



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 1

AGRICULTURAL TENANCIES

CHAPTER 2

GENERAL PROVISION AS TO NEW TYPES OF TENANCY

Succession to short limited duration tenancies and limited duration tenancies

20 Section 16 of the Succession (Scotland) Act 1964

In section 16 (provisions relating to leases) of the Succession (Scotland) Act 1964 (c. 41) (in sections 21 to 23 referred to as “the 1964 Act”), after subsection (4) there is inserted—

“(4A) Where an interest, being an interest under a lease constituting a short limited duration tenancy or a limited duration tenancy—

- (a) is not the subject of a valid bequest by the deceased; or
- (b) is the subject of such a bequest, but the bequest is not accepted by the legatee; or
- (c) is the subject of such a bequest, but the bequest is declared null and void by virtue of section 21 of the 2003 Act,

and there is among the conditions of the lease (whether expressly or by implication) a condition prohibiting assignation of the interest, the executor shall be entitled, notwithstanding that condition, to transfer the interest to a person to whom subsection (4B) below applies; and the executor shall be entitled so to transfer the interest without the consent of the landlord.

(4B) This subsection applies to—

- (a) any one of the persons entitled to succeed to the deceased’s intestate estate, or to claim legal rights or the prior rights of a surviving spouse out of the estate, in or towards satisfaction of that person’s entitlement or claim; or

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(b) any other person.

(4C) In the case of any interest under a lease constituting a short limited duration tenancy or a limited duration tenancy—

- (a) if at any time the executor is satisfied that the interest cannot be disposed of according to law and so informs the landlord, the executor may terminate the tenancy (in so far as it relates to the interest); and
- (b) if the interest is not so disposed of within the period referred to in subsection (4D) below, the lease shall (in so far as it relates to the interest) terminate at the expiry of the period,

notwithstanding any provision in the lease, or any enactment or rule of law, to the contrary effect.

(4D) The period is one year or such longer period as may be fixed by agreement or, failing agreement, by the Land Court on the application of the executor—

- (a) in the case of an interest which is the subject of an application to that court by virtue of section 21 of the 2003 Act, from the date of the determination or withdrawal of the application; and
- (b) in any other case, from the date of death of the deceased.

(4E) The—

- (a) interest may be transferred under subsections (4A) and (4B) above; or
- (b) tenancy may be terminated under subsection (4C)(a) above,

only if the transfer, or as the case may be, termination is in the best interests of the deceased's estate.”.

21 Bequest of lease

- (1) Subject to subsections (2) and (3), the tenant of a short limited duration tenancy or a limited duration tenancy may, by will or other testamentary writing, bequeath the lease constituting the tenancy to the tenant's son-in-law or daughter-in-law or to any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the 1964 Act.
- (2) Subsections (2) to (7) of section 11 (bequest of lease) of the 1991 Act apply in relation to subsection (1) as they do in relation to subsection (1) of that section, but as if, in subsection (2), the words “of a holding” were omitted.
- (3) If the person to whom the lease is so bequeathed does not accept the bequest, or if the bequest is declared null and void by virtue of subsection (2), the right to the lease is, subject to section 16(4A) to (4E) of the 1964 Act, to be treated as intestate estate of the deceased in accordance with Part I of that Act.

22 Right of landlord to object to acquirer of tenancy

- (1) A person to whom a lease constituting a short limited duration tenancy or a limited duration tenancy is transferred under section 16 (provisions relating to leases) of the 1964 Act must give notice of the transfer to the landlord within 21 days of the transfer or (where that is not possible) as soon as practicable thereafter; and the lease is, subject to subsections (2) and (3), binding on the landlord and that person as landlord and tenant respectively as from the date of the transfer if such notice is given.

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- (2) Subsections (2) to (4) of section 12 (right of landlord to object to acquirer of lease) of the 1991 Act apply in relation to subsection (1) as they do in relation to subsection (1) of that section, but as if—
- (a) in subsection (2), the reference to notice given under subsection (1) of that section were a reference to notice given under subsection (1) above;
 - (b) in subsection (4), the reference to proceeding under that section were a reference to proceedings by virtue of this section; and
 - (c) the references in those subsections to the acquirer were references to the person to whom the lease constituting the tenancy is transferred as mentioned in subsection (1) above.
- (3) Where a lease constituting a short limited duration tenancy or a limited duration tenancy is transferred to a person under subsections (4A) and (4B)(b) of section 16 of the 1964 Act, the landlord is entitled to acquire the person's interest in the lease provided that—
- (a) the landlord gives the person notice—
 - (i) in writing; and
 - (ii) within 30 days of the giving of the notice under subsection (1), of the landlord's intention to acquire that interest; and
 - (b) the terms upon which the landlord acquires that interest are no less favourable to the person than any reasonable terms upon which the lease was transferred to the person.

23 Effect of termination of tenancy where tenant deceased

Termination of a short limited duration tenancy or a limited duration tenancy by virtue of—

- (a) section 16 of the 1964 Act; or
- (b) section 22,

is to be treated, for the purposes of any compensation payable under this Act, as termination at the expiry of the term of the tenancy.