

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 1

AGRICULTURAL TENANCIES

CHAPTER 2

GENERAL PROVISION AS TO NEW TYPES OF TENANCY

[^{F1}New types of tenancy: general provision]

Textual Amendments

- F1** S. 6 cross-heading substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(2\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch.

6 Assignment, subletting and termination of short limited duration tenancies

- (1) The tenant may not assign a lease constituting a short limited duration tenancy nor sublet the land comprised in the lease.
- (2) A short limited duration tenancy may be terminated by the landlord and tenant by agreement.

Commencement Information

- II** S. 6 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

7 Assignment and subletting of limited duration tenancies

- (1) A lease constituting a limited duration tenancy may be assigned by the tenant if, following notice under subsection (2), the landlord consents to a proposed assignment.

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- (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 assignation is to be made and the date on which it is to take effect.
- (3) ^[F2]Subject to subsection (3A), the landlord may withhold consent to the proposed assignation 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.
- ^[F3](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.]
- ^[F3](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.]
- (4) 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 (except where the landlord exercises the right under subsection (5) to acquire the tenant's interest in the lease) deemed to have consented to the proposed assignation.
- (5) Where the landlord has been given notice under subsection (2), the landlord is entitled to acquire the tenant's interest in the lease provided that—
- (a) the landlord gives the tenant notice—
 - (i) in writing; and
 - (ii) within 30 days of the giving of the notice under subsection (2), 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 tenant than any reasonable terms upon which the proposed assignation was to have been made.
- ^[F4](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,

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- (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.]

(6) For the purposes of subsection (3)(b), what is good husbandry is to be construed by reference to the Sixth Schedule to the Agriculture (Scotland) Act 1948 (c. 45).

(7) A tenant may sublet the land comprised in a lease constituting a limited duration tenancy only on such basis as the lease expressly permits.

Textual Amendments

- F2** Words in s. 7(3) substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 104(2)(a), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with reg. 4)
- F3** S. 7(3A)(3B) inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 104(2)(b), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with reg. 4)
- F4** S. 7(5A) inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 104(2)(c), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with reg. 4)

Commencement Information

- I2** S. 7 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with Sch.)

[^{F5}7A Subletting of modern limited duration tenancies

A tenant may sublet the land comprised in a lease constituting a modern limited duration tenancy only on such basis as the lease expressly permits.]

Textual Amendments

- F5** S. 7A inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 86(2), 130(1)** (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch.

[^{F6}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,

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the terms upon which the assignation 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 assignation 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 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 (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 assignation.
- (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,
 - (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,

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- (l) a child of such a brother or sister,
- (m) a grandchild of such a brother or sister.]

Textual Amendments

F6 S. 7B inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 105(2), 130(1)** (with s. 128); [S.S.I. 2017/299, reg. 2, sch.](#)

8 Continuation and termination of limited duration tenancies

- (1) A limited duration tenancy may be terminated by agreement between the landlord and tenant if the agreement is in writing and—
 - (a) is entered into after the commencement of the tenancy; and
 - (b) makes provision as to compensation payable by the landlord or the tenant to the other.
- (2) At and after the expiry of the term of a limited duration tenancy, the tenancy continues to have effect in accordance with subsection (6) unless it is terminated in accordance with this section.
- (3) At the expiry of the term of a limited duration tenancy, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant.
- (4) A notice under subsection (3) must—
 - (a) be in writing and state that the tenant shall quit the land on the expiry of the term of the tenancy; and
 - (b) be given not less than one year nor more than two years before the expiry of the term of the tenancy, provided that not less than 90 days have elapsed from the date on which the intimation mentioned in subsection (5) is given.
- (5) A notice under subsection (3) is of no effect unless the landlord has given written intimation of the landlord's intention to terminate the tenancy to the tenant not less than two years nor more than three years before the expiry of the term of the tenancy.
- (6) If the tenancy is not terminated in accordance with this section, it continues in effect on a cycle of continuations; that is to say, a continuation of three years (a “first short continuation”) followed by a further continuation of three years (a “second short continuation”) followed by a further continuation of [F7]10] years (a “long continuation”) (the cycle being repeated without limit to the number of times).
- (7) During a first short continuation, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant; and subsections (4) and (5) apply to a notice under this subsection as they do to a notice under subsection (3).
- (8) During a second short continuation, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant.
- (9) A notice under subsection (8)—
 - (a) must be in writing and state that the tenant shall quit the land on the relevant day; and
 - (b) may be given at any time during the continuation.
- (10) For the purposes of subsection (9)(a)—

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- (a) where the notice has been given during the first year of the continuation, the relevant day is the day on which the continuation expires; and
 - (b) in any other case, the relevant day is the day on which the period of two years from the giving of the notice expires (and the continuation is deemed to expire on the relevant day).
- (11) During a long continuation, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant; and subsections (4) and (5) apply to a notice under this subsection as they do to a notice under subsection (3).
- (12) For the purposes of subsections (7) and (11), the references in subsections (4) and (5) to the expiry of the term of the tenancy are to be read as references to the expiry of the continuation.
- (13) At or after the expiry of the term of a limited duration tenancy, the tenant may terminate the tenancy by giving a notice under this subsection to the landlord.
- (14) A notice under subsection (13) must—
- (a) be in writing and state that the tenant intends to quit the land on the expiry of the term of the tenancy or, as the case may be, a continuation of the tenancy; and
 - (b) be given not less than one year nor more than two years before the expiry of the term of the tenancy or, as the case may be, continuation.
- (15) During the term of a limited duration tenancy, the term of the tenancy may be extended by the landlord and tenant by agreement in writing.

Textual Amendments

F7 Word in s. 8(6) substituted (22.3.2011) by [The Public Services Reform \(Agricultural Holdings\) \(Scotland\) Order 2011 \(S.S.I. 2011/232\)](#), arts. 1(1), 7(2) (with art. 10)

Commencement Information

I3 S. 8 in force at 27.11.2003 by [S.S.I. 2003/548](#), art. 2(a) (with Sch.)

[^{F8}8A Termination of modern limited duration tenancies by agreement

A modern limited duration tenancy may be terminated by agreement between the landlord and tenant if the agreement is in writing and—

- (a) is entered into after the commencement of the tenancy, and
- (b) makes provision as to compensation payable by the landlord or the tenant to the other.

Textual Amendments

F8 Ss. 8A-8E inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), ss. 87(2), 130(1) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch.

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8B Termination of modern limited duration tenancies by landlord

- (1) At the expiry of the term of a modern limited duration tenancy, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant.
- (2) A notice under subsection (1) must—
 - (a) be in writing and state that the tenant must quit the land on the expiry of the term of the tenancy, and
 - (b) be given not less than 1 year nor more than 2 years before the expiry of the term of the tenancy, provided that not less than 90 days have elapsed from the date on which the intimation mentioned in subsection (3) is given.
- (3) A notice under subsection (1) is of no effect unless the landlord has given written intimation of the landlord's intention to terminate the tenancy to the tenant not less than 2 years nor more than 3 years before the expiry of the term of the tenancy.

Textual Amendments

F8 Ss. 8A-8E inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 87(2), 130(1)** (with [s. 128](#)); [S.S.I. 2017/299](#), [reg. 2](#), [sch.](#)

8C Termination of modern limited duration tenancies by tenant

- (1) At the expiry of the term of a modern limited duration tenancy, the tenant may terminate the tenancy by giving a notice under this subsection to the landlord.
- (2) A notice under subsection (1) must—
 - (a) be in writing and state that the tenant intends to quit the land on the expiry of the term of the tenancy, and
 - (b) be given not less than 1 year nor more than 2 years before the expiry of the term of the tenancy.

Textual Amendments

F8 Ss. 8A-8E inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 87(2), 130(1)** (with [s. 128](#)); [S.S.I. 2017/299](#), [reg. 2](#), [sch.](#)

8D Termination of modern limited duration tenancies subject to break clause

- (1) This section applies where the lease constituting a modern limited duration tenancy contains a break clause by virtue of section 5B.
- (2) The tenant may terminate the tenancy after 5 years by giving a notice under this subsection to the landlord.
- (3) A notice under subsection (2) must—
 - (a) be in writing and state that the tenant intends to quit the land on the expiry of the period of 5 years beginning with the day the tenancy commenced, and
 - (b) be given not less than 1 year nor more than 2 years before the expiry of that period.

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- (4) The landlord may terminate the tenancy after 5 years by giving a notice under this subsection to the tenant.
- (5) A notice under subsection (4) must—
- (a) be in writing and state—
 - (i) that the tenant must quit the land on the expiry of the period of 5 years beginning with the day the tenancy commenced, and
 - (ii) the landlord's reasons for terminating the tenancy, and
 - (b) be given not less than 1 year nor more than 2 years before the expiry of that period.
- (6) The landlord may give notice under subsection (4) only if the tenant—
- (a) is not using the land in accordance with the rules of good husbandry, or
 - (b) is otherwise failing to comply with any other provision of the lease.
- (7) For the purposes of subsection (6)(a), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

Textual Amendments

F8 Ss. 8A-8E inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 87(2), 130(1)** (with [s. 128](#)); [S.S.I. 2017/299](#), [reg. 2](#), [sch.](#)

8E Continuation and extension of modern limited duration tenancies

- (1) At and after the expiry of the term of a modern limited duration tenancy, the tenancy continues to have effect for a further term of 7 years unless it is terminated in accordance with section 8A, 8B or 8C.
- (2) During the term of a modern limited duration tenancy, the term of the tenancy may be extended by the landlord and tenant by agreement in writing.]

Textual Amendments

F8 Ss. 8A-8E inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 87(2), 130(1)** (with [s. 128](#)); [S.S.I. 2017/299](#), [reg. 2](#), [sch.](#)

9 ^[F9]Review of rent under limited duration tenancies][^{F9}Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies]

^[F10](A1) Where, by virtue of any provision, a review of rent due as payable under a lease constituting a limited duration tenancy ^[F11], a modern limited duration tenancy or a repairing tenancy] —

- (a) may be initiated only by the landlord; or
- (b) may only determine that the rent is to be increased,

the provision concerned is void and the rent due as payable under the lease is instead to be reviewed and determined in accordance with this section.]

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(1) Where a lease constituting a limited duration tenancy [^{F12}or a modern limited duration tenancy] makes no provision for review of rent, the rent due as payable under the lease is to be reviewed and determined in accordance with this section.

[^{F13}(1A) The rent due as payable under a lease constituting a repairing tenancy is to be reviewed and determined in accordance with this section.]

[^{F14}(2) A rent review is to take place on such date as the landlord or tenant may specify in a notice in writing to the other provided that—

- (a) the notice is given not less than one year nor more than two years before the date so specified; and
- (b) the date so specified is not less than three years—
 - (i) in the case of the first rent review, from the commencement of the tenancy; or
 - (ii) in the case of any subsequent rent review, from the date of the review under this subsection which precedes it.

(3) On review, subject to subsections (4) to (7), the rent payable is the rent which the tenancy would reasonably be expected to fetch in the open market where there is a willing landlord and a willing tenant—

- (a) disregarding—
 - (i) any effect on rent due to the fact that the tenant is in occupation of the land; and
 - (ii) any distortion in rent due to a scarcity of lets; and
- (b) having regard to—
 - (i) the terms of the tenancy (other than those relating to rent);
 - (ii) information about rents for other agricultural tenancies (including when fixed) and any factors affecting those rents (or any of them) except any distortion due to a scarcity of lets; and
 - (iii) the current economic conditions in the relevant sector of agriculture.

(4) Account is to be taken of any increase in the rental value of the land resulting from the use of the land for a purpose that is not an agricultural purpose.

(5) No account is to be taken of any increase in the rental value of the land resulting from improvements—

- (a) so far as—
 - (i) they have been carried out wholly or partly at the expense of the tenant (whether or not that expense has been or will be reimbursed by any grant) without equivalent allowance or benefit having been made or given by the landlord in consideration of their execution; and
 - (ii) they have not been carried out under an obligation imposed on the tenant by the terms of the lease; and
- (b) which have been carried out by the landlord, in so far as the landlord has received or will receive any grant in respect of them,

nor may the rent be determined to be a higher amount than would have been payable if those improvements had not been so carried out.

(6) For the purposes of subsection (5)—

- (a) subject to paragraph (b), “improvements” is to be construed by reference to Schedule 5 to the 1991 Act; and

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- (b) the continuous adoption by the tenant of a standard of farming or a system of farming more beneficial to the land than the standard or system required by the terms of the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant's expense.
- (7) No account is to be taken of—
- (a) any reduction in the rental value of the land as a result of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant; or
 - (b) any such reduction resulting from—
 - (i) the use of any of the land, or changes to the land, for a purpose that is not an agricultural purpose; or
 - (ii) the carrying out of conservation activities on the land.
- (8) The rent determined in accordance with this section is to take effect from the date of the rent review.]
- [^{F14}(2) The landlord may initiate a review of the rent that is to be payable under the lease by serving a notice in writing on the tenant.
- (3) The tenant may initiate such a review by serving a notice in writing on the landlord.
- (4) A notice served under subsection (2) or (3) is a “rent review notice”.]

Textual Amendments

- F9** S. 9 heading substituted (23.12.2016 for the purpose of making regulations under s. 9A(3), 9B(3) and 9C(6) and otherwise prosp.) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 102(2)(e)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.
- F10** S. 9(A1) inserted (12.9.2012) by [Agricultural Holdings \(Amendment\) \(Scotland\) Act 2012 \(asp 6\)](#), **ss. 2, 5(2)** (with s. 4(2))
- F11** Words in s. 9(A1) inserted (23.12.2016 for the purpose of making regulations under s. 9A(3), 9B(3) and 9C(6) and otherwise prosp.) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 102(2)(a)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.
- F12** Words in s. 9(1) inserted (23.12.2016 for the purpose of making regulations under s. 9A(3), 9B(3) and 9C(6) and otherwise prosp.) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 102(2)(b)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.
- F13** S. 9(1A) inserted (23.12.2016 for the purpose of making regulations under s. 9A(3), 9B(3) and 9C(6) and otherwise prosp.) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 102(2)(c)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.
- F14** S. 9(2)-(4) substituted for s. 9(2)-(8) (23.12.2016 for the purpose of making regulations under s. 9A(3), 9B(3) and 9C(6) and otherwise prosp.) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 102(2)(d)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch.

Modifications etc. (not altering text)

- C1** S. 9(1)(A1) modified (temp.) (30.11.2017) by [The Land Reform \(Scotland\) Act 2016 \(Supplementary, Consequential, Transitory and Saving Provisions\) Regulations 2017 \(S.S.I. 2017/416\)](#), reg. 1(1), **sch. 2 para. 8**

Commencement Information

- I4** S. 9 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with Sch.)

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[^{F15}9A Form and content of rent review notice

- (1) A rent review notice must be dated and state the following—
 - (a) the names and designations of the landlord and the tenant,
 - (b) the name (if any) and the address of the land comprised in the lease or such other description of the land as will identify it,
 - (c) the rent currently payable in respect of the land,
 - (d) the rent that the person serving the notice proposes should be payable,
 - (e) the date by which the landlord and the tenant must reach agreement as to what the rent payable should be (the “rent agreement date”).
- (2) The rent review notice must be accompanied by information in writing explaining the basis on which the rent proposed by the person serving the notice has been calculated.
- (3) The Scottish Ministers may by regulations make further provision about—
 - (a) the form and content of rent review notices,
 - (b) the information that must or may accompany them.

Textual Amendments

F15 Ss. 9A-9C inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 102\(3\), 130\(1\)](#) (with s. 128); [S.S.I. 2016/365, reg. 2, sch.](#)

9B Determination of rent

- (1) On review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having regard, in particular, to—
 - (a) the productive capacity of the land comprised in the lease,
 - (b) the open market rent of any surplus residential accommodation on the land provided by the landlord, and
 - (c) the open market rent of—
 - (i) any fixed equipment on the land provided by the landlord, or
 - (ii) any land comprised in the lease,used for a purpose that is not an agricultural purpose.
- (2) In this section and section 9C(4)(a)(ii), the “open market rent” means the rent at which—
 - (a) any surplus residential accommodation, or
 - (b) any fixed equipment or land used for a purpose that is not an agricultural purpose,might reasonably be expected to be let on the open market by a willing landlord to a willing tenant.
- (3) The Scottish Ministers may by regulations make provision for the purposes of this section about the productive capacity of land comprised in leases of limited duration tenancies, modern limited duration tenancies and repairing tenancies, including how the productive capacity of such land is to be determined.
- (4) The rent determined in accordance with this section is to take effect from the rent agreement date.

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F15 Ss. 9A-9C inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 102\(3\), 130\(1\)](#) (with s. 128); S.S.I. 2016/365, [reg. 2, sch.](#)

9C Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies: surplus residential accommodation

- (1) Residential accommodation on land comprised in the lease of a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy is surplus to the extent that it exceeds what is necessary to provide accommodation for the standard labour requirement of the land.
- (2) In determining whether residential accommodation is surplus—
 - (a) whether the standard labour requirement of the holding varies (seasonally or otherwise) may be taken into account,
 - (b) any accommodation—
 - (i) all or part of which is occupied by the tenant, or
 - (ii) which the tenant is prohibited (by the lease or otherwise) from subletting,
 is to be disregarded.
- (3) But any such prohibition as is mentioned in subsection (2)(b)(ii) is to be ignored if the tenant has sublet the accommodation by virtue of section 39(3).
- (4) In having regard for the purposes of section 9B(1)(b) to the open market rent for any surplus residential accommodation—
 - (a) all the circumstances must be taken into account, including—
 - (i) the condition of the accommodation and its location, and
 - (ii) where accommodation is occupied by a retired agricultural worker, under an arrangement or agreement between the landlord and the tenant, at no rent or at a rent that is below what the open market rent for that accommodation would otherwise be, that fact,
 - (b) the fact that the accommodation is not currently let is to be disregarded.
- (5) Where regard is had to the open market rent for surplus residential accommodation for the purposes of section 9B(1)(b), that accommodation is to be disregarded for the purposes of section 9B(1)(c).
- (6) The Scottish Ministers may by regulations make provision about the standard labour requirement of land comprised in leases of limited duration tenancies, modern limited duration tenancies or repairing tenancies, including how the standard labour requirement of such land is to be determined.]

Textual Amendments

F15 Ss. 9A-9C inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [ss. 102\(3\), 130\(1\)](#) (with s. 128); S.S.I. 2016/365, [reg. 2, sch.](#)

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

10 Increase in rent: landlord's improvements

- (1) Where the landlord has carried out an improvement on the land comprised in a lease constituting a limited duration tenancy [^{F16}, a modern limited duration tenancy or a repairing tenancy] (whether or not one specified in Schedule 5 to the 1991 Act)—
- (a) at the request of, or in agreement with, the tenant;
 - (b) in pursuance of an undertaking given by the landlord by virtue of section 49(2) (as read with section 39(3) of the 1991 Act); ^{F17}...
 - (c) in compliance with a direction given by the Scottish Ministers under powers conferred on them by or under any enactment, [^{F18}or
 - (d) after giving a landlord improvement notice in accordance with section 10A and—
 - (i) the tenant has not given notice of objection in accordance with section 10B, or
 - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 10C,]
- subject to subsections (2) and (3), the rent payable is to be increased as from the completion of the improvement by an amount equal to the increase in the rental value of the land resulting from the carrying out of the improvement.
- (2) The landlord must give the tenant notice in writing of any such increase in the rent payable within 6 months of the completion of the improvement.
- (3) Where any grant has been made to the landlord in respect of an improvement mentioned in subsection (1), the increase in rent under that subsection must be reduced proportionately.

Textual Amendments

- F16** Words in s. 10(1) inserted (30.11.2017) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), **sch. 2 para. 7(3)** (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 12)
- F17** Word in s. 10(1) repealed (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), **ss. 120(5), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch.
- F18** S. 10(1)(d) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), **ss. 120(6), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch.

Commencement Information

- I5** S. 10 in force at 27.11.2003 by S.S.I. 2003/548, **art. 2(a)** (with Sch.)

[^{F19}10A Landlord improvement notices

- (1) This section applies where the landlord of—
- (a) a short limited duration tenancy within the meaning of section 4,
 - (b) a limited duration tenancy ^{F20}...,
 - (c) a modern limited duration tenancy within the meaning of section 5A, or
 - (d) subject to subsection (2), a repairing tenancy within the meaning of section 5C,
- intends to carry out a relevant improvement.
- (2) Subsection (1) does not apply in respect of the landlord of a repairing tenancy in relation to which the repairing period has not expired.

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) A “relevant improvement” is an improvement specified in schedule 5 of the 1991 Act which is not intended to be carried out—
- (a) at the request of or in agreement with the tenant,
 - (b) in pursuance of an undertaking given by landlord under section 49(2) (as read with section 39(3) of the 1991 Act), or
 - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment.
- (4) The landlord must give notice in writing to the tenant before carrying out the relevant improvement, unless section 10F applies.
- (5) A notice served in accordance with this section is a “landlord improvement notice”.
- (6) A landlord improvement notice must be dated and state the following—
- (a) the names and designations of the landlord and the tenant,
 - (b) the name (if any) and the address of the land comprised in the lease or such other description of the land as will identify it,
 - (c) details of the intended improvement, including the manner of the improvement,
 - (d) the landlord's reasons as to why the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.
- (7) In this section and in sections 10B to 10F, what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

Textual Amendments

- F19** Ss. 10A-10F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(4)**, 130(1) (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with regs. 10, 11)
- F20** Words in s. 10A(1)(b) omitted (30.11.2017) by virtue of [The Land Reform \(Scotland\) Act 2016 \(Supplementary, Consequential, Transitory and Saving Provisions\) Regulations 2017 \(S.S.I. 2017/416\)](#), reg. 1(1), **sch. 1 para. 8(2)**

10B Objection by tenant

- (1) Where the landlord has given a landlord improvement notice under section 10A, the tenant may object to the improvement or to part of it by giving notice in writing to the landlord before the end of the period of 2 months beginning with the day on which the tenant received the landlord improvement notice.
- (2) A notice under subsection (1) must be dated and must state the tenant's reasons as to why the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.

Textual Amendments

- F19** Ss. 10A-10F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(4)**, 130(1) (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with regs. 10, 11)

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

10C Referral to Land Court

- (1) Where the tenant has given notice of objection under section 10B the landlord may, before the end of the period of 2 months beginning with the day on which the landlord received the notice of objection, apply to the Land Court for approval of the relevant improvement.
- (2) The Land Court may—
 - (a) approve the carrying out of the relevant improvement—
 - (i) unconditionally, or
 - (ii) upon such terms as appear to it to be appropriate, or
 - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.

Textual Amendments

F19 Ss. 10A-10F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), ss. **119(4)**, 130(1) (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with regs. 10, 11)

10D Notice of dates of improvement

- (1) This section applies where an improvement is to be carried out by the landlord—
 - (a) at the request of or in agreement with the tenant,
 - (b) in pursuance of an undertaking given by the landlord under section 49(2),
 - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment, or
 - (d) after the landlord has given a landlord improvement notice in accordance with section 10A and—
 - (i) the tenant has not given notice of objection in accordance with section 10B, or
 - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 10C(2)(a).
- (2) The landlord must give notice in writing to the tenant stating the period during which the landlord intends to carry out the improvement.
- (3) Unless the landlord and tenant agree otherwise, that period must not commence earlier than the expiry of 2 weeks beginning with the day on which the landlord gives notice under subsection (2).
- (4) Where the landlord has not begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for postponing the carrying out of the improvement, the landlord may give a new notice under subsection (2).
- (5) Subsection (6) applies where the landlord has begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for extending the period during which the improvement is to be carried out.

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) The landlord may, at any time before the expiry of the period stated in the notice under subsection (2), extend the period by giving notice in writing to the tenant stating the extended period during which the landlord intends to carry out the improvement.
- (7) See section 10F on emergency improvements.

Textual Amendments

F19 Ss. 10A-10F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), ss. **119(4)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 10, 11)

10E Improvement by landlord without notice etc.

- (1) Subsection (2) applies where a landlord has carried out an improvement and—
- (a) the landlord did not give notice of the improvement to the tenant in accordance with section 10A,
 - (b) the tenant objected to the improvement under section 10B and the Land Court has not approved the improvement under section 10C(2)(a),
 - (c) the improvement is in breach of any decision of the Land Court under section 10C,
 - (d) the improvement was not an emergency improvement as defined in section 10F.
- (2) Any such improvement is to be disregarded for the purposes of—
- (a) assessing the tenant's responsibilities—
 - (i) in relation to farming the land comprised in the lease in accordance with the rules of good husbandry,
 - (ii) in relation to fixed equipment under sections 16(4)(b) and 16A(5)(b) (ii),
 - (b) any subsequent rent review under section 9.

Textual Amendments

F19 Ss. 10A-10F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), ss. **119(4)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 10, 11)

10F Emergency improvements

- (1) Where a landlord or a tenant considers that an emergency improvement is required, sections 10A(4) and 10D(2), (3), (5) and (6) do not apply.
- (2) In this section an “emergency improvement” means a relevant improvement that is necessary for the purposes of—
- (a) protecting public health from infectious diseases, contamination or other hazards which constitute a danger to human health,
 - (b) preventing a danger or potential danger to public safety,
 - (c) enabling the tenant to comply with the requirements of the Animal Health and Welfare (Scotland) Act 2006,

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- (d) securing the provision of essential services including electricity and water supply services, or
- (e) remedying an accident or natural cause or force majeure which was exceptional and could not reasonably have been foreseen.]

Textual Amendments

F19 Ss. 10A-10F inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 119(4), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with regs. 10, 11)

11 Variation of rent by Land Court

Where it appears to the Land Court, in determining any matter in relation to a limited duration tenancy [^{F21}, a modern limited duration tenancy or a repairing tenancy] by virtue of section 13 [^{F22}, 16, 16A or 16B], that it is equitable that the rent payable under the lease should be varied, it may vary the rent accordingly.

Textual Amendments

F21 Words in s. 11 inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 7(4)(a)** (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

F22 Words in s. 11 substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 7(4)(b)** (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

Commencement Information

I6 S. 11 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with Sch.)

12 Right of tenant to withhold rent

- (1) Subsection (2) applies to an order—
 - (a) made under subsection (1)(b) of section 84; and
 - (b) which is in relation to a failure of the landlord in a short limited duration tenancy [^{F23}, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] to fulfil any obligation the landlord has towards the tenant in respect of fixed equipment.
- (2) Where the landlord has failed—
 - (a) in a material regard; and
 - (b) as at the date specified under subsection (2) of that section,to comply with an order to which this subsection applies, the tenant may apply to the Land Court for an order under subsection (3).
- (3) An order under this subsection may (either or both)—
 - (a) authorise the tenant to carry out such work as the landlord would have to have carried out for the landlord to comply with the order to which subsection (2) applies; and
 - (b) authorise the tenant to withhold payment of the rent payable to the landlord under the tenancy on the condition that the tenant consigns to the Land Court the amount otherwise so payable.

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) The Land Court may, on the application of the tenant, from time to time release to the tenant any of the amount so consigned towards or in satisfaction of any reasonable costs incurred or to be incurred by the tenant for the purposes of or in connection with the carrying out of such work as is mentioned in paragraph (a) of subsection (3).
- (5) The Land Court, on the application of the landlord and having regard to—
 - (a) whether any work mentioned in paragraph (a) of subsection (3) remains to be carried out; and
 - (b) any costs mentioned in subsection (4),
 may terminate the order made under subsection (3) if it considers that it would be not be appropriate for the order to remain in force.
- (6) Where the Land Court terminates the order made under subsection (3), it is to order such division between the landlord and tenant of the amount (or, where any of the amount has been released to the tenant, any remaining amount) consigned under subsection (3)(b) as it considers to be equitable.
- (7) Any work carried out and authorised under subsection (3)(a) is to be treated as having been carried out at the landlord's expense in so far as the costs of the work have been or are to be satisfied by the release to the tenant of any amount consigned under subsection (3)(b).
- (8) Any right of the landlord to irritate the lease or remove the tenant on the grounds of non-payment of rent is unenforceable if the non-payment of rent is in consequence of an authorisation under subsection (3)(b) to withhold rent.
- (9) Any term of the lease or of any agreement between the landlord and tenant that purports to deprive the tenant of any right conferred by virtue of this section is, in so far as it so purports, of no effect.

Textual Amendments

F23 Words in s. 12(1)(b) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(5\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

Commencement Information

I7 S. 12 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with Sch.)

13 Written leases and the revision of certain leases

- (1) Where, in respect of a short limited duration tenancy^{F24}, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] —
 - (a) there is not in force a lease in writing; or
 - (b) there is in force a lease in writing but—
 - (i) the lease does not contain provision for the matters mentioned in subsection (2)(a) or contains provision inconsistent with those matters; or
 - (ii) the lease contains provision inconsistent with section 16 (as read with section 5(2) to (4) of the 1991 Act)^{F25}, section 16A or, as the case may be, section 16B],

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Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- the landlord or tenant may give notice in writing to the other requesting that a lease in writing be entered into containing the matters mentioned in subsection (2).
- (2) Those matters are, as the case may be—
- (a) provision for all the matters specified in Schedule 1 to the 1991 Act (that Schedule applying for the purposes of this section as it does for the purposes of that Act) or provision consistent with those matters; or
 - (b) provision consistent with section 16^{F26}, 16A or, as the case may be, 16B].
- (3) If, within the period of 6 months after notice has been given under subsection (1), no such lease has been concluded, the terms of the lease may be determined by the Land Court.
- (4) In such a determination, the Land Court—
- (a) is to specify the terms of the existing tenancy and, in so far as those terms do not make provision for the matters mentioned in subsection (2)(a) or make provision inconsistent with those matters or with section 16 (as read with section 5(2) to (4) of the 1991 Act)^{F27}, section 16A or, as the case may be, section 16B,] make such provision for those matters as appears to it to be reasonable; and
 - (b) may specify any further term of the tenancy which is—
 - (i) agreed between the landlord and the tenant; and
 - (ii) not inconsistent with any provision applying to the tenancy by virtue of this Act.
- (5) Any determination of the Land Court by virtue of this section or section 16^{F28}, 16A or, as the case may be, 16B] has effect as if—
- (a) the terms and provisions specified or made therein were contained in an agreement in writing between the landlord and the tenant; and
 - (b) such agreement had effect as from the date of the determination or from such later date as the determination may appoint.
- (6) If it appears to the Land Court that on the date of the determination the landlord or tenant would be in breach of any term of the tenancy so specified or made, the Court is to appoint such later date as would allow the landlord or, as the case may be, tenant to remedy the breach.

Textual Amendments

- F24** Words in s. 13(1) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(6\)\(a\)\(i\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 12)
- F25** Words in s. 13(1)(b)(ii) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(6\)\(a\)\(ii\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 12)
- F26** Words in s. 13(2)(b) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(6\)\(b\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch.
- F27** Words in s. 13(4)(a) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(6\)\(c\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch.
- F28** Words in s. 13(5) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(6\)\(d\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch.

Status: Point in time view as at 30/11/2017.

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Commencement Information

I8 S. 13 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

14 Freedom of cropping and disposal of produce

Section 7 (freedom of cropping and disposal of produce) of the 1991 Act applies to short limited duration tenancies [^{F29}, limited duration tenancies, modern limited duration tenancies and repairing tenancies] as it does to 1991 Act tenancies, but as if—

- (a) the references to the holding were references to the land;
- (b) in subsection (4)—
 - (i) the reference to section 61(1) of that Act were a reference to section 78(1) of this Act; and
 - (ii) the reference to arbitration included any other method mentioned in that section of this Act (the reference to the arbiter being construed accordingly);
- (c) in subsection (5)—
 - (i) paragraph (a); and
 - (ii) in paragraph (b), the words “in any other case,”, were omitted; and
- (d) in subsection (6), in paragraph (b), the reference to a direction under section 9 of the 1949 Act were omitted.

Textual Amendments

F29 Words in s. 14 substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(7\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, [sch.](#) (with reg. 12)

Commencement Information

I9 S. 14 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

15 Permanent pasture

Section 9 (arbitration as to permanent pasture) of the 1991 Act applies in relation to short limited duration tenancies [^{F30}, limited duration tenancies, modern limited duration tenancies and repairing tenancies] as it does in relation to 1991 Act tenancies, but as if the references to the holding were references to the land.

Textual Amendments

F30 Words in s. 15 substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(8\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, [sch.](#) (with reg. 12)

Commencement Information

I10 S. 15 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with [Sch.](#))

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

16 Fixed equipment etc.

- [^{F31}(1) There is incorporated in every lease constituting a short limited duration tenancy or a limited duration tenancy an undertaking by the landlord that the landlord will—
- (a) within 6 months of the commencement of the tenancy or, where that is not reasonably practicable by virtue of any obligation on the landlord under any other enactment, as soon as reasonably practicable thereafter—
 - (i) provide such fixed equipment as will enable the tenant to maintain efficient production as respects the use of the land as specified in the lease; and
 - (ii) put the fixed equipment so provided into the condition specified in the schedule of fixed equipment that is required by virtue of subsection (2); and
 - (b) during the tenancy, effect such renewal or replacement of the fixed equipment so provided as may be rendered necessary by natural decay or by fair wear and tear.
- (2) Where a lease constituting a short limited duration tenancy or a limited duration tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—
- (a) the fixed equipment which the landlord will provide in terms of subsection (1) (a); and
 - (b) the condition of the fixed equipment,
- and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78 of this Act) the schedule of fixed equipment is deemed to form part of the lease.
- (3) If at any time after the commencement of the tenancy the fixed equipment or its condition is varied, the landlord and tenant may agree to amend the schedule of fixed equipment accordingly or to substitute for it a new schedule.
- (4) There is also incorporated in every such lease a provision that the liability of the tenant in relation to the maintenance of fixed equipment extends only to a liability to maintain the fixed equipment specified in the schedule of fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—
- (a) immediately after it was put into the condition specified in the schedule of fixed equipment; or
 - (b) in the case of equipment improved, provided, renewed or replaced, during the tenancy, immediately after it was so improved, provided, renewed or replaced.
- (5) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.]
- (6) Any agreement between the landlord and tenant which purports to provide for the tenant to bear any expense of any work which the landlord is required to execute in order to fulfil the landlord's obligations under the lease is of no effect.
- (7) Any term of a lease constituting a short limited duration tenancy or a limited duration tenancy that requires the tenant to pay the whole or any part of the premium due under a fire insurance policy over any fixed equipment on the land is of no effect.

Status: Point in time view as at 30/11/2017.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F31 S. 16(1)-(5) substituted (22.3.2011) by [The Public Services Reform \(Agricultural Holdings\) \(Scotland\) Order 2011 \(S.S.I. 2011/232\)](#), arts. 1(1), **9** (with art. 10)

Commencement Information

I11 S. 16 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with [Sch.](#))

[^{F32}16A Modern limited duration tenancies: fixed equipment etc.

- (1) There is incorporated in every lease constituting a modern limited duration tenancy an undertaking by the landlord that the landlord will, within 6 months of the commencement of the tenancy or, where that is not reasonably practicable by virtue of any obligation on the landlord under any other enactment, as soon as reasonably practicable thereafter—
 - (a) provide such fixed equipment as will enable the tenant to maintain efficient production as respects the use of the land as specified in the lease, and
 - (b) put the fixed equipment so provided into the condition specified in the schedule of fixed equipment that is required by virtue of subsection (2).
- (2) Where a lease constituting a modern limited duration tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—
 - (a) the fixed equipment which the landlord will provide in terms of subsection (1) (a), and
 - (b) the condition of the fixed equipment,
 and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78) the schedule of fixed equipment is deemed to form part of the lease.
- (3) The schedule of fixed equipment must be agreed before the expiry of the period of 90 days beginning with the commencement of the tenancy.
- (4) If at any time after the commencement of the tenancy the fixed equipment or its condition is varied, the landlord and tenant may agree to amend the schedule of fixed equipment accordingly or to substitute for it a new schedule.
- (5) Unless the lease makes provision to the contrary, there is also incorporated in every such lease—
 - (a) an undertaking by the landlord that the landlord will, during the tenancy, effect such renewal or replacement of the fixed equipment provided as required by virtue of subsection (1) as may be rendered necessary by natural decay or by fair wear and tear, and
 - (b) a provision that the liability of the tenant in relation to the maintenance of fixed equipment extends only to a liability to maintain the fixed equipment specified in the schedule of fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—
 - (i) immediately after it was put into the condition specified in the schedule of fixed equipment, or

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- (ii) in the case of equipment improved, provided, renewed or replaced, during the tenancy, immediately after it was so improved, provided, renewed or replaced.
- (6) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.
- (7) Any agreement between the landlord and tenant which purports to provide for the tenant to bear any expense of any work which the landlord is required to execute in order to fulfil the landlord's obligations under the lease is of no effect.
- (8) Any term of a lease constituting a modern limited duration tenancy that requires the tenant to pay the whole or any part of the premium due under a fire insurance policy over any fixed equipment on the land is of no effect.]

Textual Amendments

F32 S. 16A inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 88(2), 130(1)** (with s. 128); [S.S.I. 2017/299](#), **reg. 2, sch.**

17 Resumption of land by landlord

- (1) The landlord may resume the land or any part of the land comprised in a lease constituting a short limited duration tenancy or ^{F33}, a limited duration tenancy or a modern limited duration tenancy] if (and only if)—
 - (a) the resumption is for a non-agricultural purpose in respect of which permission requires to be obtained, and has been obtained, under the enactments relating to town and country planning by—
 - (i) in the case of a short limited duration tenancy, any person (including the tenant);
 - (ii) in the case of a limited duration tenancy ^{F34} or a modern limited duration tenancy], any person apart from the tenant;
 - (b) the lease does not expressly prohibit resumption for that purpose; and
 - (c) notice as mentioned in subsection (2) has been given.
- (2) The landlord must give the tenant notice of any intention of the landlord so to resume any land; and the notice must—
 - (a) be in writing;
 - (b) be given not less than 1 year before the date on which the resumption is to take place; and
 - (c) specify that date.
- (3) Where notice is given under subsection (2) for resumption of part of the land, the tenant may, within 28 days after—
 - (a) the giving of the notice; or
 - (b) the determination of any matter arising from the notice,whichever is the later, terminate the tenancy by giving notice in writing to the landlord; and the termination takes effect on the date specified under subsection (2)(c).
- (4) Where the landlord resumes part of the land under this section, the tenant is entitled to a reduction in rent—
 - (a) of an amount proportionate to that part; and

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- (b) of an amount in respect of any depreciation of the value to the tenant of the remainder of the land caused by the resumption of the part or any use made of the part,

but where paragraph (a) applies, in determining the amount of the reduction, account is to be taken of any benefit or relief allowed to the tenant under the lease in respect of the part resumed.

(5) Where—

- (a) part of the land has been resumed under this section for a purpose mentioned in paragraph (f) (which specifies certain forms of mineral exploitation) of subsection (2) of section 29 of the 1991 Act (that paragraph applying for the purposes of this subsection as it does for the purposes of that section); and
- (b) the land which formed that part has subsequently been made suitable for, and is available for, agricultural use,

that land is, if the conditions in subsection (6) are fulfilled, to be restored to the tenancy.

(6) The conditions are that—

- (a) the tenancy continues in effect with the same landlord and tenant under the lease; and
- (b) any compensation paid to the tenant in consequence of the resumption was calculated on the basis that the land would be restored under subsection (5).

Textual Amendments

F33 Words in s. 17(1) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(9\)\(a\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch.

F34 Words in s. 17(1)(ii) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(9\)\(b\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch.

Commencement Information

I12 S. 17 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with Sch.)

18 Irritancy of lease and good husbandry

(1) Without prejudice to any rule of law, it is for the landlord and tenant to provide in the lease constituting a short limited duration tenancy or a limited duration tenancy what grounds there are for irritancy of the lease.

(2) Any term of such a lease or of an agreement in connection with the lease that provides for the lease to be irritated solely on the grounds that the tenant is not or has not been resident on the land is of no effect.

[^{F35}(2A) Where such a lease may be irritated on the grounds that the rent is due and unpaid, notice as mentioned in subsection (7) may not be given unless—

- (a) the landlord has given the tenant a demand in writing requiring the tenant to pay the rent due before the expiry of the period of 2 months beginning with the date of the demand, and
- (b) the demand has not been complied with.]

(3) Where such a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, what is good husbandry is to be

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construed, subject to subsections (4) and (5), by reference to the Sixth Schedule to the Agriculture (Scotland) Act 1948 (c. 45).

- (4) Conservation activities are to be treated as being in accordance with the rules of good husbandry if they are carried out in accordance with—
 - (a) an agreement entered into under any enactment by the tenant; or
 - (b) the conditions of—
 - (i) any grant for the purpose of such activities paid out of the Scottish Consolidated Fund; or
 - (ii) such other grant of a public nature as the Scottish Ministers may by order specify.
- (5) In the case of limited duration tenancies, such use of any of the land, or such change to the land, for a non-agricultural purpose as has been permitted under section 40 or 41 is to be treated as being in accordance with the rules of good husbandry.
- (6) The landlord may not enforce any right to remove the tenant on grounds of irritancy unless notice as mentioned in subsection (7) is given.
- (7) The landlord must give the tenant notice in writing of any intention of the landlord so to remove the tenant not less than 2 months before the date on which the tenant is to be removed.

Textual Amendments

F35 S. 18(2A) inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 123(2), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with reg. 13)

Commencement Information

I13 S. 18 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(a)** (with Sch.)

[^{F36}18A Irritancy of lease and good husbandry: modern limited duration tenancies

- (1) Without prejudice to any rule of law, it is for the landlord and tenant to provide in the lease constituting a modern limited duration tenancy what grounds there are for irritancy of the lease.
- (2) Any term of such a lease or of an agreement in connection with the lease that provides for the lease to be irritated solely on the grounds that the tenant is not or has not been resident on the land is of no effect.
- (3) Where such a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, what is good husbandry is to be construed, subject to subsections (4) and (5), by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (4) Conservation activities are to be treated as being in accordance with the rules of good husbandry if they are carried out in accordance with—
 - (a) an agreement entered into under any enactment by the tenant, or
 - (b) the conditions of—
 - (i) any grant for the purpose of such activities paid out of the Scottish Consolidated Fund, or

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Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (ii) such other grant of a public nature as the Scottish Ministers may by regulations specify.
- (5) Such use of any of the land, or such change to the land, for a non-agricultural purpose as has been permitted under section 40 or 41 is to be treated as being in accordance with the rules of good husbandry.
- (6) Where the landlord intends to irritate the lease, the landlord must give the tenant notice in writing specifying—
 - (a) the breach of the tenant's obligations under the lease which form the grounds on which the landlord intends to irritate the lease, and
 - (b) the period before the expiry of which the tenant must remedy that breach, which period must be not less than 12 months beginning with the date of the notice.
- (7) The period mentioned in subsection (6)(b) may be extended—
 - (a) by the landlord and the tenant by agreement, or
 - (b) by the Land Court on the application of the tenant.
- (8) The landlord may not enforce any right to remove the tenant on grounds of irritancy unless—
 - (a) the period specified in the notice under subsection (6)(b), or such extended period as mentioned in subsection (7), has expired without the tenant having remedied the breach specified in the notice, and
 - (b) the landlord has given notice in writing of the intention so to enforce the right to remove the tenant not less than 2 months before the date on which the tenant is to be removed.]

Textual Amendments

F36 S. 18A inserted (23.12.2016 for specified purposes, 30.11.2017 in so far as not already in force) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 89(2), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch.; [S.S.I. 2017/299](#), reg. 2, sch.

19 Resumption and irritancy: supplementary

Any provision of this Act as to the termination of a short limited duration tenancy [^{F37}, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] does not affect any right of the landlord to—

- (a) resume land under section 17 [^{F38}or 17A] ; or
- (b) remove a tenant—
 - (i) whose estate has been sequestered; or
 - (ii) who for any reason has incurred irritancy of the lease or other liability to be removed.

Textual Amendments

F37 Words in s. 19 substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 7(10)(a)** (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

F38 Words in s. 19(a) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 7(10)(b)** (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

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Commencement Information

I14 S. 19 in force at 27.11.2003 by S.S.I. 2003/548, **art. 2(a)** (with Sch.)

Status:

Point in time view as at 30/11/2017.

Changes to legislation:

Agricultural Holdings (Scotland) Act 2003, Cross Heading: New types of tenancy: general provision is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.