



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 1

#### AGRICULTURAL TENANCIES

### CHAPTER 2

#### GENERAL PROVISION AS TO NEW TYPES OF TENANCY

##### *Short limited duration tenancies and limited duration tenancies: general provision*

#### **6 Assignment, subletting and termination of short limited duration tenancies**

- (1) The tenant may not assign a lease constituting a short limited duration tenancy nor sublet the land comprised in the lease.
- (2) A short limited duration tenancy may be terminated by the landlord and tenant by agreement.

#### **7 Assignment and subletting of limited duration tenancies**

- (1) A lease constituting a limited duration 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; 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 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

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- (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) 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 (except where the landlord exercises the right under subsection (5) to acquire the tenant's interest in the lease) deemed to have consented to the proposed assignment.
- (5) Where the landlord has been given notice under subsection (2), the landlord is entitled to acquire the tenant's interest in the lease provided that—
  - (a) the landlord gives the tenant notice—
    - (i) in writing; and
    - (ii) within 30 days of the giving of the notice under subsection (2), of the landlord's intention to acquire that interest; and
  - (b) the terms upon which the landlord acquires that interest are no less favourable to the tenant than any reasonable terms upon which the proposed assignment was to have been made.
- (6) For the purposes of subsection (3)(b), what is good husbandry is to be construed by reference to the Sixth Schedule to the Agriculture (Scotland) Act 1948 (c. 45).
- (7) A tenant may sublet the land comprised in a lease constituting a limited duration tenancy only on such basis as the lease expressly permits.

## **8 Continuation and termination of limited duration tenancies**

- (1) A 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.
- (2) At and after the expiry of the term of a limited duration tenancy, the tenancy continues to have effect in accordance with subsection (6) unless it is terminated in accordance with this section.
- (3) At the expiry of the term of a limited duration tenancy, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant.
- (4) A notice under subsection (3) must—
  - (a) be in writing and state that the tenant shall quit the land on the expiry of the term of the tenancy; and
  - (b) be given not less than one year nor more than two 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 (5) is given.
- (5) A notice under subsection (3) 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 two years nor more than three years before the expiry of the term of the tenancy.
- (6) If the tenancy is not terminated in accordance with this section, it continues in effect on a cycle of continuations; that is to say, a continuation of three years (a "first short continuation") followed by a further continuation of three years (a "second

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- short continuation”) followed by a further continuation of fifteen years (a “long continuation”) (the cycle being repeated without limit to the number of times).
- (7) During a first short continuation, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant; and subsections (4) and (5) apply to a notice under this subsection as they do to a notice under subsection (3).
- (8) During a second short continuation, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant.
- (9) A notice under subsection (8)—
- (a) must be in writing and state that the tenant shall quit the land on the relevant day; and
  - (b) may be given at any time during the continuation.
- (10) For the purposes of subsection (9)(a)—
- (a) where the notice has been given during the first year of the continuation, the relevant day is the day on which the continuation expires; and
  - (b) in any other case, the relevant day is the day on which the period of two years from the giving of the notice expires (and the continuation is deemed to expire on the relevant day).
- (11) During a long continuation, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant; and subsections (4) and (5) apply to a notice under this subsection as they do to a notice under subsection (3).
- (12) For the purposes of subsections (7) and (11), the references in subsections (4) and (5) to the expiry of the term of the tenancy are to be read as references to the expiry of the continuation.
- (13) At or after the expiry of the term of a limited duration tenancy, the tenant may terminate the tenancy by giving a notice under this subsection to the landlord.
- (14) A notice under subsection (13) must—
- (a) be in writing and state that the tenant intends to quit the land on the expiry of the term of the tenancy or, as the case may be, a continuation of the tenancy; and
  - (b) be given not less than one year nor more than two years before the expiry of the term of the tenancy or, as the case may be, continuation.
- (15) During the term of a limited duration tenancy, the term of the tenancy may be extended by the landlord and tenant by agreement in writing.

## **9 Review of rent under limited duration tenancies**

- (1) Where a lease constituting a limited duration tenancy makes no provision for review of rent, the rent due as payable under the lease is to be reviewed and determined in accordance with this section.
- (2) A rent review is to take place on such date as the landlord or tenant may specify in a notice in writing to the other provided that—
- (a) the notice is given not less than one year nor more than two years before the date so specified; and
  - (b) the date so specified is not less than three years—

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- (i) in the case of the first rent review, from the commencement of the tenancy; or
  - (ii) in the case of any subsequent rent review, from the date of the review under this subsection which precedes it.
- (3) On review, subject to subsections (4) to (7), the rent payable is the rent which the tenancy would reasonably be expected to fetch in the open market where there is a willing landlord and a willing tenant—
- (a) disregarding—
    - (i) any effect on rent due to the fact that the tenant is in occupation of the land; and
    - (ii) any distortion in rent due to a scarcity of lets; and
  - (b) having regard to—
    - (i) the terms of the tenancy (other than those relating to rent);
    - (ii) information about rents for other agricultural tenancies (including when fixed) and any factors affecting those rents (or any of them) except any distortion due to a scarcity of lets; and
    - (iii) the current economic conditions in the relevant sector of agriculture.
- (4) Account is to be taken of any increase in the rental value of the land resulting from the use of the land for a purpose that is not an agricultural purpose.
- (5) No account is to be taken of any increase in the rental value of the land resulting from improvements—
- (a) so far as—
    - (i) they have been carried out wholly or partly at the expense of the tenant (whether or not that expense has been or will be reimbursed by any grant) without equivalent allowance or benefit having been made or given by the landlord in consideration of their execution; and
    - (ii) they have not been carried out under an obligation imposed on the tenant by the terms of the lease; and
  - (b) which have been carried out by the landlord, in so far as the landlord has received or will receive any grant in respect of them,
- nor may the rent be determined to be a higher amount than would have been payable if those improvements had not been so carried out.
- (6) For the purposes of subsection (5)—
- (a) subject to paragraph (b), “improvements” is to be construed by reference to Schedule 5 to the 1991 Act; and
  - (b) the continuous adoption by the tenant of a standard of farming or a system of farming more beneficial to the land than the standard or system required by the terms of 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.
- (7) No account is to be taken of—
- (a) any reduction in the rental value of the land as a result of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant; or
  - (b) any such reduction resulting from—

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- (i) the use of any of the land, or changes to the land, for a purpose that is not an agricultural purpose; or
- (ii) the carrying out of conservation activities on the land.

(8) The rent determined in accordance with this section is to take effect from the date of the rent review.

## **10 Increase in rent: landlord's improvements**

- (1) Where the landlord has carried out an improvement on the land comprised in a lease constituting a limited duration tenancy (whether or not one specified in Schedule 5 to the 1991 Act)—
- (a) at the request of, or in agreement with, the tenant;
  - (b) in pursuance of an undertaking given by the landlord by virtue of section 49(2) (as read with section 39(3) of the 1991 Act); or
  - (c) in compliance with a direction given by the Scottish Ministers under powers conferred on them by or under any enactment,
- subject to subsections (2) and (3), the rent payable is to be increased as from the completion of the improvement by an amount equal to the increase in the rental value of the land resulting from the carrying out of the improvement.
- (2) The landlord must give the tenant notice in writing of any such increase in the rent payable within 6 months of the completion of the improvement.
- (3) Where any grant has been made to the landlord in respect of an improvement mentioned in subsection (1), the increase in rent under that subsection must be reduced proportionately.

## **11 Variation of rent by Land Court**

Where it appears to the Land Court, in determining any matter in relation to a limited duration tenancy by virtue of section 13 or 16, that it is equitable that the rent payable under the lease should be varied, it may vary the rent accordingly.

## **12 Right of tenant to withhold rent**

- (1) Subsection (2) applies to an order—
- (a) made under subsection (1)(b) of section 84; and
  - (b) which is in relation to a failure of the landlord in a short limited duration tenancy or a limited duration tenancy to fulfil any obligation the landlord has towards the tenant in respect of fixed equipment.
- (2) Where the landlord has failed—
- (a) in a material regard; and
  - (b) as at the date specified under subsection (2) of that section,
- to comply with an order to which this subsection applies, the tenant may apply to the Land Court for an order under subsection (3).
- (3) An order under this subsection may (either or both)—
- (a) authorise the tenant to carry out such work as the landlord would have to have carried out for the landlord to comply with the order to which subsection (2) applies; and

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- (b) authorise the tenant to withhold payment of the rent payable to the landlord under the tenancy on the condition that the tenant consigns to the Land Court the amount otherwise so payable.
- (4) The Land Court may, on the application of the tenant, from time to time release to the tenant any of the amount so consigned towards or in satisfaction of any reasonable costs incurred or to be incurred by the tenant for the purposes of or in connection with the carrying out of such work as is mentioned in paragraph (a) of subsection (3).
- (5) The Land Court, on the application of the landlord and having regard to—
  - (a) whether any work mentioned in paragraph (a) of subsection (3) remains to be carried out; and
  - (b) any costs mentioned in subsection (4),
 may terminate the order made under subsection (3) if it considers that it would be not be appropriate for the order to remain in force.
- (6) Where the Land Court terminates the order made under subsection (3), it is to order such division between the landlord and tenant of the amount (or, where any of the amount has been released to the tenant, any remaining amount) consigned under subsection (3)(b) as it considers to be equitable.
- (7) Any work carried out and authorised under subsection (3)(a) is to be treated as having been carried out at the landlord's expense in so far as the costs of the work have been or are to be satisfied by the release to the tenant of any amount consigned under subsection (3)(b).
- (8) Any right of the landlord to irritate the lease or remove the tenant on the grounds of non-payment of rent is unenforceable if the non-payment of rent is in consequence of an authorisation under subsection (3)(b) to withhold rent.
- (9) Any term of the lease or of any agreement between the landlord and tenant that purports to deprive the tenant of any right conferred by virtue of this section is, in so far as it so purports, of no effect.

### **13 Written leases and the revision of certain leases**

- (1) Where, in respect of a short limited duration tenancy or a limited duration tenancy—
  - (a) there is not in force a lease in writing; or
  - (b) there is in force a lease in writing but—
    - (i) the lease does not contain provision for the matters mentioned in subsection (2)(a) or contains provision inconsistent with those matters; or
    - (ii) the lease contains provision inconsistent with section 16 (as read with section 5(2) to (4) of the 1991 Act),
 the landlord or tenant may give notice in writing to the other requesting that a lease in writing be entered into containing the matters mentioned in subsection (2).
- (2) Those matters are, as the case may be—
  - (a) provision for all the matters specified in Schedule 1 to the 1991 Act (that Schedule applying for the purposes of this section as it does for the purposes of that Act) or provision consistent with those matters; or
  - (b) provision consistent with section 16.

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- (3) If, within the period of 6 months after notice has been given under subsection (1), no such lease has been concluded, the terms of the lease may be determined by the Land Court.
- (4) In such a determination, the Land Court—
  - (a) is to specify the terms of the existing tenancy and, in so far as those terms do not make provision for the matters mentioned in subsection (2)(a) or make provision inconsistent with those matters or with section 16 (as read with section 5(2) to (4) of the 1991 Act), make such provision for those matters as appears to it to be reasonable; and
  - (b) may specify any further term of the tenancy which is—
    - (i) agreed between the landlord and the tenant; and
    - (ii) not inconsistent with any provision applying to the tenancy by virtue of this Act.
- (5) Any determination of the Land Court by virtue of this section or section 16 has effect as if—
  - (a) the terms and provisions specified or made therein were contained in an agreement in writing between the landlord and the tenant; and
  - (b) such agreement had effect as from the date of the determination or from such later date as the determination may appoint.
- (6) If it appears to the Land Court that on the date of the determination the landlord or tenant would be in breach of any term of the tenancy so specified or made, the Court is to appoint such later date as would allow the landlord or, as the case may be, tenant to remedy the breach.

## **14 Freedom of cropping and disposal of produce**

Section 7 (freedom of cropping and disposal of produce) of the 1991 Act applies to short limited duration tenancies and limited duration tenancies as it does to 1991 Act tenancies, but as if—

- (a) the references to the holding were references to the land;
- (b) in subsection (4)—
  - (i) the reference to section 61(1) of that Act were a reference to section 78(1) of this Act; and
  - (ii) the reference to arbitration included any other method mentioned in that section of this Act (the reference to the arbiter being construed accordingly);
- (c) in subsection (5)—
  - (i) paragraph (a); and
  - (ii) in paragraph (b), the words “in any other case,” were omitted; and
- (d) in subsection (6), in paragraph (b), the reference to a direction under section 9 of the 1949 Act were omitted.

## **15 Permanent pasture**

Section 9 (arbitration as to permanent pasture) of the 1991 Act applies in relation to short limited duration tenancies and limited duration tenancies as it does in relation to 1991 Act tenancies, but as if the references to the holding were references to the land.

## **16 Fixed equipment etc.**

- (1) When a lease constituting a short limited duration tenancy or a limited duration tenancy is entered into, any fixed equipment on the land comprised in the lease is to be specified in the lease.
- (2) At any time after the commencement of the tenancy, the landlord and tenant may by agreement in writing—
  - (a) specify any fixed equipment not specified under subsection (1); or
  - (b) vary the terms of any specification of fixed equipment.
- (3) There is incorporated in every lease constituting a short limited duration tenancy or a limited duration tenancy an undertaking by the landlord that the landlord will—
  - (a) at the commencement of the tenancy or as soon as is reasonably practicable thereafter, put the fixed equipment on the land into a thorough state of repair and will provide such buildings and other fixed equipment as will enable an occupier reasonably skilled in husbandry to maintain efficient production as respects both—
    - (i) the kind of produce specified in the lease, or (failing such specification) in use to be produced on the land; and
    - (ii) the quality and quantity of such produce; and
  - (b) during the tenancy effect such replacement or renewal of the buildings or other fixed equipment as may be rendered necessary by natural decay or by fair wear and tear.
- (4) In subsection (3)(a), “produce” includes anything (whether live or dead) produced in the course of agriculture.
- (5) There is also incorporated in every such lease 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 on the land in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—
  - (a) immediately after it was put in repair as mentioned in subsection (3)(a); or
  - (b) in the case of equipment provided, improved, replaced or renewed during the tenancy, immediately after it was so provided, improved, replaced or renewed.
- (6) 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.
- (7) Any term of a lease constituting a short limited duration tenancy or a 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.



## **17 Resumption of land by landlord**

- (1) The landlord may resume the land or any part of the land comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy if (and only if)—
  - (a) the resumption is for a non-agricultural purpose in respect of which permission requires to be obtained, and has been obtained, under the enactments relating to town and country planning by—
    - (i) in the case of a short limited duration tenancy, any person (including the tenant);
    - (ii) in the case of a limited duration tenancy, any person apart from the tenant;
  - (b) the lease does not expressly prohibit resumption for that purpose; and
  - (c) notice as mentioned in subsection (2) has been given.
- (2) The landlord must give the tenant notice of any intention of the landlord so to resume any land; and the notice must—
  - (a) be in writing;
  - (b) be given not less than 1 year before the date on which the resumption is to take place; and
  - (c) specify that date.
- (3) Where notice is given under subsection (2) for resumption of part of the land, the tenant may, within 28 days after—
  - (a) the giving of the notice; or
  - (b) the determination of any matter arising from the notice,whichever is the later, terminate the tenancy by giving notice in writing to the landlord; and the termination takes effect on the date specified under subsection (2)(c).
- (4) Where the landlord resumes part of the land under this section, the tenant is entitled to a reduction in rent—
  - (a) of an amount proportionate to that part; and
  - (b) of an amount in respect of any depreciation of the value to the tenant of the remainder of the land caused by the resumption of the part or any use made of the part,but where paragraph (a) applies, in determining the amount of the reduction, account is to be taken of any benefit or relief allowed to the tenant under the lease in respect of the part resumed.
- (5) Where—
  - (a) part of the land has been resumed under this section for a purpose mentioned in paragraph (f) (which specifies certain forms of mineral exploitation) of subsection (2) of section 29 of the 1991 Act (that paragraph applying for the purposes of this subsection as it does for the purposes of that section); and
  - (b) the land which formed that part has subsequently been made suitable for, and is available for, agricultural use,that land is, if the conditions in subsection (6) are fulfilled, to be restored to the tenancy.
- (6) The conditions are that—
  - (a) the tenancy continues in effect with the same landlord and tenant under the lease; and

- (b) any compensation paid to the tenant in consequence of the resumption was calculated on the basis that the land would be restored under subsection (5).

## **18 Irritancy of lease and good husbandry**

- (1) Without prejudice to any rule of law, it is for the landlord and tenant to provide in the lease constituting a short limited duration tenancy or a 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 the Sixth Schedule to the Agriculture (Scotland) Act 1948 (c. 45).
- (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 order specify.
- (5) In the case of limited duration tenancies, 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) The landlord may not enforce any right to remove the tenant on grounds of irritancy unless notice as mentioned in subsection (7) is given.
- (7) The landlord must give the tenant notice in writing of any intention of the landlord so to remove the tenant not less than 2 months before the date on which the tenant is to be removed.

## **19 Resumption and irritancy: supplementary**

Any provision of this Act as to the termination of a short limited duration tenancy or a limited duration tenancy does not affect any right of the landlord to—

- (a) resume land under section 17; or
- (b) remove a tenant—
  - (i) whose estate has been sequestrated; or
  - (ii) who for any reason has incurred irritancy of the lease or other liability to be removed.