

# LAND REFORM (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 10 – Agricultural Holdings**

#### *Chapter 1 – Modern Limited Duration Tenancies*

#### **Modern limited duration tenancies**

#### *Section 85 – Modern limited duration tenancies: creation*

414. **Section 85** of the Act amends the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”), repealing section 5 which provided for the creation of limited duration tenancies (“LDTs”). Subsection (3) inserts section 5A into the 2003 Act, which provides for the creation of modern limited duration tenancies (“MLDTs”) for a length of 10 years or more, and enabling short limited duration tenancies (“SLDTs”) to be converted into MLDTs where the lease has expired and the tenant has remained in place with the consent of the landlord, or where the lease purports to be for a length of more than five years.
415. **Section 85** also inserts section 5B into the 2003 Act, permitting a break clause after five years of an MLDT where the tenant farmer is a new entrant. However, section 5A(5) prohibits such break clauses in leases converted under section 5A(2) to (4). Section 5B, subsection (3) provides a regulation-making power for the Scottish Ministers to make further provision on who new entrants are for the purposes of section 5B.

#### *Section 86 – Modern limited duration tenancies: subletting*

416. **Section 86** amends the 2003 Act by inserting a new section 7A after section 7 (assignment and subletting of limited duration tenancies), enabling an MLDT to be sublet only if the lease for the MLDT explicitly allows it.

#### *Section 87 – Modern limited duration tenancies: termination and continuation*

417. **Section 87** amends the 2003 Act by inserting new sections 8A, 8B, 8C, 8D and 8E after section 8 (continuation and termination of limited duration tenancies). Section 8A enables an MLDT to be terminated when the landlord and tenant agree to the termination in writing, the agreement to terminate is made after the tenancy has started, and provision is made for compensation to be paid to both parties.
418. Section 8B enables a landlord to terminate an MLDT at the end of the tenancy term, when the landlord has provided written notice to the tenant at least one year but no longer than two years before the expiry of the term. Subsection (3) provides that the termination notice will have no effect unless the landlord has previously provided written confirmation to the tenant of the landlord’s intention to terminate the tenancy at least two years but no more than three years before the expiry of the term of the tenancy.

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419. Section 8C enables a tenant to terminate an MLDT at the expiry of the term of the tenancy by giving notice to the landlord confirming that the tenant intends to quit the land at the expiry of the term. Such notice must be provided between one and two years before the expiry date of the tenancy.
420. Section 8D sets out the notice process to be used for tenants and landlords when applying the break clause for MLDTs (as inserted in the 2003 Act by section 85 of this Act) which enables a tenancy to be terminated after five years. Subsections (6) and (7) set out the grounds on which a landlord can give notice: in cases when the new entrant is not using the land in accordance with the rules of good husbandry, or is failing to comply with other terms of the MLDT lease.
421. Section 8E provides that an MLDT is extended for a further seven year period unless terminated in accordance with section 8A, 8B or 8C and also provides the ability for a landlord and tenant to extend the term of the MLDT by agreement in writing.

***Section 88 – Modern limited duration tenancies: fixed equipment***

422. **Section 88** amends the 2003 Act by inserting a new section 16A after section 16 (leases not terminated by variation of terms, etc). Section 16A provides for the regulation of fixed equipment in relation to MLDTs. Subsection (1) requires a landlord, within six months of the lease starting, to provide such fixed equipment to enable the tenant to maintain efficient agricultural production for the land as specified by the terms of the lease, and to put the fixed equipment present on the holding into the condition specified in the schedule of fixed equipment. Subsection (2) specifies the information to be provided in the schedule of fixed equipment. Subsection (3) requires that the schedule of fixed equipment must be agreed within 90 days of the tenancy starting and subsection (4) enables the schedule to be varied or substituted if both parties are in agreement.
423. Subsection (5) incorporates a default term into every lease for an MLDT, in the absence of express provision to the contrary, that a landlord is required to renew or replace the fixed equipment as necessary due to natural decay or fair wear and tear. It also confirms that the tenant's liability for fixed equipment extends only to the condition the equipment was in at the time of the completion of the schedule of fixed equipment or to its condition following any improvement, provision, renewal or replacement during the tenancy.
424. Subsection (6) sets out that costs associated with compiling the schedule must be covered equally by the landlord and the tenant, unless agreed otherwise.
425. Subsection (7) states that any agreement which requires the tenant to accept the expense of works that a landlord is required to execute to fulfil a landlord's own obligations will have no effect.
426. Subsection (8) provides that any MLDT lease requiring a tenant to pay all or part of a premium for fire insurance for fixed equipment will be of no effect.

***Section 89 – Modern limited duration tenancies: irritancy***

427. **Section 89** amends the 2003 Act by inserting a new section 18A after section 18 (tenant's right to remove fixtures and buildings). Section 18A(1) enables a tenant and landlord to agree, without prejudice to any rule of law to the contrary, what the grounds for irritancy of an MLDT lease will be.
428. Subsection (2) states that any terms within a lease which provide for irritancy solely on the grounds that the tenant is not resident is to have no effect.
429. Subsection (3) states that where a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, subject to subsections

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(4) and (5), what is good husbandry is to be construed in accordance with schedule 6 of the Agriculture (Scotland) Act 1948.

430. Subsection (4) provides that conservation activities are to be treated as being in accordance with the rules of good husbandry if carried out in accordance with any agreement entered into by the tenant under any Act, or if carried out in accordance with the conditions of a grant for any activities paid out of the Scottish Consolidated Fund or any other public grant which the Scottish Ministers may specify by regulations.
431. Subsection (5) requires use of the land, or a change to the land, for a non-agricultural purpose permitted under sections 40 and 41 of the 2003 Act (diversification) to be treated as being use in accordance with the rules of good husbandry.
432. Subsection (6) sets out the process to be followed by a landlord if the landlord intends to irritate the lease, stating that a landlord must confirm in writing to the tenant the timescale for the tenant to remedy the breach, which cannot be less than a year from the date of the notice.
433. Subsection (7) enables the notice served under subsection (6) to be extended by agreement of both the parties or by the Land Court.
434. Subsection (8) provides that a landlord cannot enforce their right to remove the tenant on grounds of irritancy unless the period of the notice or any extension to that notice has expired, the tenant has not remedied the breach, and the landlord has given notice to the tenant of the landlord's intention to enforce the right to remove the tenant at least two months before the date on which the landlord plans to do so.

## **Conversion of 1991 Act tenancies**

### ***Section 90 – Conversion of 1991 Act tenancies into modern limited duration tenancies***

435. **Section 90** of the Act amends the 2003 Act by inserting section 2A to allow the conversion of a 1991 Act tenancy into a modern limited duration tenancy. The provision in section 2 of the 2003 Act allowing for conversion from a 1991 Act tenancy to a limited duration tenancy is repealed as no new LDTs will be created (due to the repeal of section 5 of the 2003 Act by section 85(2) of the Act).
436. Subsections (1) and (2) of new section 2A of the 2003 Act state that the tenant and the landlord may agree in writing that the 1991 Act tenancy is to be terminated on a fixed date provided that an MLDT lease of at least 25 years' duration is entered into that comprises the same land under the 1991 Act tenancy and that the MLDT has effect from the date on which the 1991 Act tenancy terminates under the agreement.
437. Subsection (3) provides that the landlord or tenant is entitled to revoke the agreed termination of the 1991 Act tenancy and the planned MLDT lease at any time before the date fixed for termination.
438. Subsection (4) of new section 2A states that on termination of the 1991 Act tenancy, the tenant is entitled to any compensation due for improvements under Part 4 and section 45A of the 1991 Act.
439. Subsection (5) disapplies section 21 of the 1991 Act in relation to 1991 Act tenancies terminated under subsection (1) of this section.
440. Subsection (6) of new section 2A ensures that an MLDT converted from a 1991 Act tenancy may not provide for a break clause.

***Section 91 - Conversion of limited duration tenancies into modern limited duration tenancies***

441. Section 91 of the Act inserts a new section 2B into the 2003 Act to provide for conversion of LDTs into MLDTs.
442. Subsections (1) and (2) of new section 2B of the 2003 Act state that the tenant and the landlord may agree in writing that the LDT is to be terminated on a fixed date provided that an MLDT lease of a duration not less than the term remaining under the LDT lease is entered into that comprises the same land under the LDT tenancy and that the MLDT has effect from the date on which the LDT terminates under the agreement.
443. Subsection (3) provides that the landlord or tenant is entitled to revoke the agreed termination of the LDT and the planned MLDT lease at any time before the date fixed for termination.
444. Subsection (4) and (5) of new section 2B provide that the tenant is not entitled to compensation under Part 4 of the 2003 Act (or, as the case may be, under the lease) for improvements at the point of conversion but that improvements for which compensation is due upon termination of the LDT are to be regarded as if they were improvements carried out under the MLDT.
445. Subsection (6) disapplies section 8 of the 2003 Act, on the continuation and termination of LDTs, in relation to LDTs terminated under subsection (1) of this section.
446. Subsection (7) of new section 2B ensures that an MLDT converted from an LDT may not provide for a break clause.