



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 1

#### AGRICULTURAL TENANCIES

### CHAPTER 2

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

##### *Succession to short limited duration tenancies and limited duration tenancies*

#### **20 Section 16 of the Succession (Scotland) Act 1964**

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

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

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

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

(4B) This subsection applies to—

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

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- (b) any other person.
- (4C) In the case of any interest under a lease constituting a short limited duration tenancy or a limited duration tenancy—
- (a) if at any time the executor is satisfied that the interest cannot be disposed of according to law and so informs the landlord, the executor may terminate the tenancy (in so far as it relates to the interest); and
  - (b) if the interest is not so disposed of within the period referred to in subsection (4D) below, the lease shall (in so far as it relates to the interest) terminate at the expiry of the period,
- notwithstanding any provision in the lease, or any enactment or rule of law, to the contrary effect.
- (4D) The period is one year or such longer period as may be fixed by agreement or, failing agreement, by the Land Court on the application of the executor—
- (a) in the case of an interest which is the subject of an application to that court by virtue of section 21 of the 2003 Act, from the date of the determination or withdrawal of the application; and
  - (b) in any other case, from the date of death of the deceased.
- (4E) The—
- (a) interest may be transferred under subsections (4A) and (4B) above; or
  - (b) tenancy may be terminated under subsection (4C)(a) above,
- only if the transfer, or as the case may be, termination is in the best interests of the deceased's estate.”.

#### Commencement Information

**II** S. 20 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

## 21 Bequest of lease

(1) Subject to subsections (2) and (3), the tenant of a short limited duration tenancy <sup>[F1]</sup>, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] may, by will or other testamentary writing, bequeath the lease constituting the tenancy to <sup>[F2]</sup>any one of the persons mentioned in subsection (1A)] .

<sup>[F3]</sup>(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,

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- (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.]

[<sup>F4</sup>(2) Sections 11(2) and (3), 12A, 12B and 12C(1) and (2) of the 1991 Act apply in relation to subsection (1) as they do in relation to section 11(1), subject to the following modifications—

- (a) in section 11(2), the words “of a holding” and “of the holding” are omitted,
- (b) in section 12A, in subsections (3)(b) and (c) and (4)(b), for “holding” substitute “ land comprised in the lease ”,
- (c) in section 12C, in subsection (1), for “holding” substitute “ land comprised in the lease ”.]

- (3) If the person to whom the lease is so bequeathed does not accept the bequest, or if the bequest is declared null and void by virtue of subsection (2), the right to the lease is, subject to section 16(4A) to (4E) of the 1964 Act, to be treated as intestate estate of the deceased in accordance with Part I of that Act.

#### Textual Amendments

- F1** Words in s. 21(1) substituted (30.11.2017) by Land Reform (Scotland) Act 2016 (asp 18), ss. 108(3)(a)(i), 130(1) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 12)
- F2** Words in s. 21(1) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 108(3)(a)(ii), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.
- F3** S. 21(1A) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 108(3)(b), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F4** S. 21(2) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), sch. 2 para. 16(2) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)

#### Commencement Information

- I2** S. 21 in force at 27.11.2003 by S.S.I. 2003/548, art. 2(a) (with Sch.)

## 22 Right of landlord to object to acquirer of tenancy

- (1) A person to whom a lease constituting a short limited duration tenancy [<sup>F5</sup>, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] is transferred under section 16 (provisions relating to leases) of the 1964 Act must give notice of the transfer to the landlord within 21 days of the transfer or (where that is not possible) as soon as practicable thereafter; and the lease is, subject to subsections (2) and (3), binding on the landlord and that person as landlord and tenant respectively as from the date of the transfer if such notice is given.

[<sup>F6</sup>(2) Sections 12A, 12B and 12C(1), (2) and (5) of the 1991 Act apply in relation to subsection (1) as they do in relation to section 12(1), subject to the following modifications—

- (a) in section 12A—
  - (i) in subsection (2), the reference to notice given under section 12(1) is to be read as a reference to notice given under subsection (1),
  - (ii) in subsections (3)(b) and (c) and (4)(b), for “holding” substitute “ land comprised in the lease ”,

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- (b) in section 12B(2), the reference to notice given under section 12(1) is to be read as a reference to notice given under subsection (1),
  - (c) in section 12C, in subsection (1), for “holding” substitute “ land comprised in the lease ”.]
- (3) Where a lease constituting a short limited duration tenancy [<sup>F7</sup>, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] is transferred to a person under subsections (4A) and (4B)(b) of section 16 of the 1964 Act, the landlord is entitled to acquire the person’s interest in the lease provided that—
- (a) the landlord gives the person notice—
    - (i) in writing; and
    - (ii) within 30 days of the giving of the notice under subsection (1), of the landlord’s intention to acquire that interest; and
  - (b) the terms upon which the landlord acquires that interest are no less favourable to the person than any reasonable terms upon which the lease was transferred to the person.

#### Textual Amendments

- F5** Words in s. 22(1) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(11\)\(a\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)
- F6** S. 22(2) substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 16\(3\)](#) (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with regs. 5-8)
- F7** Words in s. 22(3) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(11\)\(b\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

#### Commencement Information

- I3** S. 22 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

## 23 Effect of termination of tenancy where tenant deceased

Termination of a short limited duration tenancy [<sup>F8</sup>, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] by virtue of—

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

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

#### Textual Amendments

- F8** Words in s. 23 substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(12\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

#### Commencement Information

- I4** S. 23 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7C inserted by [2016 asp 18 s. 93\(2\)](#)
- s. 7D inserted by [2016 asp 18 s. 106\(2\)](#)
- s. 8F8G inserted by [2016 asp 18 s. 94\(2\)](#)
- s. 16B inserted by [2016 asp 18 s. 95\(2\)](#)
- s. 17A inserted by [2016 asp 18 s. 96\(2\)](#)
- s. 18B inserted by [2016 asp 18 s. 97\(2\)](#)
- s. 26(1)(1A) substituted for s. 26(1) by [2016 asp 18 s. 99\(4\)\(a\)](#)
- s. 26(3) inserted by [2016 asp 18 s. 99\(4\)\(c\)](#)