) following changes made by the 2016 Act to the provisions of the 1991 Act which govern the process of succession to agricultural tenancies. The amendments to the relevant provisions of the 1991 Act were commenced with effect on 23rd December 2016 by [S.S.I. 2016/365](#), subject to savings.

Schedule 2 contains transitory and saving provisions in connection with the modifications made by schedule 1. Paragraphs 2, 3, 5 and 6 of schedule 2 make transitory provision to the effect that the references to a “repairing tenancy” inserted into various instruments 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.

Paragraph 4 of schedule 2 makes saving provisions so that the modifications made to the Organic Aid (Scotland) Regulations 2004 by paragraph 2(3) of schedule 1 do not apply in respect of bequests of certain categories of agricultural tenancies made before 23rd December 2016 or to the succession to

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certain categories of agricultural tenancies where the deceased died before 23rd December 2016 and at the time of death had not made a will or other testamentary writing which bequeathed that lease.