

**2016 No. 365 (C. 33)**

**LANDLORD AND TENANT**

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

*Made* - - - - *9th November 2016*

*Laid before the Scottish Parliament* *11th November 2016*

*Coming into force* - - *23rd December 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 130(2) and (4) of the Land Reform (Scotland) Act 2016(a) and all other powers enabling them to do so.

**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(b);

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

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

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

“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.

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(a) 2016 asp 18.  
(b) 1964 c.41.  
(c) 1991 c.55.  
(d) 2003 asp 11.  
(e) 2012 asp 6.

## **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 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<sup>(a)</sup> (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.

## **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.

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

### **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(a) (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)(b) 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(c) (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)(d) of the 2003 Act which the landlord had begun carrying out before 23rd December 2016.

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(a) 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.

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

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

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

### **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(**a**) (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(**b**) (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.”.

(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(**c**) (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(**d**) (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.”.

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

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

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

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

**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)(**a**) the reference in section 92(2) to “modern limited duration tenancies” is to be construed in accordance with section 5A of the 2003 Act(**b**).

St Andrew’s House,  
Edinburgh  
9th November 2016

*FERGUS EWING*  
A member of the Scottish Government

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- (**a**) 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.
- (**b**) 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.

## SCHEDULE

Regulation 2(1) and (2)

### PROVISIONS OF THE 2016 ACT COMING INTO FORCE ON 23RD DECEMBER 2016

<i>Column 1</i> <i>Provisions of the 2016 Act</i>	<i>Column 2</i> <i>Subject-matter</i>	<i>Column 3</i> <i>Purpose</i>
Section 85(1) and (3)	Modern limited duration tenancies: creation	For the purpose of making regulations under sections 5B(3), 9A(3), 9B(3), 9C(6) and 18A(4)(b)(ii) of the 2003 Act and orders under section 92 of the 2003 Act
Section 89	Modern limited duration tenancies: irritancy	For the purpose of making regulations under section 18A(4)(b)(ii) of the 2003 Act
Section 92	Repairing tenancies: creation	For the purpose of making regulations under sections 9A(3), 9B(3), 9C(6) and 59A of the 2003 Act and orders under section 92 of the 2003 Act
Section 98	Repairing tenancies: compensation	For the purpose of making regulations under section 59A of the 2003 Act
Section 100	Sale to tenant or third party where landlord in breach of order or award	For the purpose of making regulations under sections 38A(4)(c), 38B(6)(e), 38C(1), 38D(4), 38L(4)(c), 38M, 38O(4) and (5), and 38P(2) of the 2003 Act
Section 101	1991 Act tenancies: rent review	For the purpose of making regulations under paragraphs 2(4), 9(1) and 10(6) of schedule 1A of the 1991 Act
Section 102	Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review	For the purpose of making regulations under section 9A(3), 9B(3) and 9C(6) of the 2003 Act
Section 103	Assignment of 1991 Act tenancies	
Section 104	Assignment of limited duration tenancies	
Section 107	Bequest of 1991 Act tenancies	
Section 108(2) and (3)(a)(ii) and (b)	Limited duration tenancies, modern limited duration tenancies and repairing tenancies: succession	
Section 109	Objection by landlord to legatee or acquirer on intestacy	
Section 110	Tenant's offer to relinquish 1991 Act tenancy	For the purpose of making regulations under section

		32B(1), 32D(1) and (2), 32G(3)(b), 32J(5) and 32Q(8) of the 1991 Act
Section 111(2) and (4)	Tenant's offer to relinquish 1991 Act tenancy: consequential modifications	For the purpose of making regulations under section 74A of the 2003 Act
Section 119	Notice required for certain improvements by landlord	
Section 120	Rent increase for certain improvements by landlord	
Section 121	Use of land for non- agricultural purposes: objection to notice of diversification	
Section 122	Use of land for non- agricultural purposes: requests for information	
Section 123	Irritancy for non-payment of rent	
Section 124	Review of small landholdings legislation	
Section 129(2) and schedule 2 so far as they relate to paragraph 7(1) of schedule 2	Minor and consequential amendments	For the purpose of commencing paragraph 7(16)(b), (29) and (30)(b) of schedule 2 of the 2016 Act.
Section 129(2) and schedule 2 so far as they relate to paragraphs 7(16)(b) and 14 to 19 of schedule 2	Minor and consequential modifications	
Section 129(2) and schedule 2 so far as they relate to paragraph 7(29) and (30)(b) of schedule 2	Minor and consequential amendments	For the purpose of making orders under section 92 of the 2003 Act

## 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.



## NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

*(This note is not part of the Regulations)*

The following provisions of the Land Reform (Scotland) Act 2016 have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provisions of the 2016 Act</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 1	1st October 2016	S.S.I. 2016/193
Section 2	1st October 2016	S.S.I. 2016/193
Section 3	1st October 2017	S.S.I. 2016/193
Section 4(1) to (5)	1st November 2016	S.S.I. 2016/250
Section 4(6) to (8)	1st April 2017	S.S.I. 2016/250
Section 5	1st November 2016	S.S.I. 2016/250
Section 6	1st April 2017	S.S.I. 2016/250
Section 7	1st November 2016	S.S.I. 2016/250
Section 8	1st April 2017	S.S.I. 2016/250
Section 9	1st April 2017	S.S.I. 2016/250
Section 10	1st November 2016	S.S.I. 2016/250
Section 11	1st November 2016	S.S.I. 2016/250
Section 12(1), (2), (3)(a), (4) and (5)	1st November 2016	S.S.I. 2016/250
Section 12(3)(b) (partially)	1st November 2016	S.S.I. 2016/250
Section 13	1st November 2016	S.S.I. 2016/250
Section 14	1st November 2016	S.S.I. 2016/250
Section 15	1st November 2016	S.S.I. 2016/250
Section 16	1st November 2016	S.S.I. 2016/250
Section 17	1st November 2016	S.S.I. 2016/250
Section 18	1st November 2016	S.S.I. 2016/250
Section 19	1st November 2016	S.S.I. 2016/250
Section 20	1st November 2016	S.S.I. 2016/250
Section 21(1) and (2)	1st November 2016	S.S.I. 2016/250
Section 21(3)	1st April 2017	S.S.I. 2016/250
Section 22(1), (2), (3)(a)(ii) and (iii) and (b), (4) and (5)	1st April 2017	S.S.I. 2016/250
Section 22(3)(a)(i)	1st October 2017	S.S.I. 2016/250
Section 23	1st April 2017	S.S.I. 2016/250
Section 24	1st April 2017	S.S.I. 2016/250
Section 25	1st April 2017	S.S.I. 2016/250
Section 26	1st April 2017	S.S.I. 2016/250
Section 27(1), (2)(a) to (f) and (h) to (i) and (3) to (9)	1st April 2017	S.S.I. 2016/250
Section 28	1st April 2017	S.S.I. 2016/250
Section 29	1st April 2017	S.S.I. 2016/250
Section 30	1st April 2017	S.S.I. 2016/250
Section 31	1st April 2017	S.S.I. 2016/250
Section 32	1st April 2017	S.S.I. 2016/250
Section 33	1st April 2017	S.S.I. 2016/250
Section 34	1st April 2017	S.S.I. 2016/250
Section 35	1st April 2017	S.S.I. 2016/250
Section 36	1st April 2017	S.S.I. 2016/250
Section 37	1st April 2017	S.S.I. 2016/250
Section 38	1st April 2017	S.S.I. 2016/250
Section 44	1st November 2016	S.S.I. 2016/250
Section 74	28th June 2016	S.S.I. 2016/193

Section 75	28th June 2016	S.S.I. 2016/193
Section 76	28th June 2016	S.S.I. 2016/193
Section 77	28th June 2016	S.S.I. 2016/193
Section 78	28th June 2016	S.S.I. 2016/193
Section 79	28th June 2016	S.S.I. 2016/193
Section 80	28th June 2016	S.S.I. 2016/193
Section 81	28th June 2016	S.S.I. 2016/193
Section 82	28th June 2016	S.S.I. 2016/193

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