
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 365

The Land Reform (Scotland) Act 2016 (Commencement No. 3, Transitory and Saving Provisions) Regulations 2016

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Land Reform (Scotland) Act 2016 (Commencement No. 3, Transitory and Saving Provisions) Regulations 2016 and come into force on 23rd December 2016.

(2) In these Regulations—

“the 1964 Act” means the Succession (Scotland) Act 1964(1);

“the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991(2);

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003(3);

“the 2012 Act” means the Agricultural Holdings (Amendment) (Scotland) Act 2012(4);

“the 2016 Act” means the Land Reform (Scotland) Act 2016;

“agricultural holding” has the same meaning as in section 1 of the 1991 Act (meaning of “agricultural holding” and “agricultural land”);

“limited duration tenancy” has the same meaning as in section 93 of the 2003 Act (interpretation);

“relevant lease” means a lease constituting a limited duration tenancy or a lease constituting a short limited duration tenancy; and

“short limited duration tenancy” has the same meaning as in section 93 of the 2003 Act.

Appointed day

2.—(1) Subject to paragraph (2), 23rd December 2016 is the day appointed for the coming into force of the provisions of the 2016 Act specified in column 1 of the table in the schedule (the subject-matter of which is specified in column 2 of that table).

(2) Where a purpose is specified in column 3 of that table in relation to any provision specified in column 1, that provision comes into force on 23rd December 2016 only for that purpose.

Saving provision: assignation and subletting of 1991 Act tenancies

3. Where a notice of a tenant’s intention to assign the lease under section 10A(2) of the 1991 Act(5) (assignation and subletting of tenancy) was given before 23rd December 2016, the modifications made by section 103 of the 2016 Act (assignation of 1991 Act tenancies) have no effect in relation to that notice and the assignation proposed in that notice.

(1) 1964 c.41.

(2) 1991 c.55.

(3) 2003 asp 11.

(4) 2012 asp 6.

(5) Section 10A was inserted by section 66 of the Agricultural Holdings (Scotland) Act 2003.

Saving provision: assignation and subletting of limited duration tenancies

4. Where a notice of a tenant's intention to assign the lease under section 7 of the 2003 Act (assignation and subletting of limited duration tenancies) was given before 23rd December 2016, the modifications made by section 104 of the 2016 Act (assignation of limited duration tenancies) have no effect in relation to that notice and the assignation proposed in that notice.

Saving provision: bequest of 1991 Act tenancies

5. The modifications of—

- (a) the 1964 Act made by paragraph 14 of schedule 2 of the 2016 Act;
- (b) the 1991 Act made by sections 107 (bequest of 1991 Act tenancies) and 109 (objection by landlord to legatee or acquirer on intestacy) and paragraph 15 of schedule 2 (minor and consequential modifications) of the 2016 Act; and
- (c) the 2012 Act made by paragraph 17 of schedule 2 of the 2016 Act,

have no effect in relation to a lease of an agricultural holding which is bequeathed in accordance with section 11 of the 1991 Act (bequest of lease), where the will or other testamentary writing containing the bequest was made before 23rd December 2016.

Saving provision: acquisition of 1991 Act tenancies under section 16 of the 1964 Act

6.—(1) The modifications of—

- (a) the 1964 Act made by paragraph 14 of schedule 2 of the 2016 Act;
- (b) the 1991 Act made by sections 107 and 109 and paragraph 15 of schedule 2 of the 2016 Act; and
- (c) the 2012 Act made by paragraph 17 of schedule 2 of the 2016 Act,

have no effect where paragraph (2) applies.

(2) This paragraph applies where an interest of a tenant under a lease of an agricultural holding is comprised in the estate of a deceased person where that person—

- (a) died before 23rd December 2016; and
- (b) at the time of death had made no will or other testamentary writing containing a bequest of such a lease.

Saving provision: bequest of short limited duration tenancies and limited duration tenancies

7. The modifications of—

- (a) the 1964 Act made by paragraph 14 of schedule 2 of the 2016 Act;
- (b) the 1991 Act made by sections 107 and 109 and paragraph 15 of schedule 2 of the 2016 Act;
- (c) the 2003 Act made by section 108(2) and (3)(a)(ii) and (b) (limited duration tenancies, modern limited duration tenancies and repairing tenancies: succession) and paragraph 16 of schedule 2 of the 2016 Act; and
- (d) the 2012 Act made by paragraph 17 of schedule 2 of the 2016 Act,

have no effect in relation to a relevant lease which is bequeathed in accordance with section 21 of the 2003 Act (bequest of lease), where the will or other testamentary writing containing the bequest was made before 23rd December 2016.

Saving provision: acquisition of short limited duration tenancies and limited duration tenancies under section 16 of the 1964 Act

8.—(1) The modifications of—

- (a) the 1964 Act made by paragraph 14 of schedule 2 of the 2016 Act;
- (b) the 1991 Act made by sections 107 and 109 and paragraph 15 of schedule 2 of the 2016 Act;
- (c) the 2003 Act made by section 108(2) and (3)(a)(ii) and (b) and paragraph 16 of schedule 2 of the 2016 Act; and
- (d) the 2012 Act made by paragraph 17 of schedule 2 of the 2016 Act,

have no effect where paragraph (2) applies.

(2) This paragraph applies where an interest of a tenant under a relevant lease is comprised in the estate of a deceased person where that person—

- (a) died before 23rd December 2016; and
- (b) at the time of death had made no will or other testamentary writing containing a bequest of such a lease.

Saving provision: improvement by landlord without notice etc.: 1991 Act

9. Section 14E of the 1991 Act(**6**) (improvement by landlord without notice etc.) has no effect in relation to an improvement that is a relevant improvement within the meaning of section 14A(2)(**7**) of the 1991 Act which the landlord had begun carrying out before 23rd December 2016.

Saving provision: improvement by landlord without notice etc.: 2003 Act

10. Section 10E of the 2003 Act(**8**) (improvement by landlord without notice etc.) has no effect in relation to an improvement that is a relevant improvement within the meaning of section 10A(3)(**9**) of the 2003 Act which the landlord had begun carrying out before 23rd December 2016.

Transitory provision: landlord improvement notices: 2003 Act

11.—(1) Until the coming into force of section 85 of the 2016 Act (modern limited duration tenancies: creation) for all purposes, section 10A(1) of the 2003 Act(**10**) (landlord improvement notices) is to be read as if paragraph (c) were omitted.

(2) Until the coming into force of section 92 of the 2016 Act (repairing tenancies: creation) for all purposes, section 10A of the 2003 Act is to be read as if subsections (1)(d) and (2) were omitted.

(3) Until the coming into force of section 101 of the 2016 Act (1991 Act tenancies: rent review) for all purposes, section 14E(2) of the 1991 Act(**11**) (improvement by landlord without notice etc.) is to be read as if for paragraph (b) there were substituted—

- “(b) any subsequent rent review in accordance with the terms of the tenancy or a determination by the Land Court of the question of the rent properly payable in respect of the holding in accordance with section 13 of the 1991 Act.”.

(**6**) Section 14E was inserted by section 119(2) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). Section 119 is commenced by these Regulations.

(**7**) Section 14A was inserted by section 119(2) of the 2016 Act.

(**8**) Section 10E was inserted by section 119(4) of the 2016 Act.

(**9**) Section 10A was inserted by section 119(4) of the 2016 Act.

(**10**) Section 10A was inserted by section 119(4) of the 2016 Act.

(**11**) Section 14E was inserted by section 119(2) of the 2016 Act.

(4) Until the coming into force of section 88(2) of the 2016 Act (modern limited duration tenancies: fixed equipment), section 10E(2)(a) of the 2003 Act(12) (improvement by landlord without notice etc.) is to be read as if for sub-paragraph (ii) there were substituted—

“(ii) in relation to fixed equipment under section 16(4)(b),”.

Saving provision: notice of diversification

12. The modifications of the 2003 Act made by sections 121 and 122 of the 2016 Act (use of land for non-agricultural purposes) have no effect in relation to a notice of diversification given under section 40(1) of the 2003 Act (notice of and objection to diversification) where the notice was given before 23rd December 2016.

Saving provision: irritancy for non-payment of rent

13. The modifications of section 18 of the 2003 Act (irritancy of lease and good husbandry) made by section 123 of the 2016 Act (irritancy for non-payment of rent) have no effect in relation to a notice given by a landlord under section 18(7) of the 2003 Act where the notice was given before 23rd December 2016.

Transitory provision: right to compensation for improvements

14. Until the coming into force of section 85 of the 2016 Act (modern limited duration tenancies: creation) for all purposes, section 45(5) of the 2003 Act(13) (right to compensation for improvements), is to be read as if for section 45(5) there were substituted—

“(5) Nothing in any order made under section 73 of the 1991 Act which varies the provisions of schedule 5 of that Act affects the right of a tenant of a short limited duration tenancy or a limited duration tenancy to claim, in respect of an improvement made or begun before the date on which such order comes into force, any compensation to which, but for the making of the order, the tenant would have been entitled.”.

Transitory provision: ancillary provision under section 92 of the 2003 Act

15. Until the coming into force of section 85(2) of the 2016 Act (repeal of section 5 of the 2003 Act), for the purposes of section 92(2) of the 2003 Act (ancillary provision)(14) the reference in section 92(2) to “modern limited duration tenancies” is to be construed in accordance with section 5A of the 2003 Act(15).

St Andrew’s House,
Edinburgh
9th November 2016

FERGUS EWING
A member of the Scottish Government

(12) Section 10E was inserted by section 119(4) of the 2016 Act.

(13) Section 45(5) was inserted by paragraph 7(16)(b) of schedule 2 of the 2016 Act.

(14) Section 92(2) of the 2003 Act is amended by paragraph 7(29) of schedule 2 of the 2016 Act. Paragraph 7(29) of schedule 2 is commenced by these Regulations.

(15) Section 85(3) of the 2016 Act inserts section 5A into the 2003 Act. Section 85(3) is commenced by these Regulations only for the purpose of making regulations, so as to provide a definition of “modern limited duration tenancy” in those regulations.