
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to bringing into force particular sections of the Land Reform (Scotland) Act 2016 (“the Act”). The Bill for the Act received Royal Assent on 22nd April 2016. Sections 125 to 127, 130 and 131 came into force on 23rd April 2016.

Regulation 2(1) and the schedule appoint 23rd December 2016 for the coming into force of the provisions specified in column 1 of the table in the schedule. Regulation 2(2) provides that where a purpose is specified in the third column of that table the associated provision comes into force for that purpose only. The subject-matter of the provisions commenced by the schedule are: partial commencement of assignation and succession changes; landlord’s improvements process; diversification; irritancy changes; and review of small landholdings. Various provisions in Part 10 of the Act are also commenced so far as necessary to enable certain regulations to be made.

Regulations 3 and 4 provide saving provision in connection with assignation of different types of tenancies. The effect is that where notice of an intention of the tenant to assign is given before 23rd December 2016 then the law in force at the time continues to apply on and after that date in relation to that particular notice of assignation.

Regulations 5 and 7 make saving provision so that the changes to the law on testate succession which are commenced by these Regulations have no effect in relation to bequests of tenancies made before 23rd December 2016. Regulations 6 and 8 make saving provision so that changes to the law on acquisition of a lease on intestacy do not apply where the deceased died before 23rd December 2016 and at the time of death had not made a will or other testamentary writing which bequeathed the lease.

Regulations 9 and 10 make saving provision so that provisions on relevant improvements do not apply in respect of relevant improvements which the landlord had begun carrying out before Chapter 9 of Part 10 of the Act comes into force. Regulation 11 makes transitory provision so that references in the provisions commenced by these Regulations to other provisions which are still to be commenced are to be ignored until those other provisions come into force.

Regulation 12 makes saving provision so that where a diversification notice is issued before the coming into force of Chapter 10 of Part 10 of the Act on 23rd December 2016, then the law in force at that time continues to apply to that diversification notice notwithstanding the coming into force of Chapter 10.

Regulation 13 makes saving provision in relation to irritancy under section 18 of the 2003 Act. Section 123 of the Act inserts subsection (2A) into section 18 of the 2003 Act. This creates a new step in the irritancy process whereby a landlord may not give notice under section 18(7) unless the landlord has given the tenant a demand in writing requiring the tenant to pay rent within two months and this has not been complied with. This new step applies regardless of when the grounds for irritancy arose except where the landlord gave notice in writing of the landlord’s intention to remove the tenant before 23rd December 2016.

Regulation 14 makes transitory provision so that references in section 45(5) of the 2003 Act (inserted by paragraph 7(16)(b) of schedule 2 of the Act) to other provisions which are still to be commenced are to be ignored until those provisions come into force.

Regulation 15 provides that until section 85(2) of the Act is in force, the term “modern limited duration tenancy” is to have the meaning given by section 5A of the 2003 Act (partially commenced by these Regulations for that purpose). Until paragraph 7(30) of schedule 2 of the Act is commenced, there is no definition of that term in section 93 of the 2003 Act.