



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 10

#### AGRICULTURAL HOLDINGS

### 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,

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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.”.

(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 assignation 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 (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.”.

## **104      Assignment of limited duration tenancies**

(1) The 2003 Act is amended as follows.

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

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- (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 assignation 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 (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.”.

## **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—

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### **“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.
- (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,

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- (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.”.

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

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- (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.”.

#### **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”,

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- (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.”.

*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”,

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- (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.
- (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.



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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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.

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*Status: This is the original version (as it was originally enacted).*

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**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.