



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 10

#### AGRICULTURAL HOLDINGS

#### CHAPTER 1

#### MODERN LIMITED DURATION TENANCIES

##### *Modern limited duration tenancies*

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

- (1) The 2003 Act is amended as follows.
- (2) Section 5 (limited duration tenancies) is repealed.
- (3) After section 5 insert—

##### **“5A Modern limited duration tenancies**

- (1) Where—
  - (a) agricultural land is let under a lease entered into on or after the coming into force of this section for a term of not less than 10 years,
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord, and
  - (c) the lease does not constitute a 1991 Act tenancy or a repairing tenancy, the tenancy under the lease is, by virtue of this subsection, a modern limited duration tenancy.
- (2) Where—
  - (a) at any time before the expiry of the term of a short limited duration tenancy, the landlord and the tenant agree in writing to convert the tenancy to a modern limited duration tenancy, or

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- (b) the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of 5 years (including such a term fixed by virtue of section 4(2) or (3)) with the consent of the landlord,

the tenancy has effect as if it were for a term of 10 years commencing at the start of the term of the short limited duration tenancy, and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.

- (3) Where subsection (5) of section 4 results in a short limited duration tenancy purporting to be for a term of more than 5 years, the tenancy has effect as if it were for a term of 10 years; and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.
- (4) Without prejudice to subsections (2) and (3), where a lease constituting a tenancy of agricultural land, as described in paragraphs (b) and (c) of subsection (1), purports to be for a term of more than 5 years and less than 10 years, the tenancy has effect as if it were for a term of 10 years; and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.
- (5) Section 5B does not apply to a modern limited duration tenancy created under subsection (2), (3) or (4).

#### **5B Modern limited duration tenancies: break clauses**

- (1) This section applies where the tenant under a lease constituting a modern limited duration tenancy is a new entrant to farming.
- (2) The lease may contain a provision that the tenancy may be terminated after 5 years in accordance with section 8D (a “break clause”).
- (3) The Scottish Ministers may by regulations make further provision about the tenants who are new entrants for the purposes of this section.”.

#### **Commencement Information**

- I1** S. 85(1)(3) in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)
- I2** S. 85(1)(3) in force at 30.11.2017 in so far as not already in force by S.S.I. 2017/299, reg. 2, sch. (with reg. 5) (as amended by S.S.I. 2017/370, regs. 1, 3, 4)
- I3** S. 85(2) in force at 30.11.2017 by S.S.I. 2017/299, reg. 2, sch. (with reg. 4)

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

- (1) The 2003 Act is amended as follows.
- (2) After section 7 insert—

#### **“7A Subletting of modern limited duration tenancies**

A tenant may sublet the land comprised in a lease constituting a modern limited duration tenancy only on such basis as the lease expressly permits.”.

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#### Commencement Information

**I4** S. 86 in force at 30.11.2017 by S.S.I. 2017/299, reg. 2, sch.

### 87 Modern limited duration tenancies: termination and continuation

- (1) The 2003 Act is amended as follows.
- (2) After section 8 insert—

#### “8A Termination of modern limited duration tenancies by agreement

A modern limited duration tenancy may be terminated by agreement between the landlord and tenant if the agreement is in writing and—

- (a) is entered into after the commencement of the tenancy, and
- (b) makes provision as to compensation payable by the landlord or the tenant to the other.

#### 8B Termination of modern limited duration tenancies by landlord

- (1) At the expiry of the term of a modern limited duration tenancy, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant.
- (2) A notice under subsection (1) must—
  - (a) be in writing and state that the tenant must quit the land on the expiry of the term of the tenancy, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of the term of the tenancy, provided that not less than 90 days have elapsed from the date on which the intimation mentioned in subsection (3) is given.
- (3) A notice under subsection (1) is of no effect unless the landlord has given written intimation of the landlord's intention to terminate the tenancy to the tenant not less than 2 years nor more than 3 years before the expiry of the term of the tenancy.

#### 8C Termination of modern limited duration tenancies by tenant

- (1) At the expiry of the term of a modern limited duration tenancy, the tenant may terminate the tenancy by giving a notice under this subsection to the landlord.
- (2) A notice under subsection (1) must—
  - (a) be in writing and state that the tenant intends to quit the land on the expiry of the term of the tenancy, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of the term of the tenancy.

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### **8D Termination of modern limited duration tenancies subject to break clause**

- (1) This section applies where the lease constituting a modern limited duration tenancy contains a break clause by virtue of section 5B.
- (2) The tenant may terminate the tenancy after 5 years by giving a notice under this subsection to the landlord.
- (3) A notice under subsection (2) must—
  - (a) be in writing and state that the tenant intends to quit the land on the expiry of the period of 5 years beginning with the day the tenancy commenced, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of that period.
- (4) The landlord may terminate the tenancy after 5 years by giving a notice under this subsection to the tenant.
- (5) A notice under subsection (4) must—
  - (a) be in writing and state—
    - (i) that the tenant must quit the land on the expiry of the period of 5 years beginning with the day the tenancy commenced, and
    - (ii) the landlord's reasons for terminating the tenancy, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of that period.
- (6) The landlord may give notice under subsection (4) only if the tenant—
  - (a) is not using the land in accordance with the rules of good husbandry, or
  - (b) is otherwise failing to comply with any other provision of the lease.
- (7) For the purposes of subsection (6)(a), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

### **8E Continuation and extension of modern limited duration tenancies**

- (1) At and after the expiry of the term of a modern limited duration tenancy, the tenancy continues to have effect for a further term of 7 years unless it is terminated in accordance with section 8A, 8B or 8C.
- (2) During the term of a modern limited duration tenancy, the term of the tenancy may be extended by the landlord and tenant by agreement in writing.”.

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#### **Commencement Information**

**15** [S. 87](#) in force at 30.11.2017 by [S.S.I. 2017/299](#), [reg. 2](#), [sch.](#)

## **88 Modern limited duration tenancies: fixed equipment**

- (1) The 2003 Act is amended as follows.

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(2) After section 16 insert—

**“16A Modern limited duration tenancies: fixed equipment etc.**

- (1) There is incorporated in every lease constituting a modern limited duration tenancy an undertaking by the landlord that the landlord will, within 6 months of the commencement of the tenancy or, where that is not reasonably practicable by virtue of any obligation on the landlord under any other enactment, as soon as reasonably practicable thereafter—
  - (a) provide such fixed equipment as will enable the tenant to maintain efficient production as respects the use of the land as specified in the lease, and
  - (b) put the fixed equipment so provided into the condition specified in the schedule of fixed equipment that is required by virtue of subsection (2).
- (2) Where a lease constituting a modern limited duration tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—
  - (a) the fixed equipment which the landlord will provide in terms of subsection (1)(a), and
  - (b) the condition of the fixed equipment,and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78) the schedule of fixed equipment is deemed to form part of the lease.
- (3) The schedule of fixed equipment must be agreed before the expiry of the period of 90 days beginning with the commencement of the tenancy.
- (4) If at any time after the commencement of the tenancy the fixed equipment or its condition is varied, the landlord and tenant may agree to amend the schedule of fixed equipment accordingly or to substitute for it a new schedule.
- (5) Unless the lease makes provision to the contrary, there is also incorporated in every such lease—
  - (a) an undertaking by the landlord that the landlord will, during the tenancy, effect such renewal or replacement of the fixed equipment provided as required by virtue of subsection (1) as may be rendered necessary by natural decay or by fair wear and tear, and
  - (b) a provision that the liability of the tenant in relation to the maintenance of fixed equipment extends only to a liability to maintain the fixed equipment specified in the schedule of fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—
    - (i) immediately after it was put into the condition specified in the schedule of fixed equipment, or
    - (ii) in the case of equipment improved, provided, renewed or replaced, during the tenancy, immediately after it was so improved, provided, renewed or replaced.

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- (6) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.
- (7) Any agreement between the landlord and tenant which purports to provide for the tenant to bear any expense of any work which the landlord is required to execute in order to fulfil the landlord's obligations under the lease is of no effect.
- (8) Any term of a lease constituting a modern limited duration tenancy that requires the tenant to pay the whole or any part of the premium due under a fire insurance policy over any fixed equipment on the land is of no effect.”.

**Commencement Information**

**16** S. 88 in force at 30.11.2017 by S.S.I. 2017/299, reg. 2, sch.

**89 Modern limited duration tenancies: irritancy**

- (1) The 2003 Act is amended as follows.
- (2) After section 18 insert—

**“18A Irritancy of lease and good husbandry: modern limited duration tenancies**

- (1) Without prejudice to any rule of law, it is for the landlord and tenant to provide in the lease constituting a modern limited duration tenancy what grounds there are for irritancy of the lease.
- (2) Any term of such a lease or of an agreement in connection with the lease that provides for the lease to be irritated solely on the grounds that the tenant is not or has not been resident on the land is of no effect.
- (3) Where such a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, what is good husbandry is to be construed, subject to subsections (4) and (5), by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (4) Conservation activities are to be treated as being in accordance with the rules of good husbandry if they are carried out in accordance with—
  - (a) an agreement entered into under any enactment by the tenant, or
  - (b) the conditions of—
    - (i) any grant for the purpose of such activities paid out of the Scottish Consolidated Fund, or
    - (ii) such other grant of a public nature as the Scottish Ministers may by regulations specify.
- (5) Such use of any of the land, or such change to the land, for a non-agricultural purpose as has been permitted under section 40 or 41 is to be treated as being in accordance with the rules of good husbandry.

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- (6) Where the landlord intends to irritate the lease, the landlord must give the tenant notice in writing specifying—
  - (a) the breach of the tenant's obligations under the lease which form the grounds on which the landlord intends to irritate the lease, and
  - (b) the period before the expiry of which the tenant must remedy that breach, which period must be not less than 12 months beginning with the date of the notice.
- (7) The period mentioned in subsection (6)(b) may be extended—
  - (a) by the landlord and the tenant by agreement, or
  - (b) by the Land Court on the application of the tenant.
- (8) The landlord may not enforce any right to remove the tenant on grounds of irritancy unless—
  - (a) the period specified in the notice under subsection (6)(b), or such extended period as mentioned in subsection (7), has expired without the tenant having remedied the breach specified in the notice, and
  - (b) the landlord has given notice in writing of the intention so to enforce the right to remove the tenant not less than 2 months before the date on which the tenant is to be removed.”.

#### Commencement Information

- 17** S. 89 in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)  
**18** S. 89 in force at 30.11.2017 in so far as not already in force by S.S.I. 2017/299, reg. 2, sch.

### *Conversion of 1991 Act tenancies*

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

- (1) The 2003 Act is amended as follows.
- (2) Section 2 is repealed.
- (3) After that section insert—

#### **“2A Conversion from 1991 Act tenancy to modern limited duration tenancy**

- (1) The landlord and tenant under a 1991 Act tenancy may terminate the tenancy by agreement in writing provided that—
  - (a) the agreement—
    - (i) specifies the date on which the termination is to have effect, and
    - (ii) is made not less than 30 days before that date, and
  - (b) subsection (2) is complied with.
- (2) This subsection is complied with if the landlord and tenant enter into a lease constituting a modern limited duration tenancy for a term of not less than 25 years which—

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- (a) comprises or includes the same land as that comprised in the tenancy being terminated under subsection (1), and
  - (b) has effect from the date on which the termination under that subsection has effect.
- (3) The landlord or tenant is entitled, at any time before the date on which the termination under subsection (1) has effect, to revoke (without penalty)—
- (a) the agreement made under that subsection, and
  - (b) the lease mentioned in subsection (2),
- by giving notice in writing to the other of the revocation.
- (4) On termination of a 1991 Act tenancy under subsection (1), the tenant is entitled to—
- (a) such compensation for improvements as the tenant would have been entitled to under Part 4 (compensation for improvements) of the 1991 Act (or, as the case may be, under the lease), and
  - (b) such compensation as the tenant would have been entitled to under section 45A (compensation arising as a result of diversification and cropping of trees) of that Act,
- were the tenant quitting the holding as a result of the termination of the tenancy.
- (5) Where a 1991 Act tenancy is terminated under subsection (1), section 21 (notice to quit and notice of intention to quit) of the 1991 Act does not apply in respect of the tenancy.
- (6) Section 5B does not apply to a modern limited duration tenancy created under this section.”.

**Commencement Information**

**I9** S. 90 in force at 30.11.2017 by S.S.I. 2017/299, reg. 2, sch. (with reg. 3)

*Conversion of limited duration tenancies*

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

- (1) The 2003 Act is amended as follows.
- (2) After section 2A (as inserted by section 90) insert—

**“2B Conversion from limited duration tenancy to modern limited duration tenancy**

- (1) The landlord and tenant under a limited duration tenancy may terminate the tenancy by agreement in writing provided that—
  - (a) the agreement—
    - (i) specifies the date on which the termination is to have effect, and
    - (ii) is made not less than 30 days before that date, and



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- (b) subsection (2) is complied with.
- (2) This subsection is complied with if the landlord and tenant enter into a lease constituting a modern limited duration tenancy for a term of not less than the term remaining under the limited duration tenancy which—
  - (a) comprises or includes the same land as that comprised in the tenancy being terminated under subsection (1), and
  - (b) has effect from the date on which the termination under that subsection has effect.
- (3) The landlord or tenant is entitled, at any time before the date on which the termination under subsection (1) has effect, to revoke (without penalty)—
  - (a) the agreement made under that subsection, and
  - (b) the lease mentioned in subsection (2),by giving notice in writing to the other of the revocation.
- (4) On termination of a limited duration tenancy under subsection (1), the tenant is not entitled to compensation for improvements under Part 4 (or, as the case may be, under the lease).
- (5) But any improvements for which the tenant would have been entitled to compensation under that Part but for subsection (4) are, for the purposes of that Part, to be regarded as improvements carried out during the modern limited duration tenancy.
- (6) Where a limited duration tenancy is terminated under subsection (1), section 8 does not apply in respect of the tenancy.
- (7) Section 5B does not apply to a modern limited duration tenancy created under this section.”.

**Commencement Information**

**I10** S. 91 in force at 30.11.2017 by S.S.I. 2017/299, reg. 2, sch.

## CHAPTER 2

### REPAIRING TENANCIES

#### 92 Repairing tenancies: creation

- (1) The 2003 Act is amended as follows.
- (2) After section 5B (as inserted by section 85) insert—

#### “5C Repairing tenancies: creation

- (1) Where—
  - (a) agricultural land is let under a lease entered into on or after the coming into force of this section for a term of not less than 35 years,

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- (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord,
  - (c) the lease does not constitute a 1991 Act tenancy,
  - (d) the lease requires the tenant, during the repairing period, to improve the land comprised in the lease in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry, and
  - (e) the lease expressly states that this section is to apply to the tenancy, the tenancy is, by virtue of this subsection, a repairing tenancy.
- (2) In this Part, the “repairing period” is the period, beginning with the commencement of the tenancy, of—
- (a) 5 years, or
  - (b) such longer period—
    - (i) as the landlord and tenant may agree under this paragraph or, as the case may be, under subsection (3)(a), or
    - (ii) as the Land Court may determine under subsection (3)(b).
- (3) The repairing period may be extended at any time before its expiry—
- (a) by the landlord and tenant by agreement, or
  - (b) by the Land Court on the application of either the landlord or the tenant.
- (4) On an application under subsection (3)(b), the Land Court may extend the repairing period—
- (a) if it considers it appropriate in all the circumstances to do so, and
  - (b) by such period as it determines necessary in all the circumstances.
- (5) A lease constituting a repairing tenancy may contain a provision that the tenancy may be terminated in accordance with section 8G (a “break clause”).
- (6) In this section and section 5D, what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

#### **5D Repairing tenancies: exemption from rules of good husbandry during repairing period**

- (1) Where a lease constituting a repairing tenancy does not include provision mentioned in subsection (2), such provision is incorporated.
- (2) The provision is that during the repairing period the tenant cannot be held liable for not farming the land comprised in the lease in accordance with the rules of good husbandry.”

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#### **Commencement Information**

**I11** S. 92 in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

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PROSPECTIVE

**93 Repairing tenancies: subletting**

- (1) The 2003 Act is amended as follows.
- (2) After section 7B (as inserted by section 105) insert—

**“7C Subletting of repairing tenancies**

- (1) During the repairing period, a tenant may not sublet the land comprised in a lease constituting a repairing tenancy without the consent of the landlord.
- (2) After the expiry of the repairing period, a tenant may sublet the land comprised in a lease constituting a repairing tenancy only on such basis as the lease expressly permits.”

PROSPECTIVE

**94 Repairing tenancies: termination, continuation and extension**

- (1) The 2003 Act is amended as follows.
- (2) After section 8E (as inserted by section 87) insert—

**“8F Termination, continuation and extension of repairing tenancies**

- (1) Subject to section 8G, sections 8A to 8C apply to the termination of a repairing tenancy as to the termination of a modern limited duration tenancy.
- (2) Section 8E applies to the continuation and extension of a repairing tenancy as to the continuation and extension of a modern limited duration tenancy.

**8G Termination of repairing tenancies subject to break clause**

- (1) This section applies where the lease constituting a repairing tenancy contains a break clause by virtue of section 5C(5).
- (2) At any time until the expiry of the repairing period, the tenant may terminate the tenancy by giving a notice under this subsection to the landlord.
- (3) A notice under subsection (2) must—
  - (a) be in writing and state that the tenant intends to quit the land on a date specified in the notice, which is to be no later than the expiry of the repairing period, and
  - (b) be given not less than 1 year nor more than 2 years before the date specified in the notice.
- (4) The landlord may terminate the tenancy on the expiry of the repairing period by giving a notice under this subsection to the tenant.
- (5) A notice under subsection (4) must—

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- (a) be in writing and state—
    - (i) that the tenant must quit the land on the expiry of the repairing period, and
    - (ii) the landlord's reasons for terminating the tenancy, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of the repairing period.
- (6) The landlord—
- (a) may not give notice under subsection (4) on the grounds that the tenant is not farming the land in accordance with the rules of good husbandry,
  - (b) may give notice under subsection (4) if the tenant is otherwise failing to comply with any other provision of the lease.
- (7) For the purposes of subsection (6), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.”.

PROSPECTIVE

## 95 Repairing tenancies: fixed equipment

- (1) The 2003 Act is amended as follows.
- (2) After section 16A (as inserted by section 88) insert—

### “16B Repairing tenancies: fixed equipment

- (1) Where a lease constituting a repairing tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—
  - (a) the fixed equipment which the landlord will provide during the repairing period as will enable the tenant to maintain efficient production, after the expiry of the repairing period, as respects the use of the land as specified in the lease,
  - (b) the condition of such fixed equipment, and
  - (c) any fixed equipment on the land which may be disregarded for the purposes of subsections (5) and (6),
 and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78) the schedule of fixed equipment is deemed to form part of the lease.
- (2) The schedule of fixed equipment must be agreed before the expiry of the period of 90 days beginning with the commencement of the tenancy.
- (3) If at any time after the commencement of the tenancy the fixed equipment or its condition is varied, the landlord and tenant may agree to amend the schedule of fixed equipment accordingly or to substitute for it a new schedule.
- (4) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.

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- (5) Unless the lease makes provision to the contrary, there is incorporated in every such lease an undertaking by the tenant that the tenant will, during the repairing period—
- (a) provide such fixed equipment, and
  - (b) effect such maintenance, renewal or replacement of the fixed equipment provided by the tenant by virtue of paragraph (a) and by the landlord by virtue of subsection (1)(a),
- as may be necessary to enable the tenant to maintain efficient production, after the expiry of the repairing period, as respects the use of the land as specified in the lease.
- (6) Unless the lease makes provision to the contrary, there is also incorporated in every such lease—
- (a) an undertaking by the landlord that the landlord will, after the expiry of the repairing period, effect such renewal or replacement of the fixed equipment specified in the schedule of fixed equipment as may be rendered necessary by natural decay or by fair wear and tear, and
  - (b) a provision that the liability of the tenant in relation to the maintenance of fixed equipment, after the expiry of the repairing period, extends only to a liability to maintain the fixed equipment specified in the schedule of fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—
    - (i) at the expiry of the repairing period, or
    - (ii) in the case of equipment improved, provided, renewed or replaced, after the expiry of the repairing period, immediately after it was so improved, provided, renewed or replaced.
- (7) Subsections (5) and (6) do not apply to any fixed equipment specified in the schedule of fixed equipment by virtue of subsection (1)(c).
- (8) Any agreement between the landlord and tenant which purports to provide for the tenant, whether during the repairing period or after its expiry, to bear any expense of any work which the landlord is required to execute in order to fulfil the landlord's obligations under the lease is of no effect.
- (9) Any term of a lease constituting a repairing tenancy that requires the tenant, whether during the repairing period or after its expiry, to pay the whole or any part of the premium due under a fire insurance policy over any fixed equipment on the land is of no effect.”.

PROSPECTIVE

## 96 Repairing tenancies: resumption of land by landlord

- (1) The 2003 Act is amended as follows.
- (2) After section 17 insert—

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### “17A Resumption of land by landlord: repairing tenancies

- (1) Until 5 years have elapsed from the date of expiry of the repairing period, the landlord may not resume the land or any part of the land comprised in the lease constituting the repairing tenancy.
- (2) After 5 years have elapsed from the date of expiry of the repairing period, section 17 applies to the resumption of the land or any part of the land comprised in a lease constituting a repairing tenancy as it applies to the resumption of the land or any part of the land comprised in a lease constituting a limited duration tenancy or a modern limited duration tenancy.”.

PROSPECTIVE

## 97 Repairing tenancies: irritancy

- (1) The 2003 Act is amended as follows.
- (2) After section 18A (as inserted by section 89)—

### “18B Irritancy of lease and good husbandry: repairing tenancies

- (1) Subject to subsection (2), section 18A applies to the irritancy of a lease constituting a repairing tenancy as it applies to the irritancy of a lease constituting a modern limited duration tenancy.
- (2) During the repairing period, section 18A has effect as if, after subsection (2), there were inserted—
  - “(2A) Any term of such a lease or of an agreement in connection with the lease that provides for the lease to be irritated solely on the grounds that the tenant is not using the land in accordance with the rules of good husbandry is of no effect.”.

## 98 Repairing tenancies: compensation

- (1) The 2003 Act is amended as follows.
- (2) After section 59 insert—

### “59A Compensation under repairing tenancies

The Scottish Ministers may by regulations provide that Part 4, in its application to repairing tenancies, has effect with such modifications as the regulations may specify.”.

#### Commencement Information

**I12** S. 98 in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

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PROSPECTIVE

## CHAPTER 3

### TENANT'S RIGHT TO BUY

#### **99 Tenant's right to buy: removal of requirement to register**

- (1) The 2003 Act is amended as follows.
- (2) Sections 24 (register of tenants' interests in acquiring land) and 25 (registration of such interests) are repealed.
- (3) Before section 26 insert as an italic heading “ The right to buy ”.
- (4) In section 26 (notice of proposal to transfer land)—
  - (a) for subsection (1) substitute—
    - “(1) This section applies where—
      - (a) the owner of land comprised in a lease constituting a 1991 Act tenancy, or
      - (b) a creditor in a standard security with a right to sell the land, proposes to transfer the land or any part of it to another person.
    - (1A) The owner or, as the case may be, the creditor must, subject to section 27, give notice in writing of the proposed transfer to the tenant.”,
    - (b) in subsection (2), for “subsection (1)” substitute “ subsection (1A) ”,
    - (c) after that subsection insert—
      - “(3) For the purposes of this Part, “tenant”—
        - (a) where there are two or more tenants under the lease, means those tenants, and
        - (b) does not include a sub-tenant.”.
  - (5) In section 27 (transfers not requiring notice), subsection (1)(g)(v) is repealed.
  - (6) In section 28 (right to buy)—
    - (a) in subsection (1)—
      - (i) “a tenant's interest in acquiring land is for the time being registered under section 25 and” is repealed,
      - (ii) in paragraph (a), for first “the land” substitute “ land comprised in a lease constituting a 1991 Act tenancy, ”,
    - (b) in subsection (3)—
      - (i) after paragraph (a) insert “ or ”,
      - (ii) paragraph (c) is repealed (together with the “or” immediately before it).
  - (7) In section 29 (exercise of right to buy), subsection (7) is repealed.

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## CHAPTER 4

### SALE WHERE LANDLORD IN BREACH

#### 100 Sale to tenant or third party where landlord in breach of order or award

- (1) The 2003 Act is amended as follows.
- (2) After section 38 insert—

#### “PART 2A

### SALE WHERE LANDLORD IN BREACH

#### *Application to Land Court for order for sale*

#### **38A Application to Land Court for order for sale**

- (1) This section applies where—
  - (a) the Land Court has made an order (but not an interim order) under section 84(1)(b) requiring the landlord of a 1991 Act tenancy to remedy a material breach of the landlord's obligations in relation to the tenant, or
  - (b) an arbiter appointed under section 61A(3) of the 1991 Act has by virtue of section 61A(5) made an award having the same effect as such an order.
- (2) Subject to subsection (5), the tenant may apply to the Land Court for an order for sale if the landlord fails to comply with the order or award mentioned in subsection (1)—
  - (a) in a material regard, and
  - (b) by the date specified in the order or award by virtue of section 84(2) or, as the case may be, section 61A(5) of the 1991 Act.
- (3) An “order for sale” is an order that the tenant has the right to buy the land comprised in the lease.
- (4) The tenant must give notice of the application—
  - (a) to the landlord,
  - (b) where there is a heritable security over an interest in the land comprised in the lease, to the creditor who holds the security,
  - (c) to such other persons as the Scottish Ministers may prescribe by regulations.
- (5) Where—
  - (a) the tenant acquired a right to buy the land comprised in the lease under section 28, and
  - (b) the right to buy was extinguished under section 29(6) or 32(8),
 the tenant may apply for an order for sale only if the period of 12 months, beginning with the date on which the right to buy was extinguished, has expired.



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### 38B Order for sale

- (1) The Land Court may make an order for sale if satisfied that—
  - (a) the landlord has failed to comply with the order or award mentioned in section 38A(1)—
    - (i) in a material regard, and
    - (ii) by the date specified in the order or, as the case may be, the award,
  - (b) the failure substantially and adversely affects the tenant's ability to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry,
  - (c) greater hardship would be caused by not making the order than by making it, and
  - (d) in all the circumstances it is appropriate.
- (2) The Land Court may make an order for sale despite the fact that the owner is subject to a legal incapacity or disability which would affect the owner's ability to transfer or otherwise deal with the land in respect of which the order is made.
- (3) Where the owner is subject to an enforceable personal obligation to transfer the land to a person other than the tenant, the Land Court may not make an order for sale unless—
  - (a) the transfer is a transfer mentioned in subsection (4), and
  - (b) the transfer—
    - (i) is or forms part of a scheme or arrangement or is one of a series of transfers, and
    - (ii) the main purpose or effect, or one of the main purposes or effects, of the scheme, arrangement or, as the case may be, series is the avoidance of the making of an order for sale.
- (4) The transfer referred to in subsection (3) is a transfer—
  - (a) otherwise than for value,
  - (b) between spouses in pursuance of an arrangement between them entered into at any time after they have ceased living together,
  - (c) between companies in the same group, or
  - (d) in consequence of—
    - (i) the assumption, resignation or death of one or more of the partners in a partnership, or
    - (ii) the assumption, resignation or death of one or more of the trustees of a trust.
- (5) For the purposes of subsection (4)(c), companies are in the same group if they are, or are included in a number of, companies which, by virtue of section 170 of the Taxation of Chargeable Gains Act 1992, together form a group for the purposes of sections 171 to 181 of that Act.
- (6) The Land Court must give notice of the making of the order to—
  - (a) the landlord,
  - (b) the owner (where the owner is not the landlord),

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- (c) where there is a heritable security over an interest in the land comprised in the lease, the creditor who holds the security,
  - (d) the Keeper of the Registers of Scotland,
  - (e) such other persons as the Scottish Ministers may prescribe by regulations.
- (7) In subsection (1)(b), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (8) In this Part, “owner” includes a person in whom the land is vested for the purposes of any enactment relating to—
- (a) sequestration, bankruptcy, winding-up or incapacity, or
  - (b) the purposes for which judicial factors may be appointed.

### **38C Effect of order for sale: prohibition of transfer etc.**

- (1) The Scottish Ministers may by regulations make provision prohibiting persons from transferring or otherwise dealing with land in respect of which an order for sale has been made under section 38B.
- (2) Regulations under subsection (1) may in particular include provision—
- (a) specifying the persons to whom the prohibition is to apply,
  - (b) specifying the period during which the prohibition is to apply,
  - (c) specifying transfers or dealings which are and are not prohibited by the regulations,
  - (d) requiring information to be incorporated in deeds relating to the land (including specifying the information that is to be incorporated, the circumstances in which it is to be incorporated and the deeds in which it is to be incorporated),
  - (e) requiring such information to be removed and the circumstances in which it is to be so removed.

### **38D Effect of order for sale: suspension of rights**

- (1) Where an order for sale is made under section 38B, the rights mentioned in subsection (3) are—
- (a) suspended as from the date when the Land Court makes the order, and
  - (b) revived—
    - (i) when a transfer by virtue of the order is completed, or
    - (ii) if such a transfer is not completed before the end of the period mentioned in subsection (2), or if the order for sale ceases to have effect, on the end of that period or on the order ceasing to have effect, whichever occurs first.
- (2) The period referred to in subsection (1)(b)(ii) is whichever of the following periods ends later—
- (a) the period of 12 months beginning with the day on which notice under section 38E(3) is given, or
  - (b) such longer period fixed by or agreed under section 38F(4) or, as the case may be, specified in an order under section 38I(4)(b)(ii).

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- (3) The rights referred to in subsection (1) are any rights—
  - (a) of pre-emption, redemption or reversion, or
  - (b) deriving from any other option to purchase,exercisable over the land in respect of which the order for sale has been made.
- (4) The Scottish Ministers may by regulations make provision about the suspension and revival of other rights in or over land in respect of which an order for sale has been made.
- (5) Regulations under subsection (4) may in particular include provision specifying—
  - (a) the rights to which the regulations do and do not apply,
  - (b) the period during which such rights are suspended,
  - (c) the circumstances in which the rights are revived (which may include the ending of a period as specified in the regulations).
- (6) Nothing in this section—
  - (a) affects the operation of an inhibition on the sale of the land,
  - (b) prevents an action of adjudication from proceeding, or
  - (c) affects the commencement, execution or operation of any other diligence.

### **38E Tenant's right to buy**

- (1) Where—
  - (a) an order for sale is made under section 38B, and
  - (b) the period within which an appeal against the making of the order may be brought has expired without an appeal being brought or, where such an appeal has been brought, it has been abandoned or dismissed,the tenant has the right to buy the land in respect of which the order has been made from the owner.
- (2) Where a tenant has a right to buy under subsection (1), the tenant may proceed in accordance with section 38F to buy the land from the owner provided that notice is given under subsection (3).
- (3) Notice is given under this subsection if, before the period mentioned in subsection (4) has expired, the tenant gives notice that the tenant intends to buy the land to—
  - (a) the owner,
  - (b) the Keeper of the Registers of Scotland, and
  - (c) the Land Court.
- (4) That period is the period of 28 days beginning with—
  - (a) the day after the last day on which an appeal may be brought (no appeal having been brought), or
  - (b) an appeal having been brought, the day after the day on which the appeal was abandoned or dismissed.
- (5) If at any time the tenant does not intend to proceed in accordance with section 38F to buy the land, the tenant must give notice of that fact to—

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- (a) the owner,
  - (b) the Keeper of the Registers of Scotland, and
  - (c) the Land Court.
- (6) Where the tenant—
- (a) does not give notice under subsection (3), or
  - (b) gives notice under subsection (5),
- the tenant's right to buy is extinguished.

### *Procedure for buying and valuation*

#### **38F Procedure for buying**

- (1) It is for the tenant to make the offer to buy in exercise of the tenant's right to buy under section 38E.
- (2) The offer is to be at a price—
  - (a) agreed between the tenant and the person from whom the land is to be bought (“the seller”), or
  - (b) where there is no such agreement—
    - (i) payable by the tenant in accordance with section 34(8), or
    - (ii) if the price is determined in an appeal under section 37, as is so determined.
- (3) The offer must specify the date of entry and of payment of the price in accordance with subsection (4).
- (4) The date of entry and of payment of the price are to be—
  - (a) a date not later than 6 months from the date when the tenant gave notice under section 38E(3) of the tenant's intention to buy,
  - (b) where the price payable by the tenant is the subject of an appeal under section 37 which has not, before the expiry of the period of 4 months beginning with the date when the tenant gave such notice, been—
    - (i) determined, or
    - (ii) abandoned following agreement between the tenant and the seller,
 a date not later than 2 months after the appeal is so determined or, as the case may be, abandoned, or
  - (c) such later date as may be agreed between the tenant and the seller.
- (5) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.
- (6) The seller must—
  - (a) make available to the tenant such deeds and other documents as are sufficient to enable the tenant to proceed to complete title to the land,
  - (b) transfer title accordingly.

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### **38G Appointment of valuer and valuation of the land**

- (1) The provisions mentioned in subsection (2) apply to a sale implementing a tenant's right to buy by virtue of an order for sale as they apply to a sale implementing a tenant's right to buy under section 28, subject to the modifications mentioned in that subsection.
- (2) Those provisions are—
  - (a) section 33 (appointment of valuer), subject to the modifications that—
    - (i) in subsection (2), the reference to section 29(2) or (4) is to be read as a reference to section 38E(3),
    - (ii) subsection (5) does not apply,
  - (b) section 34 (valuation of land), subject to the modifications that—
    - (i) in subsection (1), the reference to the date of notice under section 26 of the seller's proposal to transfer the land is to be read as a reference to the date of notice under section 38E(3),
    - (ii) in subsection (8), the reference to section 32(2)(b)(i) is to be read as a reference to section 38F(2)(b)(i),
  - (c) section 35 (special provision where buyer is general partner in limited partnership), subject to the modification that the reference to section 28 is to be read as a reference to section 38E,
  - (d) section 36 (further provision on valuation), subject to the modifications that—
    - (i) in subsection (6)(a), the reference to section 32(7) is to be read as a reference to section 38I(3),
    - (ii) the following subsection is to be inserted after subsection (6)  
—  
“(6A) Where—
      - (a) the Land Court has made an order under section 38H(3),
      - (b) the seller to whom the order applies has complied with the order, and
      - (c) the tenant does not proceed with the purchase of the land from the seller,  
the tenant is liable to the seller for any expenses met by the seller by virtue of subsection (5).”
  - (e) section 37 (appeal to the Lands Tribunal against valuation), subject to the modification that, in subsection (3)(b), the reference to section 32(2)(b)(ii) is to be read as a reference to section 38F(2)(b)(ii), and
  - (f) section 38 (referral of certain matters by the Lands Tribunal to the Land Court).

### **38H Failure of seller to complete transaction**

- (1) If the seller has not, within the period fixed by or agreed under section 38F(4)  
—
  - (a) complied with section 38F(6)(a), or

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(b) done any of the things mentioned in subsection (2),  
the tenant may apply to the Land Court for an order under subsection (3).

(2) The things are—

- (a) concluding missives for the sale of the land, or
- (b) taking all steps which the seller could reasonably have taken in the time available towards so concluding missives.

(3) An order under this subsection may—

- (a) direct the seller to comply with section 38F(6)(a) within such period as the order may specify,
- (b) direct the seller—
  - (i) to conclude missives, and
  - (ii) to take such remedial action for the purpose of so concluding missives,
within such period as the order may specify, and
- (c) direct the tenant and seller to incorporate into the missives any term or condition in respect of the sale of the land as the order may specify.

(4) If the seller fails to comply—

- (a) with an order under subsection (3), or
- (b) with section 38F(6)(b),

the Land Court may, on the application of the tenant, authorise its principal clerk to adjust, execute and deliver such deeds or other documents as will complete the transfer of ownership of the land to the tenant to the same force and effect as if done by the seller.

### **38I Failure of tenant to complete transaction**

(1) If the tenant has not, within the period fixed by or agreed under section 38F(4), done any of the things mentioned in subsection (2), the seller may apply to the Land Court for an order under subsection (3).

(2) The things are—

- (a) concluding missives for the sale of the land, or
- (b) taking all steps which the tenant could reasonably have taken in the time available towards so concluding missives.

(3) An order under this subsection may—

- (a) direct the tenant—
  - (i) to conclude missives, and
  - (ii) to take such remedial action for the purpose of so concluding missives,
within such period as the order may specify, and
- (b) direct the tenant and seller to incorporate into the missives any term or condition in respect of the sale of the land as the order may specify.

(4) The right to buy is extinguished if—

- (a) the tenant fails to comply with an order under subsection (3), or
- (b) no order having been applied for under section 38H(3) or under subsection (3), missives have not been concluded before the end of—

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- (i) the period of 12 months beginning with the date when the tenant gave notice under section 38E(3) of the tenant's intention to buy, or
- (ii) such longer period as the Land Court may, on the application of the tenant, order.

### **38J Completion of sale to tenant**

- (1) The price paid for the transfer of ownership of the land to the tenant is to be paid not later than the final settlement date.
- (2) The “final settlement date” is the date on which the period, fixed or agreed under section 38F(4) or, as the case may be, specified in an order under section 38I(4)(b)(ii), expires.
- (3) Where, on the final settlement date, the seller is not able to effect the grant of a good and marketable title to the tenant—
  - (a) the price, or
  - (b) if, for any reason, the price has not been ascertained, such sum as may be fixed by the valuer appointed under section 33,is to be consigned into the Land Court until that title is granted, the tenant gives notice under section 38E(5) to the court of the tenant's decision not to proceed to complete the transaction or, as the case may be, the Land Court orders its release.
- (4) Except where subsection (3) applies, where the price remains unpaid after the date not later than which it is to be paid, the tenant's right to buy is extinguished.
- (5) Any heritable security which burdened the land immediately before title is granted to the tenant in pursuance of this section ceases to do so on the registration of that title in the Land Register of Scotland.
- (6) Where such a security also burdens land other than the land in respect of which title is granted to the tenant, the security does not, by virtue of subsection (5), cease to burden that other land.
- (7) Unless the creditors holding any such security otherwise agree, the tenant must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the seller by the tenant as the price for the land.
- (8) Any sum paid by a tenant under subsection (7) is to be deducted from the sum which the tenant is to pay to the seller as the price for the land.
- (9) Any legal incapacity or disability of an owner has no effect on the title passed to a tenant to which land has been sold in accordance with this Part.

### **38K Effect of extinguishing of right to buy**

- (1) Where a right to buy is extinguished under section 38E(6), 38I(4) or 38J(4), the tenant may acquire a subsequent right to buy the same land or any part of it under section 28(1) but only if the conditions mentioned in subsection (2) are met.

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- (2) Those conditions are that—
- (a) the period of 12 months from the extinguishing of the right to buy under section 38E(6), 38I(4) or 38J(4) has expired, or
  - (b) before that period has expired—
    - (i) the land is transferred to another person whether under an order for sale or otherwise, and
    - (ii) that person requires to give notice under section 26 in relation to a subsequent transfer.

### *Sale to third party*

#### **38L Sale to third party**

- (1) This section applies where a tenant's right to buy land in respect of which an order for sale has been made is extinguished under section 38E(6), 38I(4) or 38J(4).
- (2) The tenant may, before the expiry of the period mentioned in subsection (3), apply to the Land Court for the order for sale to be varied to allow the land in respect of which the order has been made to be offered for sale on the open market.
- (3) That period is the period of 28 days beginning with the date on which the right to buy was extinguished.
- (4) The tenant must give notice of the application—
  - (a) to the owner,
  - (b) where there is a heritable security over an interest in the land to which the application relates, to the creditor who holds the security,
  - (c) to such other persons as the Scottish Ministers may prescribe by regulations.
- (5) The Land Court may, if it considers it appropriate in all the circumstances, grant the application and vary the order for sale to require the land to be offered for sale on the open market.
- (6) Where—
  - (a) no application is made under subsection (2), or
  - (b) the Land Court refuses such an application,
 the order for sale ceases to have effect.

#### **38M Procedure for sale to third party**

- (1) The Scottish Ministers may by regulations make further provision about the sale of land in relation to which the Land Court has, under section 38L, varied an order for sale to allow the land to be offered for sale on the open market.
- (2) Regulations under subsection (1) may in particular include provision about—
  - (a) the appointment of a person to sell the land,
  - (b) the valuation of the land (including the appointment of a valuer, who need not be a different person to the person appointed to sell the land),



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- (c) the procedure for the sale of the land (including sale by private bargain or by public roup),
  - (d) the period within which the land is to be sold (including provision for applications to the Land Court to extend such a period),
  - (e) the persons to whom the land cannot be sold,
  - (f) the powers of the person appointed to sell the land, including powers to adjust, execute or deliver any deeds or other documents necessary to complete the transfer of ownership of the land,
  - (g) the duties of the person appointed to sell the land, which must include—
    - (i) a duty to ensure that the price at which the land is sold is the best that can reasonably be obtained, and
    - (ii) a duty to compensate any person who incurs a loss caused as a result of the appointed person's negligence in the sale of the land,
  - (h) the distribution of the proceeds of sale,
  - (i) liability for any expenses incurred by the person appointed to sell or value the land,
  - (j) reports by the person appointed to sell the land to the Land Court,
  - (k) the effect on any rights such as are mentioned in section 38D(3),
  - (l) the effect on any heritable securities which burden the land in respect of which the order for sale has been made,
  - (m) what happens if the land is not sold within a period specified in the regulations.
- (3) Regulations under subsection (1) may apply the provisions of this Act, that apply to the sale of land comprised in a lease to a tenant by virtue of an order for sale, to the sale of such land on the open market, with or without modifications.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).

#### *Post-sale obligations*

### **38N Restriction on notice to quit etc. where sale to third party**

- (1) This section applies where a third party buys the land comprised in the lease of a 1991 Act tenancy by virtue of an order for sale varied under section 38L.
- (2) During the period of 10 years beginning with the date the third party acquired title to the land, sections 22 to 24, 26 and 43 of the 1991 Act have effect in relation to the tenancy subject to the following modifications.
- (3) Section 22(2) has effect as if—
  - (a) paragraphs (a) and (b) were omitted,
  - (b) for paragraph (c) there were substituted—
    - “(c) the Land Court, on an application made—
      - (i) by a landlord who bought the land constituting the tenancy by virtue of an order for sale varied under section 38L of the

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Agricultural Holdings (Scotland) Act 2003  
Act,

- (ii) not more than 9 months before the giving of the notice to quit,  
granted a certificate under section 26(1) that the tenant was not fulfilling the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry,” and
- (c) for “any of paragraphs (a) to (f)” there were substituted “ any of paragraphs (c) to (f) ”.
- (4) Section 24(1)(e) has effect as if, for “not falling within section 22(2)(b) of this Act”, there were substituted “ and, in a case where the use requires permission under the enactments relating to town and country planning, such permission has been obtained ”.
- (5) Section 26 has effect as if, after subsection (1), there were inserted—
- “(1A) The Land Court must not grant a certificate under subsection (1) where subsection (1B) applies.
- (1B) This subsection applies where—
  - (a) the application under subsection (1) is made by a landlord who bought the land constituting the tenancy by virtue of an order for sale varied under section 38L of the Agricultural Holdings (Scotland) Act 2003 Act (the “2003 Act”), and
  - (b) the tenant's failure to farm in accordance with the rules of good husbandry is attributable to a material breach of the former landlord's obligations in relation to the tenant on the basis of which the Land Court made the order under section 84(1)(b) of the 2003 Act referred to in section 38A(1)(a) of that Act.”.
- (6) Section 43 has effect as if, for subsection (2), there were substituted—
- “(2) Compensation is not payable under this section where—
  - (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in the landlord's own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on condition that the tenant must, along with the last or waygoing crop, sow permanent grass seeds, or
  - (b) the application of section 22(1) to the notice to quit is excluded by any of paragraphs (c) to (f) of subsection (2) of that section.”.

### **380 Payment to former landlord where early resale**

- (1) This section applies where—
  - (a) a tenant or, as the case may be, a third party (the “original buyer”) buys land under an order for sale made in respect of the land, and
  - (b) the land is subsequently sold—
    - (i) before the end of the period of 10 years beginning with the date on which the original buyer acquired title to the land (the “original date”),

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- (ii) at a price higher than the price paid by the original buyer to the person from whom the land was bought (the “original seller”).
- (2) The original buyer must pay to the original seller a proportion of the difference between the price at which the land is subsequently sold and the price paid by the original buyer to the original seller.
  - (3) The proportion of the difference which must be paid to the original seller is to be—
    - (a) 100 per cent where the subsequent sale occurs before the end of the period of 5 years beginning with the original date,
    - (b) 66 per cent where it occurs after the end of that period but before the end of the period of 8 years beginning with that date,
    - (c) 33 per cent where it occurs after the end of the period of 8 years beginning with that date.
  - (4) The Scottish Ministers may by regulations make further provision about the payment that the original buyer must make to the original seller.
  - (5) Regulations under subsection (4) may in particular include provision about—
    - (a) the exclusion, for the purposes of subsection (2), of so much of the price at which the land is subsequently sold as is attributable to an increase in the value of the land resulting from such causes as may be specified in the regulations (which may include improvements of the kind mentioned in schedule 5 of the 1991 Act),
    - (b) payment where part only of the land bought under the order for sale is subsequently sold within the period of 10 years mentioned in subsection (1)(b),
    - (c) the granting of standard securities over the land in relation to the liability to make a payment under this section (including the priority of such securities in relation to any other securities over the land),
    - (d) circumstances in which no liability to make a payment under this section arises.

### **38P Compensation**

- (1) Any person, including an owner or former owner of land comprised in the lease of a 1991 Act tenancy, who has incurred loss or expense—
  - (a) in complying with the requirements of this Part following the making of an application by a tenant under section 38A(2) or 38L(2), or
  - (b) where the tenant gave notice under section 38E(3) of the tenant's intention to buy the land, as a result of the failure of the tenant or the seller to complete the purchase,is entitled to recover the amount of that loss or expense from the Scottish Ministers.
- (2) The Scottish Ministers may by regulations make provision about—
  - (a) the losses and expenses which may and may not be compensated,
  - (b) the procedure for claiming compensation (including who determines whether compensation is payable),

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(c) the amount of compensation payable (including the manner in which such compensation is calculated).

(3) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by regulations under subsection (2)(b), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal for Scotland.”.

#### Commencement Information

**I13** S. 100 in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, **sch.** (with regs. 3-15)

## CHAPTER 5

### RENT REVIEW

#### *1991 Act tenancies: rent review*

#### **101 1991 Act tenancies: rent review**

- (1) The 1991 Act is amended as follows.
- (2) For section 13 (variation of rent) substitute—

*“Rent review*

#### **13 Rent review**

Schedule 1A makes provision for review of the rent payable in respect of an agricultural holding.”.

- (3) After schedule 1 insert—

“SCHEDULE 1A  
*(introduced by section 13)*

### RENT REVIEW

#### *Rent review: service of rent review notice*

- 1 (1) The landlord of an agricultural holding to which this paragraph applies may initiate a review of the rent that is to be payable in respect of the holding by serving a notice in writing on the tenant of the holding.
- (2) The tenant of such an agricultural holding may initiate such a review by serving a notice in writing on the landlord of the holding.
- (3) A notice served under sub-paragraph (1) or (2) is a “rent review notice”.

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- (4) This paragraph applies to an agricultural holding in respect of which—
- (a) the lease was entered into before 27 November 2003, or
  - (b) the lease—
    - (i) was entered into in writing on or after that date but prior to the commencement of the tenancy, and
    - (ii) expressly states that this Act is to apply in relation to the tenancy.

#### *Form and content of rent review notice*

- 2 (1) A rent review notice must be dated and state the following—
- (a) the names and designations of the landlord and the tenant of the agricultural holding,
  - (b) the name (if any) and the address of the holding or such other description of the holding as will identify it,
  - (c) the rent currently payable in respect of the holding,
  - (d) the rent that the person serving the notice proposes should be payable,
  - (e) the date by which the landlord and the tenant must reach agreement as to what the rent payable should be (the “rent agreement date”).
- (2) The rent review notice must be accompanied by information in writing explaining the basis on which the rent proposed by the person serving the notice has been calculated.
- (3) For the purposes of sub-paragraph (1)(e), the rent agreement date stated in the rent review notice must not fall—
- (a) earlier than 12 months from the date on which the notice is served, or
  - (b) later than 2 years from that date.
- (4) The Scottish Ministers may by regulations make further provision about—
- (a) the form and content of rent review notices,
  - (b) the information that must or may accompany them.
- (5) Regulations under sub-paragraph (4) are subject to the negative procedure.

#### *Timing of rent review notice*

- 3 (1) A rent review notice may not be served under paragraph 1 if the rent agreement date stated in the notice would fall before the end of the period of 3 years beginning with the latest of—
- (a) the commencement of the tenancy,
  - (b) the date as from which a previous variation of rent (under paragraph 7(2)(a) or otherwise) took effect,
  - (c) the date as from which a previous determination under paragraph 7(2)(b) that the rent should continue unchanged took effect.
- (2) For the purposes of sub-paragraph (1)(b), the following are to be disregarded—
- (a) a variation of rent under section 14,
  - (b) an increase of rent under section 15(1),
  - (c) a reduction of rent under section 31,

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- (d) a variation of rent arising under—
  - (i) the exercise or revocation of an option to tax under schedule 10 of the Value Added Tax Act 1994, or
  - (ii) a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.

*Withdrawal of rent review notice*

- 4 (1) This paragraph applies where—
  - (a) a rent review notice is served under paragraph 1,
  - (b) no agreement has been reached between the landlord and the tenant as to the rent that is to be payable in respect of the holding, and
  - (c) no determination has been made by the Land Court under paragraph 7(2) as to the rent that is to be payable in respect of the holding.
- (2) The person who served the rent review notice may withdraw it but only with the consent of the recipient of the notice.

*Termination of rent review notice*

- 5 A rent review notice ceases to have effect on the earliest of the following—
  - (a) the date it is withdrawn,
  - (b) the date the landlord and the tenant reach agreement as to the rent that is to be payable in respect of the holding,
  - (c) where no referral is made to the Land Court under paragraph 6(2), the day after the rent agreement date,
  - (d) where a referral is made to the Land Court under paragraph 6(2), the date on which the Land Court determines under paragraph 7(2) the question of what the rent payable in respect of the holding is to be.

*Referral of rent to the Land Court*

- 6 (1) This paragraph applies where—
  - (a) a rent review notice is served under paragraph 1, and
  - (b) no agreement has been reached between the landlord and the tenant as to the rent that is to be payable in respect of the holding.
- (2) The landlord or the tenant of the holding may (whether the sender of the notice or not) refer the question of what the rent payable in respect of the holding should be to the Land Court.
- (3) The landlord or the tenant may not make such a referral after the rent agreement date.

*Powers of Land Court on referral under paragraph 6*

- 7 (1) This paragraph applies where a landlord or a tenant makes a referral to the Land Court under paragraph 6(2).
- (2) The Land Court must determine what the rent payable in respect of the holding is to be as from the rent agreement date and may—

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- (a) vary the rent currently payable in respect of the holding, or
  - (b) determine that the rent should continue unchanged.
- (3) The rent that is to be payable in respect of the holding is the rent that the Land Court, taking account of all the circumstances, considers is the fair rent for the holding.
- (4) In determining the fair rent for the holding, the Land Court must have regard, in particular, to—
- (a) the productive capacity of the holding,
  - (b) the open market rent of any surplus residential accommodation on the holding provided by the landlord, and
  - (c) the open market rent of—
    - (i) any fixed equipment on the holding provided by the landlord, or
    - (ii) any land forming part of the holding, used for a purpose that is not an agricultural purpose.

*New rent to take effect from rent agreement date*

- 8 The rent agreed between the landlord and the tenant or, as the case may be, determined in accordance with paragraph 7 is to take effect from the rent agreement date.

*Productive capacity*

- 9 (1) The Scottish Ministers may by regulations make provision for the purposes of paragraph 7(4)(a) about the productive capacity of agricultural holdings, including—
- (a) how the productive capacity of an agricultural holding is to be determined,
  - (b) the information to be provided by the landlord and the tenant of a holding to the Land Court to enable the court to have regard to the productive capacity of the holding.
- (2) Regulations under sub-paragraph (1) are subject to the affirmative procedure.

*Surplus residential accommodation*

- 10 (1) Residential accommodation on an agricultural holding is surplus to the extent that it exceeds what is necessary to provide accommodation for the standard labour requirement of the holding.
- (2) In determining, for the purposes of paragraph 7(4)(b), whether residential accommodation is surplus the Land Court—
- (a) may take into account whether the standard labour requirement of the holding varies (seasonally or otherwise),
  - (b) must disregard —
    - (i) any accommodation all or part of which is occupied by the tenant of the holding,
    - (ii) any accommodation if the tenant is prohibited (by the lease or otherwise) from subletting it.

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- (3) But any such prohibition as is mentioned in sub-paragraph (2)(b)(ii) is to be ignored if the tenant has sublet the accommodation by virtue of section 39(3) of the Agricultural Holdings (Scotland) Act 2003.
- (4) In having regard for the purposes of paragraph 7(4)(b) to the open market rent for any surplus residential accommodation, the Land Court—
  - (a) must take into account all the circumstances, including—
    - (i) the condition of the accommodation and its location, and
    - (ii) where accommodation is occupied by a retired agricultural worker, under an arrangement or agreement between the landlord and the tenant of the holding, at no rent or at a rent that is below what the open market rent for that accommodation would otherwise be, that fact,
  - (b) where the accommodation is not currently let, must disregard that fact.
- (5) Where regard is had to the open market rent for surplus residential accommodation for the purposes of paragraph 7(4)(b), that accommodation is to be disregarded for the purposes of paragraph 7(4)(c).
- (6) The Scottish Ministers may by regulations make provision about the standard labour requirement of agricultural holdings, including—
  - (a) how the standard labour requirement of an agricultural holding is to be determined,
  - (b) the information to be provided by the landlord and the tenant of a holding to the Land Court to enable the court to determine the standard labour requirement of the holding.
- (7) Regulations under sub-paragraph (6) are subject to the affirmative procedure.

#### *Open market rent*

- 11 For the purposes of paragraphs 7(4) and 10(4)(a)(ii), the “open market rent” means the rent at which—
  - (a) any surplus residential accommodation, or
  - (b) any fixed equipment or land used for a purpose that is not an agricultural purpose,
 might reasonably be expected to be let on the open market by a willing landlord to a willing tenant.

#### *Power of Land Court to phase in new rent*

- 12 (1) This paragraph applies where the Land Court determines under paragraph 7(2) that the rent payable in respect of an agricultural holding (the “new rent”) is to be—
  - (a) 30% or more higher, or
  - (b) 30% or more lower,
 than the rent currently payable in respect of the holding (the “original rent”).
- (2) The tenant or the landlord may apply to the Land Court to have the new rent phased in.



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- (3) The Land Court may, if it considers that it would cause the tenant or, as the case may be, the landlord undue hardship were the new rent to be payable from the rent agreement date, order that the new rent be phased in over a 3 year period in accordance with sub-paragraphs (4) to (6).
- (4) The rent payable in the first year after the rent agreement date is—
  - (a) where sub-paragraph (1)(a) applies, the sum of the original rent and one third of the difference between the new rent and the original rent, or
  - (b) where sub-paragraph (1)(b) applies, the original rent less one third of the difference between the original rent and the new rent.
- (5) The rent payable in the second year after the rent agreement date is—
  - (a) where sub-paragraph (1)(a) applies, the sum of the original rent and two thirds of the difference between the new rent and the original rent, or
  - (b) where sub-paragraph (1)(b) applies, the original rent less two thirds of the difference between the original rent and the new rent.
- (6) The rent payable from the third year after the rent agreement date is the new rent.

#### *Interpretation*

- 13 In this schedule—
- “open market rent” has the meaning given by paragraph 11,
  - “rent agreement date” has the meaning given by paragraph 2(1)(e),
  - “rent review notice” has the meaning given by paragraph 1(3),
  - “surplus residential accommodation” has the meaning given by paragraph 10.”.

#### **Commencement Information**

**I14** S. 101 in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

#### *Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review*

### **102 Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review**

- (1) The 2003 Act is amended as follows.
- (2) In section 9 (review of rent under limited duration tenancies)—
  - (a) in subsection (A1), after “tenancy” insert “, a modern limited duration tenancy or a repairing tenancy ”,
  - (b) in subsection (1), after “tenancy” insert “ or a modern limited duration tenancy ”,
  - (c) after subsection (1) insert—

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- “(1A) The rent due as payable under a lease constituting a repairing tenancy is to be reviewed and determined in accordance with this section.”,
- (d) for subsections (2) to (8) substitute—
- “(2) The landlord may initiate a review of the rent that is to be payable under the lease by serving a notice in writing on the tenant.
- (3) The tenant may initiate such a review by serving a notice in writing on the landlord.
- (4) A notice served under subsection (2) or (3) is a “rent review notice”.
- (e) the title of the section becomes “ **Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies** ”.
- (3) After section 9 insert—

#### **“9A Form and content of rent review notice**

- (1) A rent review notice must be dated and state the following—
- (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the land comprised in the lease or such other description of the land as will identify it,
  - (c) the rent currently payable in respect of the land,
  - (d) the rent that the person serving the notice proposes should be payable,
  - (e) the date by which the landlord and the tenant must reach agreement as to what the rent payable should be (the “rent agreement date”).
- (2) The rent review notice must be accompanied by information in writing explaining the basis on which the rent proposed by the person serving the notice has been calculated.
- (3) The Scottish Ministers may by regulations make further provision about—
- (a) the form and content of rent review notices,
  - (b) the information that must or may accompany them.

#### **9B Determination of rent**

- (1) On review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having regard, in particular, to—
- (a) the productive capacity of the land comprised in the lease,
  - (b) the open market rent of any surplus residential accommodation on the land provided by the landlord, and
  - (c) the open market rent of—
    - (i) any fixed equipment on the land provided by the landlord, or
    - (ii) any land comprised in the lease,
 used for a purpose that is not an agricultural purpose.
- (2) In this section and section 9C(4)(a)(ii), the “open market rent” means the rent at which—
- (a) any surplus residential accommodation, or

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- (b) any fixed equipment or land used for a purpose that is not an agricultural purpose,  
might reasonably be expected to be let on the open market by a willing landlord to a willing tenant.
- (3) The Scottish Ministers may by regulations make provision for the purposes of this section about the productive capacity of land comprised in leases of limited duration tenancies, modern limited duration tenancies and repairing tenancies, including how the productive capacity of such land is to be determined.
- (4) The rent determined in accordance with this section is to take effect from the rent agreement date.

### **9C Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies: surplus residential accommodation**

- (1) Residential accommodation on land comprised in the lease of a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy is surplus to the extent that it exceeds what is necessary to provide accommodation for the standard labour requirement of the land.
- (2) In determining whether residential accommodation is surplus—
  - (a) whether the standard labour requirement of the holding varies (seasonally or otherwise) may be taken into account,
  - (b) any accommodation—
    - (i) all or part of which is occupied by the tenant, or
    - (ii) which the tenant is prohibited (by the lease or otherwise) from subletting,is to be disregarded.
- (3) But any such prohibition as is mentioned in subsection (2)(b)(ii) is to be ignored if the tenant has sublet the accommodation by virtue of section 39(3).
- (4) In having regard for the purposes of section 9B(1)(b) to the open market rent for any surplus residential accommodation—
  - (a) all the circumstances must be taken into account, including—
    - (i) the condition of the accommodation and its location, and
    - (ii) where accommodation is occupied by a retired agricultural worker, under an arrangement or agreement between the landlord and the tenant, at no rent or at a rent that is below what the open market rent for that accommodation would otherwise be, that fact,
  - (b) the fact that the accommodation is not currently let is to be disregarded.
- (5) Where regard is had to the open market rent for surplus residential accommodation for the purposes of section 9B(1)(b), that accommodation is to be disregarded for the purposes of section 9B(1)(c).
- (6) The Scottish Ministers may by regulations make provision about the standard labour requirement of land comprised in leases of limited duration tenancies,

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modern limited duration tenancies or repairing tenancies, including how the standard labour requirement of such land is to be determined.”.

**Commencement Information**

**I15** S. 102 in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

## CHAPTER 6

### ASSIGNATION OF AND SUCCESSION TO AGRICULTURAL TENANCIES

#### *Assignment*

#### **103**      **Assignment of 1991 Act tenancies**

- (1) Section 10A of the 1991 Act (assignment and subletting of tenancy) is amended as follows.
- (2) In subsection (1), for “any of the persons who would be entitled to succeed to his estate on intestacy by virtue of the Succession (Scotland) Act 1964 (c.41)” substitute “ any one of the persons mentioned in subsection (1A) ”.
- (3) After that subsection insert—
 

“(1A) The persons referred to in subsection (1) are—

  - (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964,
  - (b) a spouse or civil partner of a child of the tenant,
  - (c) a spouse or civil partner of a grandchild of the tenant,
  - (d) a spouse or civil partner of a brother or sister of the tenant,
  - (e) a brother or sister of the tenant's spouse or civil partner,
  - (f) a spouse or civil partner of such a brother or sister,
  - (g) a child (including a step-child) of such a brother or sister,
  - (h) a grandchild (including a step-grandchild) of such a brother or sister,
  - (i) a step-child of the tenant,
  - (j) a spouse or civil partner of such a step-child,
  - (k) a descendant of such a step-child,
  - (l) a step-brother or step-sister of the tenant,
  - (m) a spouse or civil partner of such a step-brother or step-sister,
  - (n) a descendant of such a step-brother or step-sister.”.
- (4) In subsection (3), for “The” substitute “ Subject to subsection (3A), the ”.
- (5) After that subsection insert—
 

“(3A) Where the tenant proposes to assign the lease to a person who is a near relative of the tenant, the only grounds on which the landlord can withhold consent to the proposed assignment are the following—

  - (a) that the person is not of good character,

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*Status: Point in time view as at 12/06/2020. This version of this part contains provisions that are prospective.*  
*Changes to legislation: Land Reform (Scotland) Act 2016, PART 10 is up to date with all changes known to be in force on or before 30 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (b) that the person does not have sufficient resources to enable the person to farm the holding with reasonable efficiency,
- (c) subject to subsection (3B), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the holding with reasonable efficiency.

(3B) The ground of objection in subsection (3A)(c) does not apply where the person—

- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
- (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.”.

(6) After subsection (5) insert—

“(6) In this section and in sections 12A and 12B, “near relative”, in relation to a tenant of an agricultural holding, means—

- (a) a parent of the tenant,
- (b) a spouse or civil partner of the tenant,
- (c) a child of the tenant,
- (d) a spouse or civil partner of such a child,
- (e) a grandchild of the tenant,
- (f) a brother or sister of the tenant,
- (g) a spouse or civil partner of such a brother or sister,
- (h) a child of a brother or sister of the tenant,
- (i) a grandchild of a brother or sister of the tenant,
- (j) a brother or sister of the tenant's spouse or civil partner,
- (k) a spouse or civil partner of such a brother or sister,
- (l) a child of such a brother or sister,
- (m) a grandchild of such a brother or sister.”.

#### Commencement Information

I16 S. 103 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

## 104 Assignment of limited duration tenancies

(1) The 2003 Act is amended as follows.

(2) In section 7 (assignment and subletting of limited duration tenancies)—

- (a) in subsection (3), for “The” substitute “ Subject to subsection (3A), the ”,
- (b) after that subsection insert—

“(3A) Where the tenant proposes to assign the lease to a person who is a near relative of the tenant, the only grounds on which the landlord can withhold consent to the proposed assignment are the following—

- (a) that the person is not of good character,

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- (b) that the person does not have sufficient resources to enable the person to farm the land with reasonable efficiency,
  - (c) subject to subsection (3B), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the land with reasonable efficiency.
- (3B) The ground of objection in subsection (3A)(c) does not apply where the person—
- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the land is farmed with reasonable efficiency until the person completes that course.”,
- (c) after subsection (5) insert—
- “(5A) For the purposes of subsection (3A), “near relative”, in relation to a tenant of an agricultural holding, means—
- (a) a parent of the tenant,
  - (b) a spouse or civil partner of the tenant,
  - (c) a child of the tenant,
  - (d) a spouse or civil partner of such a child,
  - (e) a grandchild of the tenant,
  - (f) a brother or sister of the tenant,
  - (g) a spouse or civil partner of such a brother or sister,
  - (h) a child of a brother or sister of the tenant,
  - (i) a grandchild of a brother or sister of the tenant,
  - (j) a brother or sister of the tenant's spouse or civil partner,
  - (k) a spouse or civil partner of such a brother or sister,
  - (l) a child of such a brother or sister,
  - (m) a grandchild of such a brother or sister.”.

**Commencement Information**

**I17** S. 104 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

**105 Assignment of modern limited duration tenancies**

- (1) The 2003 Act is amended as follows.
- (2) After section 7A (as inserted by section 86) insert—

**“7B Assignment of modern limited duration tenancies**

- (1) A lease constituting a modern limited duration tenancy may be assigned by the tenant if, following notice under subsection (2), the landlord consents to a proposed assignment.

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- (2) The tenant must give the landlord a notice in writing of any intention of the tenant to assign the lease; and the notice must include the particulars of the proposed assignee, the terms upon which the assignment is to be made and the date on which it is to take effect.
- (3) Subject to subsection (4), the landlord may withhold consent to the proposed assignment if there are reasonable grounds for doing so; and, in particular, the landlord may withhold consent if not satisfied that the proposed assignee—
  - (a) would have the ability to pay—
    - (i) the rent due under the lease, or
    - (ii) for adequate maintenance of the land, or
  - (b) has the skills or experience that would be required properly to manage and maintain the land in accordance with the rules of good husbandry.
- (4) Where the tenant proposes to assign the lease to a person who is a near relative of the tenant, the only grounds on which the landlord can withhold consent to the proposed assignment are the following—
  - (a) that the person is not of good character,
  - (b) that the person does not have sufficient resources to enable the person to farm the land with reasonable efficiency,
  - (c) subject to subsection (5), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the land with reasonable efficiency.
- (5) The ground of objection in subsection (4)(c) does not apply where the person—
  - (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the land is farmed with reasonable efficiency until the person completes that course.
- (6) Any such withholding of consent (and the grounds for withholding it) is to be intimated in writing to the tenant within 30 days of the giving of the notice under subsection (2); and, if no such intimation is made, the landlord is deemed to have consented to the proposed assignment.
- (7) For the purposes of subsection (3)(b), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (8) For the purposes of subsection (4), “near relative”, in relation to a tenant of an agricultural holding, means—
  - (a) a parent of the tenant,
  - (b) a spouse or civil partner of the tenant,
  - (c) a child of the tenant,
  - (d) a spouse or civil partner of such a child,
  - (e) a grandchild of the tenant,
  - (f) a brother or sister of the tenant,
  - (g) a spouse or civil partner of such a brother or sister,
  - (h) a child of a brother or sister of the tenant,

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- (i) a grandchild of a brother or sister of the tenant,
- (j) a brother or sister of the tenant's spouse or civil partner,
- (k) a spouse or civil partner of such a brother or sister,
- (l) a child of such a brother or sister,
- (m) a grandchild of such a brother or sister.”.

#### Commencement Information

**I18** S. 105 in force at 30.11.2017 by S.S.I. 2017/299, reg. 2, sch.

PROSPECTIVE

### 106 Assignment of repairing tenancies

- (1) The 2003 Act is amended as follows.
- (2) After section 7C (as inserted by section 93) insert—

#### “7D Assignment of repairing tenancies

- (1) During the repairing period, a lease constituting a repairing tenancy may be assigned by the tenant if, following notice under subsection (2), the landlord consents to a proposed assignment.
- (2) The tenant must give the landlord a notice in writing of any intention of the tenant to assign the lease during the repairing period; and the notice must include the particulars of the proposed assignee, the terms upon which the assignment is to be made and the date on which it is to take effect.
- (3) The landlord may withhold consent to the proposed assignment during the repairing period if there are reasonable grounds for doing so; and, in particular, the landlord may withhold consent if not satisfied that the proposed assignee—
  - (a) would have the ability to pay—
    - (i) the rent due under the lease, or
    - (ii) for investment in the land in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry, or
  - (b) has the skills or experience that would be required properly to manage and improve the land in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry.
- (4) The ground of objection in subsection (3)(b) does not apply where the person—
  - (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and



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- (b) has made arrangements to secure that the land is farmed with reasonable efficiency until the person completes that course.
- (5) Any such withholding of consent during the repairing period (and the grounds for withholding it) is to be intimated in writing to the tenant within 30 days of the giving of notice under subsection (2); and, if no such intimation is made, the landlord is deemed to have consented to the proposed assignment.
- (6) For the purposes of subsection (3), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (7) After the expiry of the repairing period, section 7B applies to the assignment of a lease constituting a repairing tenancy as to the assignment of a lease constituting a modern limited duration tenancy.”.

### *Succession*

#### **107 Bequest of 1991 Act tenancies**

In section 11 of the 1991 Act (bequest of lease)—

- (a) in subsection (1), for “his 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 Succession (Scotland) Act 1964” substitute “ any one of the persons mentioned in subsection (1A) ”,
- (b) after that subsection insert—

“(1A) The persons referred to in subsection (1) are—

- (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964,
- (b) a spouse or civil partner of a child of the tenant,
- (c) a spouse or civil partner of a grandchild of the tenant,
- (d) a spouse or civil partner of a brother or sister of the tenant,
- (e) a brother or sister of the tenant's spouse or civil partner,
- (f) a spouse or civil partner of such a brother or sister,
- (g) a child (including a step-child) of such a brother or sister,
- (h) a grandchild (including a step-grandchild) of such a brother or sister,
- (i) a step-child of the tenant,
- (j) a spouse or civil partner of such a step-child,
- (k) a descendant of such a step-child,
- (l) a step-brother or step-sister of the tenant,
- (m) a spouse or civil partner of such a step-brother or step-sister,
- (n) a descendant of such a step-brother or step-sister.”.

#### **Commencement Information**

**I19** S. 107 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

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*Status: Point in time view as at 12/06/2020. This version of this part contains provisions that are prospective.*  
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## 108 Limited duration tenancies, modern limited duration tenancies and repairing tenancies: succession

(1) Section 16 of the Succession (Scotland) Act 1964 (provisions relating to leases) is amended as follows—

- (a) in subsection (4A), for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy ”,
- (b) in subsection (4C), for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy ”,
- (c) in subsection (9)—
  - (i) in the definition of “agricultural lease”, for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy ”,
  - (ii) for “and “limited duration tenancy”” substitute “, “limited duration tenancy”, “modern limited duration tenancy” and “repairing tenancy””.

(2) The 2003 Act is amended as follows.

(3) In section 21 (bequest of lease)—

- (a) in subsection (1)—
  - (i) for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy ”,
  - (ii) for “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” substitute “ any one of the persons mentioned in subsection (1A) ”,
- (b) after that subsection insert—

“(1A) The persons referred to in subsection (1) are—

- (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964,
- (b) a spouse or civil partner of a child of the tenant,
- (c) a spouse or civil partner of a grandchild of the tenant,
- (d) a spouse or civil partner of a brother or sister of the tenant,
- (e) a brother or sister of the tenant's spouse or civil partner,
- (f) a spouse or civil partner of such a brother or sister,
- (g) a child (including a step-child) of such a brother or sister,
- (h) a grandchild (including a step-grandchild) of such a brother or sister,
- (i) a step-child of the tenant,
- (j) a spouse or civil partner of such a step-child,
- (k) a descendant of such a step-child,
- (l) a step-brother or step-sister of the tenant,
- (m) a spouse or civil partner of such a step-brother or step-sister,
- (n) a descendant of such a step-brother or step-sister.”

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#### Commencement Information

- I20** S. 108(1)(3)(a)(i) in force at 30.11.2017 by S.S.I. 2017/299, reg. 2, sch. (with regs. 7, 12) (as amended by S.S.I. 2017/370, regs. 1, 3, 4)
- I21** S. 108(2)(3)(a)(ii)(b) in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

### *Landlord's objection to tenant's successor*

## 109 Objection by landlord to legatee or acquirer on intestacy

- (1) The 1991 Act is amended as follows.
- (2) In section 11 (bequest of lease)—
  - (a) in subsection (1), for “subsections (2) to (8) below” substitute “ subsections (2) and (3) and to sections 12A to 12C ”,
  - (b) in subsection (2), after “this section” insert “ and in sections 12A to 12C ”,
  - (c) in subsection (3), for “subsection (4) below” substitute “ section 12A(2) or 12B(2) ”,
  - (d) subsections (4) to (7) are repealed,
  - (e) in subsection (8), “, or if the bequest is declared null and void under subsection (6) above,” is repealed.
- (3) In section 12 (right of landlord to object to acquirer of lease)—
  - (a) in subsection (1)—
    - (i) after “this section” insert “ and in sections 12A to 12C ”,
    - (ii) for “subsection (2) below” substitute “ section 12A(2) or 12B(2) ”,
  - (b) subsections (2) to (5) are repealed,
  - (c) the title of the section becomes “ **Transfer of lease on intestacy** ”.
- (4) After section 12 insert—

#### **“12A Landlord's objection to legatee or acquirer on intestacy: near relative**

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is a near relative of the deceased.
- (2) The landlord may, within 1 month after the notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease.
- (3) The only grounds on which the landlord can object to receiving the person as tenant under the lease are the following—
  - (a) that the person is not of good character,
  - (b) that the person does not have sufficient resources to enable the person to farm the holding with reasonable efficiency,
  - (c) subject to subsection (4), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the holding with reasonable efficiency.

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- (4) The ground of objection in subsection (3)(c) does not apply where the person—
- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under section 11(2) or 12(1), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.
- (5) If the landlord gives a counter-notice under subsection (2), the landlord may, within 1 month after the counter-notice is given, apply to the Land Court for an order—
- (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease.
- (6) If, on the hearing of such an application, any ground of objection stated by the landlord is established to the satisfaction of the Land Court, it must make an order—
- (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the court specifies.
- (7) In any other case, the Land Court must make an order declaring the legatee or, as the case may be, the acquirer to be the tenant under the lease and the lease to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.
- (8) Where the landlord does not apply to the Land Court under subsection (5)—
- (a) the counter-notice ceases to have effect on the expiry of the period of 1 month mentioned in that subsection, and
  - (b) the lease is to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.

### **12B Landlord's objection to legatee or acquirer on intestacy: other persons**

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is not a near relative of the deceased.
- (2) The landlord may, within 1 month after notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease and—
- (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the landlord specifies, being a term at least 1 year but no more than 2 years from the date of the counter-notice.
- (3) If the landlord gives a counter-notice under subsection (2), the person may, within 1 month after the counter-notice is given, appeal to the Land Court.

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- (4) If, on the hearing of such an appeal, any reasonable ground stated by the person—
- (a) in the case of a legatee, for not declaring the bequest to be null and void,
  - (b) in the case of an acquirer, for not terminating the lease,
- is established to the satisfaction of the Land Court, it must make an order quashing the counter-notice.
- (5) In any other case, the Land Court must make an order confirming the counter-notice.

### **12C Landlord's objection to legatee or acquirer on intestacy: supplementary provision**

- (1) Pending any proceedings under section 12A or 12B, the legatee or acquirer is to have possession of the holding provided the executor in whom the lease is vested under section 14 of the Succession (Scotland) Act 1964 consents.
- (2) Subsection (1) does not apply where the Land Court, on the application of the landlord and on cause shown, directs otherwise.
- (3) In the case of a legatee, if the bequest is declared null and void—
- (a) under section 12A(6)(a),
  - (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or
  - (c) by virtue of the Land Court confirming such a counter-notice on such an appeal,
- the right to the lease is to be treated as intestate estate of the deceased tenant in accordance with Part 1 of the Succession (Scotland) Act 1964.
- (4) In the case of an acquirer, if the lease is terminated—
- (a) under section 12A(6)(b),
  - (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or
  - (c) by virtue of the Land Court confirming such a counter-notice on such an appeal,
- that termination is to be treated, for the purposes of Parts 4 and 5 of this Act (compensation), as termination of the acquirer's tenancy of the holding.
- (5) But nothing in this section is to entitle the acquirer to compensation for disturbance.”.

- (5) Section 25 (termination of tenancies acquired by succession) is repealed.

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#### **Commencement Information**

**I22** S. 109 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

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## CHAPTER 7

### RELINQUISHING AND ASSIGNATION OF 1991 ACT TENANCIES

#### 110 Tenant's offer to relinquish 1991 Act tenancy

- (1) The 1991 Act is amended as follows.
- (2) After section 32 insert—

#### “PART 3A

#### RELINQUISHING AND ASSIGNATION OF HOLDINGS

#### CHAPTER 1

#### TENANT'S OFFER TO RELINQUISH HOLDING

#### *Application of Part and key terms*

#### **32A Application of Part**

- (1) This Part applies where the tenant of an agricultural holding to which subsection (2) applies wishes to quit the tenancy before the date on which the tenancy could otherwise be brought to an end by notice of intention to quit or, failing which, assign the lease to an individual who is a new entrant to, or who is progressing in, farming.
- (2) This subsection applies to an agricultural holding in respect of which—
  - (a) the lease was entered into before 27 November 2003, or
  - (b) the lease—
    - (i) was entered into in writing on or after that date but prior to the commencement of the tenancy, and
    - (ii) expressly states that this Act is to apply to the tenancy.

#### **32B New entrants to farming and persons progressing in farming**

- (1) The Scottish Ministers may by regulations make further provision about the individuals who are new entrants to, or who are progressing in, farming for the purposes of this Part.
- (2) Regulations under subsection (1) are subject to the negative procedure. Notice of intention to relinquish

#### **32C Tenant's offer to relinquish tenancy**

- (1) The tenant may serve notice in writing on the landlord of the holding indicating that the tenant will quit the tenancy provided the landlord pays to the tenant an amount, calculated in accordance with section 32L, as compensation for so doing.

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- (2) A notice served under subsection (1) is a “notice of intention to relinquish”.
- (3) The tenant must, at the same time as serving a notice of intention to relinquish, send a copy of the notice to the Tenant Farming Commissioner.

### **32D Form and content of notice of intention to relinquish**

- (1) The Scottish Ministers may by regulations prescribe the form and content of notices of intention to relinquish.
- (2) Regulations under subsection (1) may, in particular, include provision for—
  - (a) such notices to be dated,
  - (b) such notices to state—
    - (i) the names and designations of the landlord and the tenant of the agricultural holding,
    - (ii) the name (if any) and the address of the holding or such other description of the holding as will identify it,
    - (iii) the rent currently payable in respect of the holding,
    - (iv) the date on which the rent for the holding was last varied or, as the case may be, continued unchanged (whether by agreement or by determination of the Land Court),
    - (v) the improvements (if any) carried out to the holding by the tenant,
  - (c) the information that must or may accompany such notices (which may include maps or plans of the holding).
- (3) Regulations under subsection (1) are subject to the negative procedure.

### **32E Restrictions on serving notice of intention to relinquish**

- (1) A tenant may not serve a notice of intention to relinquish if, at the date of service, any of subsections (2) to (7) apply.
- (2) This subsection applies where the tenant has served notice of intention to quit.
- (3) This subsection applies where the tenant has failed to comply with a written demand, served on the tenant by the landlord, requiring the tenant—
  - (a) to pay rent due in respect of the holding within 2 months from the date of service of the demand, or
  - (b) to remedy a relevant breach within a reasonable time.
- (4) In subsection (3)(b), a “relevant breach” is a breach by the tenant of a condition of the tenancy which—
  - (a) is capable of being remedied, and
  - (b) is not inconsistent with the fulfilment of the tenant's responsibilities to farm in accordance with the rules of good husbandry.
- (5) This subsection applies where the landlord has served notice to quit to which section 22(2) applies.
- (6) This subsection applies where the landlord has served notice to quit to which section 22(2) does not apply and—

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- (a) the period mentioned in section 23(1) within which the landlord may apply to the Land Court for consent to the operation of the notice has not expired,
  - (b) the landlord has applied in accordance with that section and the Land Court has yet to reach a decision, or
  - (c) the Land Court has, on such an application, consented to the notice and—
    - (i) any period within which an appeal may be made against that decision has not expired,
    - (ii) such a period has expired without an appeal having been made, or
    - (iii) an appeal having been made, the decision of the Land Court to consent to the notice has been upheld.
- (7) This subsection applies where, in relation to a notice to quit to which section 22(2) does not apply, the Land Court has, following an application under section 23(1), refused consent to its operation and—
- (a) any period within which an appeal may be made against that decision has not expired,
  - (b) an appeal has been made but not determined, or
  - (c) the decision of the Land Court to refuse consent to the notice has been quashed.

### **32F Restriction on notice to quit etc. where notice of intention to relinquish served**

- (1) This section applies where a tenant serves a notice of intention to relinquish.
- (2) During the relevant period, sections 22 to 24 and 43 have effect in relation to the tenancy subject to the following modifications.
- (3) The relevant period is the period beginning with the date of service of the notice of intention to relinquish and ending with—
  - (a) the date the tenancy is terminated under section 32T(2), or
  - (b) the date on which the period of 1 year mentioned in section 32U(2) expires.
- (4) Section 22(2) has effect as if—
  - (a) paragraphs (a) and (b) were omitted, and
  - (b) for “any of paragraphs (a) to (f)” there were substituted “ any of paragraphs (c) to (f) ”.
- (5) Section 24(1) has effect as if paragraph (e) were omitted.
- (6) Section 43 has effect as if, for subsection (2), there were substituted—
 

“(2) Compensation is not payable under this section where—

  - (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in the landlord's own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on condition that the tenant must, along with the last or waygoing crop, sow permanent grass seeds, or



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- (b) the application of section 22(1) to the notice to quit is excluded by any of paragraphs (c) to (f) of subsection (2) of that section.”.

### *Appointment of valuer*

#### **32G Appointment of valuer by Tenant Farming Commissioner**

- (1) This section applies where the Tenant Farming Commissioner receives a copy of a notice of intention to relinquish.
- (2) The Commissioner must, before the expiry of the period mentioned in subsection (3), appoint a person, who meets the requirements mentioned in subsection (4), to—
  - (a) carry out the assessment mentioned in section 32J(1), and
  - (b) calculate the amount to be payable by the landlord to the tenant as compensation for the tenant quitting the tenancy were the landlord to accept the notice of intention to relinquish.
- (3) The period is—
  - (a) the period of 14 days beginning with the date on which the notice is served, or
  - (b) such other period specified by the Scottish Ministers by regulations.
- (4) The requirements referred to in subsection (2) are that the person appears to the Commissioner—
  - (a) to be independent of the landlord and the tenant, and
  - (b) to possess qualifications, knowledge and experience suitable for assessing the—
    - (i) value of agricultural land, both with vacant possession and where subject to agricultural holdings, and
    - (ii) compensation that may be payable to tenants and landlords of such holdings.
- (5) A person appointed under subsection (2) is the “valuer”.
- (6) The Tenant Farming Commissioner must give notice in writing to the tenant and the landlord of the name and address of the valuer appointed under subsection (2).
- (7) Regulations under subsection (3)(b) are subject to the negative procedure.

#### **32H Objection to valuer appointed by Tenant Farming Commissioner**

- (1) This section applies where the tenant or the landlord objects to the person appointed under section 32G(2) by the Tenant Farming Commissioner on one or more of the grounds mentioned in subsection (2).
- (2) Those grounds are that the person—
  - (a) is not independent of the landlord or, as the case may be, the tenant, or
  - (b) does not possess the qualifications, knowledge and experience mentioned in section 32G(4)(b).

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- (3) The tenant or, as the case may be, the landlord may apply to the Land Court to appoint a person as the valuer in place of the person appointed by the Tenant Farming Commissioner.
- (4) An application under subsection (3)—
  - (a) must—
    - (i) be made before the expiry of the period of 14 days beginning with the date of the notice under section 32G(6), and
    - (ii) state the ground of objection to the person appointed by the Tenant Farming Commissioner, and
  - (b) may propose a person to be appointed as the valuer in place of that person.
- (5) The Land Court may, on an application under subsection (3)—
  - (a) reject the objection, or
  - (b) appoint a person as the valuer (whether a person proposed in the application or not).
- (6) The decision of the Land Court on an application under subsection (3) is final.

### **32I Valuer's expenses**

- (1) The tenant is responsible for meeting the expenses, incurred in carrying out functions under this Part, of a valuer appointed—
  - (a) by the Tenant Farming Commissioner under section 32G(2), or
  - (b) by the Land Court under section 32H(5)(b).
- (2) Where, in the case of a valuer appointed under section 32G(2), those expenses have been met by the Tenant Farming Commissioner, the Commissioner is entitled to recover them from the tenant.

### *Valuer's assessment*

### **32J Assessment of value of land etc.**

- (1) The valuer is to assess—
  - (a) the value of the land to which the holding relates—
    - (i) if sold with vacant possession,
    - (ii) if sold with the tenant still in occupation, and
  - (b) the amount of compensation—
    - (i) to which the tenant would be entitled, by virtue of Part 4, sections 40 and 41 or any agreement applying in place of that Part or those sections, in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44, and
    - (iii) to which the landlord would be entitled under sections 45 and 45A.
- (2) In assessing the value of the land under subsection (1)(a)(i) or (ii), the valuer—

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- (a) is to have regard to the value that would be likely to be agreed between a reasonable seller and buyer of such land assuming the seller and buyer are, as respects the transaction, willing,
  - (b) is to take account—
    - (i) of when the landlord would in the normal course of events have been likely to recover vacant possession of the land from the tenant,
    - (ii) of the terms and conditions of any lease, other than the lease of the holding, affecting the land,
  - (c) is to take no account of—
    - (i) the existence of any person to whom the tenant could assign the lease of the holding under section 10A or to whom the lease could be bequeathed under section 11,
    - (ii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale,
    - (iii) any factor attributable to any use of the land which is or would be unlawful,
    - (iv) any increase in the value of the land resulting from improvements in relation to which the tenant would be entitled to compensation as mentioned in subsection (1)(b)(i) and (ii),
    - (v) any increase in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding,
    - (vi) any reduction in the value of the land resulting from any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant in relation to which the landlord would be entitled to compensation as mentioned in subsection (1)(b)(iii),
    - (vii) any reduction in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding.
- (3) For the purposes of subsection (2)(c)(iv)—
- (a) subject to paragraph (b), “improvements” is to be construed by reference to schedule 5, and
  - (b) the continuous adoption by the tenant of a standard of farming more beneficial to the land than the standard or system required by the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant's expense.
- (4) The valuer is to calculate, in accordance with section 32L, the amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish.
- (5) The Scottish Ministers may by regulations amend subsections (2) and (3) so as to—
- (a) add,

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- (b) remove,
- (c) vary the description of,

a matter which the valuer must have regard to, take account of or take no account of in assessing the value of the land under subsection (1)(a)(i) or (ii).

- (6) Regulations under subsection (5) are subject to the affirmative procedure.

### **32K Valuation: further provision**

- (1) The valuer is—
  - (a) to invite the landlord and the tenant to make written representations about the assessment under section 32J(1), and
  - (b) to have regard to any such representations.
- (2) The valuer may—
  - (a) enter onto land, and
  - (b) make any reasonable request of the landlord and tenant, for the purposes of any assessment under section 32J(1).

### *Calculation of compensation*

### **32L Compensation payable by landlord to tenant**

The amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish is to be calculated as follows:

*Step 1* Deduct from the value of the land to which the holding relates if sold with vacant possession the value of the land if sold with the tenant still in occupation (both as assessed under section 32J(1) or, as the case may be, 32N(3)(a)).

*Step 2* Divide the amount calculated under Step 1 by 2.

*Step 3* Add to the amount of compensation to which the tenant would be entitled in relation to improvements the amount of compensation to which the tenant would be entitled under section 44 (as so assessed).

*Step 4* Deduct from the amount calculated under Step 3 the amount of compensation to which the landlord would be entitled under sections 45 and 45A (as so assessed).

*Step 5* Add to the amount calculated under Step 2 the amount calculated under Step 4.

### *Notice of assessment*

### **32M Notice of assessment**

- (1) The valuer must, before the expiry of the period mentioned in subsection (2), serve a notice in writing, specifying the matters mentioned in subsection (3), on—
  - (a) the tenant, and
  - (b) the landlord.

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- (2) The period is the period of 8 weeks beginning with—
  - (a) the date on which the period, within which an application under section 32H(3) may be made, expires, or
  - (b) where such an application is made, the date of the Land Court's decision on it.
- (3) The matters are—
  - (a) the value, assessed under section 32J(1)(a), of the land to which the holding relates—
    - (i) if sold with vacant possession, and
    - (ii) if sold with the tenant still in occupation,
  - (b) the amount, assessed under section 32J(1)(b), of compensation—
    - (i) to which the tenant would be entitled in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44,
    - (iii) to which the landlord would be entitled under section 45 and 45A, and
  - (c) the amount, calculated in accordance with section 32L, to be payable by the landlord to the tenant as compensation were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The notice must also—
  - (a) be dated,
  - (b) state the date of valuation of each of the values and amounts mentioned in subsection (3), and
  - (c) set out how the valuer arrived at each of those values and amounts.
- (5) The notice may also contain or be accompanied by any other information that the valuer considers appropriate.
- (6) A notice served under subsection (1) is a “notice of assessment”.
- (7) The valuer must, at the same time as serving a notice of assessment, send a copy of the notice to the Tenant Farming Commissioner.

#### *Appeal against valuer's assessment*

### **32N Appeal to Lands Tribunal against valuer's assessment**

- (1) The tenant or the landlord may appeal to the Lands Tribunal against a notice of assessment.
- (2) An appeal under this section must—
  - (a) state the grounds on which it is being made, and
  - (b) be lodged before the expiry of the period of 21 days beginning with the date the notice of assessment was served.
- (3) The Lands Tribunal may—
  - (a) reassess any value or amount of compensation mentioned in section 32J(1) (and any factor affecting the value or amount),

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- (b) determine the amount to be payable by the landlord to the tenant as compensation, calculated in accordance with section 32L, were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The valuer whose assessment is appealed against may be a witness in the appeal proceedings.
- (5) In the appeal proceedings, in addition to the landlord and the tenant, the following persons are entitled to be heard—
  - (a) where the landlord is a creditor in a standard security, the owner of the land,
  - (b) where the landlord is the owner of the land, any creditor in a standard security over the land or any part of it.
- (6) The Lands Tribunal is to give written reasons for its decision on an appeal under this section.
- (7) The decision of the Lands Tribunal in an appeal under this section is final.

### **32O Referral of certain matters by Lands Tribunal to Land Court**

Where, in an appeal before the Lands Tribunal under section 32N, an issue of law arises which may competently be determined by the Land Court by virtue of this Act or the 2003 Act, the Tribunal is to refer the issue to the Land Court for determination unless the Tribunal considers that it is not appropriate to do so.

#### *Withdrawal of notice of intention to relinquish*

### **32P Withdrawal of notice of intention to relinquish**

- (1) The tenant may, before the expiry of the period mentioned in subsection (2), withdraw a notice of intention to relinquish by serving notice on the landlord.
- (2) The period is—
  - (a) the period of 35 days beginning with the day the notice of assessment is served, or
  - (b) if an appeal is made to the Lands Tribunal under section 32N, the period of 14 days beginning with the date of the Tribunal's decision.
- (3) The tenant must, at the same time as serving notice under subsection (1), send a copy of the notice to—
  - (a) the Tenant Farming Commissioner,
  - (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).
- (4) Where the tenant serves notice under subsection (1)—
  - (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
  - (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

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### *Landlord's response to tenant's offer to quit tenancy*

#### **32Q Landlord's acceptance of notice of intention to relinquish**

- (1) The section applies where the landlord wishes to accept the tenant's notice of intention to relinquish.
- (2) The landlord must—
  - (a) serve notice on the tenant which complies with subsection (3), and
  - (b) pay the amount of compensation calculated under section 32L before the expiry of the period mentioned in subsection (5).
- (3) A notice complies with this subsection if it—
  - (a) is served before the expiry of the period mentioned in subsection (4), and
  - (b) states that the landlord will, in exchange for the tenant quitting the tenancy, pay to the tenant—
    - (i) the amount of compensation assessed by the valuer and specified in the notice of assessment, or
    - (ii) where the Lands Tribunal has determined under section 32N(3)(b) that the compensation should be a different amount, that amount.
- (4) The period referred to in subsection (3)(a) is the period of 28 days beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (5) The period referred to in subsection (2)(b) is the period of 6 months beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (6) A notice served under subsection (2)(a) is a “notice of acceptance”.
- (7) The landlord must, at the same time as serving a notice of acceptance, send a copy of the notice to the Tenant Farming Commissioner.
- (8) The Scottish Ministers may by regulations specify the form and content of notices of acceptance.
- (9) Regulations under subsection (8) are subject to the negative procedure.

#### **32R Notice of declinature**

- (1) The landlord may, at any time before the expiry of the period of 28 days mentioned in section 32Q(4), serve notice on the tenant stating that the landlord does not wish to accept the notice of intention to relinquish.
- (2) A notice served under subsection (1) is a “notice of declinature”.
- (3) The landlord must, at the same time as serving a notice of declinature, send a copy of the notice to—
  - (a) the Tenant Farming Commissioner,

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- (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).
- (4) Where the landlord serves notice of declination—
- (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
  - (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

### **32S Withdrawal of notice of acceptance**

- (1) A landlord may, at any time before the expiry of the period of 6 months mentioned in section 32Q(5), withdraw a notice of acceptance by serving notice in writing on the tenant.
- (2) A notice served under subsection (1) is a “notice of withdrawal”.
- (3) The landlord must, at the same time as serving notice of withdrawal, send a copy of the notice to the Tenant Farming Commissioner.
- (4) The tenant is entitled to recover from the landlord any loss or expense incurred in reliance on the landlord's notice of acceptance.

#### *Payment of compensation ends tenancy*

### **32T Consequences of landlord paying compensation to tenant**

- (1) This section applies where, on or before the expiry of the period mentioned in section 32Q(5), the landlord pays to the tenant the amount of compensation in accordance with section 32Q(2)(b).
- (2) The tenancy comes to an end—
  - (a) on the expiry of that period, or
  - (b) on such earlier date as the tenant and landlord may agree.
- (3) Where a tenancy is terminated under subsection (2), section 21 does not apply in respect of the tenancy.
- (4) Any claim or entitlement to compensation or any other payment, other than to the compensation mentioned in section 32J(1)(b), is preserved despite the payment of compensation in accordance with section 32Q(2)(b).

## **CHAPTER 2**

### ASSIGNATION WHERE LANDLORD DOES NOT ACCEPT TENANT'S OFFER

#### **32U Assignation where landlord does not accept notice of intention to relinquish**

- (1) This section applies where the tenant serves notice of intention to relinquish and the landlord—
  - (a) serves notice of declination,



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- (b) fails to serve notice of acceptance before the expiry of the period of 28 days mentioned in section 32Q(4), or
  - (c) serves notice of acceptance but—
    - (i) serves notice of withdrawal before the expiry of the period of 6 months mentioned in section 32Q(5), or
    - (ii) fails to pay the amount of compensation required before the expiry of that period in accordance with section 32Q(2)(b).
- (2) The tenant may, before the expiry of the period of 1 year beginning with the date mentioned in subsection (3), assign the lease of the holding to an individual who is a new entrant to, or who is progressing in, farming.
- (3) That date is—
- (a) the date notice of declinature is served,
  - (b) where the landlord fails to serve notice of acceptance before the expiry of the period of 28 days mentioned in section 32Q(4), the date falling at the end of that period,
  - (c) the date notice of withdrawal is served, or
  - (d) where the landlord fails to pay the amount of compensation required before the expiry of the period of 6 months mentioned in section 32Q(5), the date falling at the end of that period.

### **32V Application of section 10A to assignation under this Part**

Section 10A has effect in relation to an assignation by virtue of section 32U(2)

- (a) as if subsections (1), (1A) and (6) were omitted,
- (b) as if, for subsections (3), (3A) and (3B) there were substituted—
  - “(3) The landlord may withhold consent to the proposed assignation if—
    - (a) the proposed assignee is not an individual who is a new entrant to farming or who is progressing in farming, or
    - (b) there are reasonable grounds for doing so.
  - (3A) In subsection (3)(b), reasonable grounds include, in particular, that the landlord is not satisfied that the proposed assignee—
    - (a) would have the ability to pay—
      - (i) the rent due under the lease, or
      - (ii) for adequate maintenance of the land, or
    - (b) has the skills or experience that would be required properly to manage and maintain the land in accordance with the rules of good husbandry.
  - (3B) The ground of objection in subsection (3A)(b) does not apply where the proposed assignee is a new entrant to farming and—
    - (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and

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- (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.”.

## CHAPTER 3

### INTERPRETATION

#### 32W Interpretation of Part

In this Part—

- “new entrant to farming” and “person progressing in farming” are to be construed in accordance with section 32B,
- “notice of acceptance” has the meaning given by section 32Q(6),
- “notice of assessment” has the meaning given by section 32M(6),
- “notice of declinature” has the meaning given by section 32R(2),
- “notice of intention to relinquish” has the meaning given by section 32C(2),
- “notice of withdrawal” has the meaning given by section 32S(2),
- “Tenant Farming Commissioner” means the person appointed under section 10(1) of the Land Reform (Scotland) Act 2016,
- “valuer” means the person appointed under section 32G(2) or, as the case may be, 32H(5)(b).”.

#### Commencement Information

**I23** S. 110 in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

#### 111 Tenant's offer to relinquish 1991 Act tenancy: consequential modifications

- (1) In section 21(1) of the 1991 Act, after “section 20” insert “ and Part 3A ”.
- (2) The 2003 Act is amended as follows.
- (3) In section 55 (right to compensation for yielding vacant possession), in subsection (4), after “Where” insert “ the tenancy is a limited duration tenancy or a modern limited duration tenancy and ”.
- (4) After section 74 insert—

#### “74A Application of Part 3A of the 1991 Act

- (1) The Scottish Ministers may by regulations provide that Part 3A of the 1991 Act does not apply in relation to such types of partnership who are tenants, and in such circumstances, as the regulations may specify.
- (2) The Scottish Ministers may by regulations—
  - (a) provide that general partners, of such types of limited partnership as the regulations may specify, may, in such circumstances as may be

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- so specified, exercise and enforce any rights of tenants conferred by Part 3A of that Act,
- (b) provide that Part 3A, in its application in relation to—
- (i) partnerships who are tenants, and
  - (ii) such partners of partnerships as may exercise or enforce any rights of tenants conferred by that Part,
- has effect with or subject to such modifications as the regulations may specify,
- (c) make such further provision in relation to such partnerships and partners as they consider appropriate for the purposes of that Part.
- (3) Regulations under subsection (2) may make different provision for different types of partnership.”.

#### Commencement Information

**I24** S. 111(2)(4) in force at 23.12.2016 for specified purposes by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

## CHAPTER 8

### COMPENSATION FOR TENANT'S IMPROVEMENTS

#### *Amnesty for tenant's improvements*

#### **112 Amnesty for certain improvements by tenant**

- (1) This Chapter applies where, in respect of a relevant improvement—
- (a) a tenant of an agricultural holding to which the 1991 Act applies intends to claim compensation under section 34 of that Act, or
  - (b) a tenant—
    - (i) under a short limited duration tenancy within the meaning of section 4 of the 2003 Act,
    - (ii) under a limited duration tenancy within the meaning of section 5 of that Act, or
    - (iii) under a modern limited duration tenancy within the meaning of section 5A of that Act,intends to claim compensation under section 45 of that Act.
- (2) A “relevant improvement” is a Part 1, Part 2 or Part 3 improvement completed before the beginning of the amnesty period.
- (3) In this Chapter the “amnesty period” means the period of 3 years <sup>[F1</sup>and 6 months] beginning with the day on which this section comes into force.
- (4) A tenant may give notice of the relevant improvement to the landlord in accordance with section 114.
- (5) A tenant may not give such notice where—
- (a) in relation to a Part 1 improvement—

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*Status: Point in time view as at 12/06/2020. This version of this part contains provisions that are prospective.*  
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- (i) the tenant carried out the improvement without the landlord's consent, or
  - (ii) the landlord gave consent, whether orally or in writing, and the tenant carried out the improvement in a manner substantially different to the manner consented to,
  - (b) in relation to a Part 2 improvement, the tenant had given notice under section 38(1) of the 1991 Act or, as the case may be, under section 49(1) of the 2003 Act and—
    - (i) the tenant carried out the improvement in a manner substantially different to the manner proposed in the notice,
    - (ii) the landlord objected to the improvement under section 39(1) of the 1991 Act or, as the case may be, under section 49(2) of the 2003 Act (as read with section 39(1) of the 1991 Act), or
    - (iii) the tenant carried out the improvement in breach of any decision of the Land Court under section 39(2) of the 1991 Act or, as the case may be, under section 49(2) of the 2003 Act (as read with section 39(2) of the 1991 Act),
  - (c) in relation to a Part 3 improvement, the tenant had given notice under section 34(8) of the 1991 Act and the tenant carried out the improvement in a manner substantially different to the manner proposed in the notice.
- (6) Nothing in this section affects the extent to which compensation for a relevant improvement is recoverable by a tenant under custom, agreement or otherwise by virtue of the 1991 Act or 2003 Act in lieu of any compensation by virtue of this Chapter.
- (7) In this section—
- (a) a “Part 1 improvement” means—
    - (i) an improvement specified in Part 1 of schedule 3 of the 1991 Act and begun before 31 July 1931,
    - (ii) an improvement specified in Part 1 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948, or
    - (iii) an improvement specified in Part 1 of schedule 5 of the 1991 Act, and begun on or after 1 November 1948,
  - (b) a “Part 2 improvement” means—
    - (i) an improvement specified in Part 2 of schedule 3 of the 1991 Act and begun before 31 July 1931,
    - (ii) an improvement specified in Part 2 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948, or
    - (iii) an improvement specified in Part 2 of schedule 5 of the 1991 Act and begun on or after 1 November 1948,
  - (c) a “Part 3 improvement” means—
    - (i) an improvement specified in paragraph 29 of schedule 3 of the 1991 Act and begun before 31 July 1931, or
    - (ii) an improvement specified in paragraph 29 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948.

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#### Textual Amendments

- F1** Words in s. 112(3) inserted (12.6.2020) by [The Land Reform \(Scotland\) Act 2016 \(Supplementary Provision\) \(Coronavirus\) Regulations 2020 \(S.S.I. 2020/174\)](#), regs. 1(1), 2

#### Commencement Information

- I25** S. 112 in force at 13.6.2017 by [S.S.I. 2017/20](#), reg. 2, [sch.](#) (with reg. 3)

### 113 Amendment of the Agricultural Holdings (Scotland) Acts

- (1) After section 34 of the 1991 Act insert—

#### “34A Amnesty under the Land Reform (Scotland) Act 2016

A tenant of an agricultural holding is entitled to compensation under section 34 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.”.

- (2) After section 45 of the 2003 Act insert—

#### “45A Amnesty under the Land Reform (Scotland) Act 2016

A tenant under a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy is entitled to compensation under section 45 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.”.

#### Commencement Information

- I26** S. 113 in force at 13.6.2017 by [S.S.I. 2017/20](#), reg. 2, [sch.](#) (with reg. 4)

### 114 Amnesty notice

- (1) A notice given in accordance with this section is an “amnesty notice”.
- (2) An amnesty notice must be in writing and given to the landlord within the amnesty period.
- (3) An amnesty notice must be dated and state the following—
- the names and designations of the landlord and the tenant,
  - the name (if any) and the address or such other description of the holding as will identify it,
  - details of the relevant improvement, including the manner in which the improvement was carried out,
  - the tenant's reasons as to why it is fair and equitable for compensation to be payable for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (4) Section 84(4) of the 1991 Act applies to the giving of an amnesty notice as it applies to the giving of a notice under that Act.

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- (5) In this Chapter the “holding”, in the case of a short limited duration tenancy, limited duration tenancy or modern limited duration tenancy, means the land comprised in the lease.

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**Commencement Information**

**I27** S. 114 in force at 13.6.2017 by S.S.I. 2017/20, reg. 2, sch. (with reg. 5)

*Objection to amnesty notice and referral to Land Court*

**115      Objection by landlord**

- (1) Compensation under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act is not payable to the tenant if, before the end of the period of 2 months beginning with the day on which the landlord receives an amnesty notice under section 114, the landlord objects to the relevant improvement or to part of it by giving notice in writing to the tenant.
- (2) A notice given under subsection (1) must be dated and must state the landlord's reasons for objecting to the relevant improvement or, as the case may be, to part of the relevant improvement.
- (3) The landlord's reasons for objecting must be one or more of the following—
- (a) that it is not fair and equitable for compensation to be payable for the relevant improvement on the tenant quitting the holding at the termination of the tenancy,
  - (b) that the landlord carried out the improvement in whole or in part, or
  - (c) the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed such benefit in writing.

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**Commencement Information**

**I28** S. 115 in force at 13.6.2017 by S.S.I. 2017/20, reg. 2, sch.

**116      Referral to Land Court**

- (1) Where the landlord has given notice of objection under section 115(1), the tenant may, before the end of the period of 2 months beginning with the day on which the tenant received the notice of objection, apply to the Land Court for approval of the relevant improvement for the purposes of section 34 of the 1991 Act or, as the case may be, section 45 of the 2003 Act.
- (2) The Land Court may—
- (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms, as to reduction of the compensation which would otherwise be payable or as to other matters, as appears to it to be appropriate, or

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- (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that—
  - (a) the landlord has benefited or would benefit from the improvement, and
  - (b) in all the circumstances it is just and equitable for compensation to be payable by the landlord for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (4) No compensation is payable to the tenant to the extent that the Land Court determines that—
  - (a) the landlord carried out the improvement, or
  - (b) the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed such benefit in writing.

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**Commencement Information**

**I29** S. 116 in force at 13.6.2017 by S.S.I. 2017/20, reg. 2, sch.

*Agreements made during amnesty period*

**117**     **Amnesty agreements**

- (1) Where no compensation is payable for a relevant improvement under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act because a relevant requirement has not been met, the landlord and tenant may nonetheless enter into an agreement in writing during the amnesty period (an “amnesty agreement”) that the landlord will compensate the tenant for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (2) Section 53 of the 1991 Act and section 59 of the 2003 Act do not apply where an amnesty agreement has been entered into.
- (3) The amount of compensation payable under an amnesty agreement must be as set out in section 36 of the 1991 Act or, as the case may be, in section 47 of the 2003 Act.
- (4) In subsection (1) a “relevant requirement” is a requirement, imposed by virtue of Part 4 of the 1991 Act or by virtue of Chapter 1 of Part 4 of the 2003 Act, compliance with which would entitle a tenant to compensation under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act.

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**Commencement Information**

**I30** S. 117 in force at 13.6.2017 by S.S.I. 2017/20, reg. 2, sch.

*Resolution of disputes*

**118**     **Arbitration and other dispute resolution**

- (1) In the 1991 Act—

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- (a) in section 61 (agreement to refer matters to arbitration)—
    - (i) in subsection (1), after “this Act” insert “ or section 116 of the Land Reform (Scotland) Act 2016 ”,
    - (ii) in subsection (2)—
      - (A) “8(6),” is repealed,
      - (B) “39,” is repealed,
  - (b) in section 61A(5) (arbitration: procedure etc.), after “this Act” insert “ or of section 116 of the Land Reform (Scotland) Act 2016 ”,
  - (c) in section 61B (clauses in leases as to resolution of disputes), after “under this Act” insert “ or under section 116 of the Land Reform (Scotland) Act 2016 ”.
- (2) In section 1(7A) of the Scottish Land Court Act 1993, for “or the Agricultural Holdings (Scotland) Act 2003” substitute “, the Agricultural Holdings (Scotland) Act 2003 or section 116 of the Land Reform (Scotland) Act 2016 ”.
- (3) In the 2003 Act—
- (a) in section 78 (agreement to refer matters to arbitration)—
    - (i) in subsection (1), after “this Act” insert “ or by virtue of section 116 of the Land Reform (Scotland) Act 2016 ”,
    - (ii) in subsection (2), for “section 21, 22 or 49(2)” substitute “ section 21 or 22 ”,
  - (b) in section 79(5) (arbitration: procedure etc.), after “this Act” insert “ or by virtue of section 116 of the Land Reform (Scotland) Act 2016 ”,
  - (c) in section 81 (clauses in leases as to resolution of disputes), after “this Act” insert “ or by virtue of section 116 of the Land Reform (Scotland) Act 2016 ”.

**Commencement Information**

**I31** S. 118 in force at 13.6.2017 by S.S.I. 2017/20, reg. 2, sch.

## CHAPTER 9

### IMPROVEMENTS BY LANDLORD

#### **119 Notice required for certain improvements by landlord**

- (1) The 1991 Act is amended as follows.
- (2) After section 14 insert—

#### **“14A Landlord improvement notices**

- (1) This section applies where the landlord of an agricultural holding intends to carry out a relevant improvement.
- (2) A “relevant improvement” is an improvement specified in schedule 5 which is not intended to be carried out—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by landlord under section 39(3),  
or



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- (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment.
- (3) The landlord must give notice in writing to the tenant before carrying out the relevant improvement, unless section 14F applies.
- (4) A notice served in accordance with this section is a “landlord improvement notice”.
- (5) A landlord improvement notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the holding or such other description of the holding as will identify it,
  - (c) details of the intended improvement, including the manner of the improvement,
  - (d) the landlord's reasons as to why the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

#### **14B Objection by tenant**

- (1) Where the landlord has given a landlord improvement notice under section 14A, the tenant may object to the improvement or to part of it by giving notice in writing to the landlord before the end of the period of 2 months beginning with the day on which the tenant received the landlord improvement notice.
- (2) A notice under subsection (1) must be dated and must state the tenant's reasons as to why the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

#### **14C Referral to Land Court**

- (1) Where the tenant has given notice of objection under section 14B the landlord may, before the end of the period of 2 months beginning with the day on which the landlord received the notice of objection, apply to the Land Court for approval of the relevant improvement.
- (2) The Land Court may—
  - (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms as appear to it to be appropriate, or
  - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

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### **14D Notice of dates of improvement**

- (1) This section applies where an improvement is to be carried out by the landlord—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by the landlord under section 39(3),
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment, or
  - (d) after the landlord has given a landlord improvement notice in accordance with section 14A and—
    - (i) the tenant has not given notice of objection in accordance with section 14B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 14C(2) (a).
- (2) The landlord must give notice in writing to the tenant stating the period during which the landlord intends to carry out the improvement.
- (3) Unless the landlord and tenant agree otherwise, that period must not commence earlier than the expiry of 2 weeks beginning with the day on which the landlord gives notice under subsection (2).
- (4) Where the landlord has not begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for postponing the carrying out of the improvement, the landlord may give a new notice under subsection (2).
- (5) Subsection (6) applies where the landlord has begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for extending the period during which the improvement is to be carried out.
- (6) The landlord may, at any time before the expiry of the period stated in the notice under subsection (2), extend the period by giving notice in writing to the tenant stating the extended period during which the landlord intends to carry out the improvement.
- (7) See section 14F on emergency improvements.

### **14E Improvement by landlord without notice etc.**

- (1) Subsection (2) applies where a landlord has carried out an improvement and—
  - (a) the landlord did not give notice of the improvement to the tenant in accordance with section 14A,
  - (b) the tenant objected to the improvement under section 14B and the Land Court has not approved the improvement under section 14C(2) (a),
  - (c) the improvement is in breach of any decision of the Land Court under section 14C,

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- (d) the improvement was not an emergency improvement as defined in section 14F.
- (2) Any such improvement is to be disregarded for the purposes of—
  - (a) assessing the tenant's responsibilities—
    - (i) in relation to farming the holding in accordance with the rules of good husbandry,
    - (ii) in relation to fixed equipment under section 5(2)(b)(ii).
  - (b) any subsequent rent review under schedule 1A.

### **14F Emergency improvements**

- (1) Where a landlord or a tenant considers that an emergency improvement is required, sections 14A(3) and 14D(2), (3), (5) and (6) do not apply.
- (2) In this section an “emergency improvement” means a relevant improvement that is necessary for the purposes of—
  - (a) protecting public health from infectious diseases, contamination or other hazards which constitute a danger to human health,
  - (b) preventing a danger or potential danger to public safety,
  - (c) enabling the tenant to comply with the requirements of the Animal Health and Welfare (Scotland) Act 2006,
  - (d) securing the provision of essential services including electricity and water supply services, or
  - (e) remedying an accident or natural cause or force majeure which was exceptional and could not reasonably have been foreseen.”.
- (3) The 2003 Act is amended as follows.
- (4) After section 10 insert—

### **“10A Landlord improvement notices**

- (1) This section applies where the landlord of—
  - (a) a short limited duration tenancy within the meaning of section 4,
  - (b) a limited duration tenancy within the meaning of section 5,
  - (c) a modern limited duration tenancy within the meaning of section 5A, or
  - (d) subject to subsection (2), a repairing tenancy within the meaning of section 5C,intends to carry out a relevant improvement.
- (2) Subsection (1) does not apply in respect of the landlord of a repairing tenancy in relation to which the repairing period has not expired.
- (3) A “relevant improvement” is an improvement specified in schedule 5 of the 1991 Act which is not intended to be carried out—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by landlord under section 49(2) (as read with section 39(3) of the 1991 Act), or

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- (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment.
- (4) The landlord must give notice in writing to the tenant before carrying out the relevant improvement, unless section 10F applies.
- (5) A notice served in accordance with this section is a “landlord improvement notice”.
- (6) A landlord improvement notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the land comprised in the lease or such other description of the land as will identify it,
  - (c) details of the intended improvement, including the manner of the improvement,
  - (d) the landlord's reasons as to why the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.
- (7) In this section and in sections 10B to 10F, what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

#### **10B Objection by tenant**

- (1) Where the landlord has given a landlord improvement notice under section 10A, the tenant may object to the improvement or to part of it by giving notice in writing to the landlord before the end of the period of 2 months beginning with the day on which the tenant received the landlord improvement notice.
- (2) A notice under subsection (1) must be dated and must state the tenant's reasons as to why the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.

#### **10C Referral to Land Court**

- (1) Where the tenant has given notice of objection under section 10B the landlord may, before the end of the period of 2 months beginning with the day on which the landlord received the notice of objection, apply to the Land Court for approval of the relevant improvement.
- (2) The Land Court may—
  - (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms as appear to it to be appropriate, or
  - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.

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### **10D Notice of dates of improvement**

- (1) This section applies where an improvement is to be carried out by the landlord—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by the landlord under section 49(2),
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment, or
  - (d) after the landlord has given a landlord improvement notice in accordance with section 10A and—
    - (i) the tenant has not given notice of objection in accordance with section 10B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 10C(2)
      - (a).
- (2) The landlord must give notice in writing to the tenant stating the period during which the landlord intends to carry out the improvement.
- (3) Unless the landlord and tenant agree otherwise, that period must not commence earlier than the expiry of 2 weeks beginning with the day on which the landlord gives notice under subsection (2).
- (4) Where the landlord has not begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for postponing the carrying out of the improvement, the landlord may give a new notice under subsection (2).
- (5) Subsection (6) applies where the landlord has begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for extending the period during which the improvement is to be carried out.
- (6) The landlord may, at any time before the expiry of the period stated in the notice under subsection (2), extend the period by giving notice in writing to the tenant stating the extended period during which the landlord intends to carry out the improvement.
- (7) See section 10F on emergency improvements.

### **10E Improvement by landlord without notice etc.**

- (1) Subsection (2) applies where a landlord has carried out an improvement and—
  - (a) the landlord did not give notice of the improvement to the tenant in accordance with section 10A,
  - (b) the tenant objected to the improvement under section 10B and the Land Court has not approved the improvement under section 10C(2)
    - (a),
  - (c) the improvement is in breach of any decision of the Land Court under section 10C,

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- (d) the improvement was not an emergency improvement as defined in section 10F.
- (2) Any such improvement is to be disregarded for the purposes of—
- (a) assessing the tenant's responsibilities—
    - (i) in relation to farming the land comprised in the lease in accordance with the rules of good husbandry,
    - (ii) in relation to fixed equipment under sections 16(4)(b) and 16A(5)(b)(ii),
  - (b) any subsequent rent review under section 9.

### **10F Emergency improvements**

- (1) Where a landlord or a tenant considers that an emergency improvement is required, sections 10A(4) and 10D(2), (3), (5) and (6) do not apply.
- (2) In this section an “emergency improvement” means a relevant improvement that is necessary for the purposes of—
- (a) protecting public health from infectious diseases, contamination or other hazards which constitute a danger to human health,
  - (b) preventing a danger or potential danger to public safety,
  - (c) enabling the tenant to comply with the requirements of the Animal Health and Welfare (Scotland) Act 2006,
  - (d) securing the provision of essential services including electricity and water supply services, or
  - (e) remedying an accident or natural cause or force majeure which was exceptional and could not reasonably have been foreseen.”.

#### **Commencement Information**

**I32** S. 119 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

## **120 Rent increase for certain improvements by landlord**

- (1) Section 15 of the 1991 Act (increase of rent for certain improvements by landlord) is amended as follows.
- (2) After subsection (1)(b), “or” is repealed.
- (3) After subsection (1)(c), insert “, or
- (d) after giving a landlord improvement notice in accordance with section 14A and—
    - (i) the tenant has not given notice of objection in accordance with section 14B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 14C,”.
- (4) Section 10 of the 2003 Act (increase in rent: landlord's improvements) is amended as follows.
- (5) After subsection (1)(b), “or” is repealed.

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- (6) After subsection (1)(c), insert “, or
- (d) after giving a landlord improvement notice in accordance with section 10A and—
    - (i) the tenant has not given notice of objection in accordance with section 10B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 10C.”.

**Commencement Information**

**I33** S. 120 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

**CHAPTER 10**

DIVERSIFICATION

**121 Use of land for non-agricultural purposes: objection to notice of diversification**

- (1) The 2003 Act is amended as follows.
- (2) In section 40—
- (a) in subsection (1), for “section 41” substitute “ in sections 40A and 41 ”,
  - (b) after subsection (5) insert—
    - “(5A) Where the landlord objects to the notice of diversification, the land may be used for the purpose specified under paragraph (a), and as specified under paragraphs (b) and (c), of subsection (2)—
      - (a) only if—
        - (i) the landlord withdraws the objection,
        - (ii) the landlord does not apply under section 40A for a determination in relation to the objection, or
        - (iii) such an application having been made, the Land Court determines under section 41 that the objection is unreasonable,
      - (b) from the relevant date, and
      - (c) subject to any conditions imposed—
        - (i) by the landlord under subsection (14), or
        - (ii) by the Land Court under section 41(2) or (3).
    - (5B) For the purposes of subsection (5A)(b), the relevant date is—
      - (a) where no application is made under section 40A—
        - (i) the date specified under subsection (2)(d),
        - (ii) if the objection is withdrawn, the date of the withdrawal,
        - (iii) the date the period mentioned in section 40A(3) expires,
- whichever is the later,

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- (b) where an application is made under section 40A, the date fixed by the Land Court under section 41(1)(b)(ii).”,
- (c) after subsection (13) insert—

“(14) Where the landlord withdraws the objection under subsection (9) before the expiry of the period mentioned in section 40A(3), the landlord—

- (a) must notify the tenant in writing of the withdrawal, and
- (b) may impose any conditions as mentioned in subsection (10) and, where such conditions are imposed, must, at the same time as notifying the tenant of the withdrawal of the objection, notify the tenant in writing of the conditions (and the reasons for imposing them).”.

- (3) After that section insert—

**“40A Landlord's objection: application to Land Court**

- (1) This section applies where the landlord gives notice of an objection under section 40(11)(a) to a notice of diversification.
- (2) The landlord may, before the expiry of the period mentioned in subsection (3), apply to the Land Court for a determination under section 41 that the objection is reasonable.
- (3) That period is 60 days from the giving of notice of the objection under section 40(11)(a).
- (4) The objection ceases to have effect—
  - (a) on the expiry of the period mentioned in subsection (3) unless the landlord applies, before the expiry of that period, to the Land Court under subsection (2), or
  - (b) if it is withdrawn before the expiry of that period, no such application having been made.”.
- (4) In section 41—
  - (a) in subsection (1), after “Where” insert “, on an application made by the landlord under section 40A(2), ”,
  - (b) in subsection (2), for “40(4)(a)” substitute “ 40(4)(a) or (5A) ”,
  - (c) in subsection (3)—
    - (i) after “Where” insert “, on the application of the tenant, ”,
    - (ii) after “section 40(10)” insert “ or, as the case may be, (14) ”.

**Commencement Information**

**I34** S. 121 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

**122 Use of land for non-agricultural purposes: requests for information**

- (1) The 2003 Act is amended as follows.
- (2) In section 40—



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- (a) in subsection (5), for paragraph (b) substitute—
  - “(b) where the landlord has made a request for information under subsection (6), the date falling 70 days from the making of the request, if later than the date so specified,”
- (b) for subsection (6) substitute—
  - “(6) The landlord may, on one occasion within 30 days of the giving of the notice of diversification, request the tenant to provide the landlord with relevant information.”
- (c) in subsection (12), for paragraph (a) substitute—
  - “(a) where the landlord has made a request for information under subsection (6), 60 days from the making of the request,”

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**Commencement Information**

**I35** S. 122 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

## CHAPTER 11

### IRRITANCY FOR NON-PAYMENT OF RENT

#### 123 Irritancy for non-payment of rent

- (1) The 2003 Act is amended as follows.
- (2) In section 18 (irritancy of lease and good husbandry), after subsection (2) insert—
  - “(2A) Where such a lease may be irritated on the grounds that the rent is due and unpaid, notice as mentioned in subsection (7) may not be given unless—
    - (a) the landlord has given the tenant a demand in writing requiring the tenant to pay the rent due before the expiry of the period of 2 months beginning with the date of the demand, and
    - (b) the demand has not been complied with.”

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**Commencement Information**

**I36** S. 123 in force at 23.12.2016 by S.S.I. 2016/365, reg. 2, sch. (with regs. 3-15)

**Status:**

Point in time view as at 12/06/2020. This version of this part contains provisions that are prospective.

**Changes to legislation:**

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