



# 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- (2) Section 5 (limited duration tenancies) is repealed.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.”.

**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.”.

**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—

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- (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.

#### **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.

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- (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.”.

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

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

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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.
- (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.”.

## **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.

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- (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.
- (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.”.

#### *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—

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*Status: This is the original version (as it was originally enacted).*

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**“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—
  - (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.”.

*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—

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**“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
  - (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.”.