

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Agricultural Holdings

Chapter 5 – Rent Review

1991 Act tenancies: rent review

539. Section 13 of the 1991 Act provides the basis for the fixing of rent for a 1991 Act tenancy (as defined in section 1(4) of the 2003 Act).
540. [Section 101](#) amends section 13 of the 1991 Act by introducing a new schedule, schedule 1A of the 1991 Act, which sets out the new rent review procedures for 1991 Act tenancies.
541. Paragraph 1 of schedule 1A sets out the initiation process of the rent review notice.
542. Sub-paragraphs (1) and (2) set out that the notice must be in writing and can be initiated by either the tenant or the landlord.
543. Sub-paragraph (3) states that a notice initiating a review of rent is called a “rent review notice”.
544. Sub-paragraph (4) states that the provisions are applicable to all 1991 Act tenancies. This is any lease of an agricultural holding which was entered into before 27 November 2003, the date of the commencement of section 1 of the 2003 Act, or which was entered into in writing on or after that date but prior to the commencement of the tenancy and which expressly states that the 1991 Act is to apply in relation to the tenancy.
545. Paragraph 2 of schedule 1A sets out provisions for the form and content of the rent review notice.
546. Sub-paragraph (1) sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the holding, the current and proposed rent payable. The rent review notice also sets out the “rent agreement date” which is the date by which the landlord and tenant must agree the rent. Sub-paragraph (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.
547. Sub-paragraph (3)(a) sets out that the rent agreement date cannot fall earlier than 12 months or later than two years from the date on which the rent review notice is served.
548. Sub-paragraph (4) creates a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them.
549. Paragraph 3 of schedule 1A provides details around the timing of the rent review notice.

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550. Sub-paragraph (1) provides that a rent review notice can be served only if the rent agreement date is three years after the beginning of the tenancy; three years after the date from which any previous variation in rent took effect; and three years after the date of any ruling by the Land Court that the rent should remain unchanged.
551. Sub-paragraph (2) lists a number of exceptions where a rent review can take place within three years from a date on which a previous variation in rent took effect. These are variations of rent under section 14, 15(1) or 31 of the 1991 Act. It also includes: variations arising either under the exercise or revocation of an option to tax under schedule 10 of the Value Added Tax Act 1994 or from a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.
552. Paragraph 4 of schedule 1A details the circumstances when a rent review notice can be withdrawn. When a notice has been served and no agreement has been reached between the parties as to the new rent payable, and the Land Court has not made a determination as to what rent is payable, then the person who served the rent review notice may withdraw it, but only with the consent of the other party.
553. Paragraph 5 of schedule 1A states that a rent review notice ceases to have effect on the earliest of the following: the date it is withdrawn; the date the parties reach agreement as to rent payable; the day after the rent agreement date if there is no referral made to the Land Court or, if a referral is made to the Land Court, the date on which it determines what the rent payable should be.
554. Paragraph 6 of schedule 1A provides for the ability of parties to refer the determination of the rent to the Land Court after a rent review notice has been issued and where they cannot reach agreement.
555. Sub-paragraphs (2) and (3) state that either party can refer the matter to the Land Court upon receipt of the rent review notice but may not do so after the rent agreement date.
556. Paragraph 7 of schedule 1A sets out the powers of the Land Court upon referral by either the tenant or landlord for determination of the rent.
557. Sub-paragraph (2) states that upon referral to the Land Court, a determination can be made to either vary the rent payable or leave it unchanged.
558. Sub-paragraph (3) sets out the new rent review test whereby the Land Court determines a fair rent taking account of all the circumstances.
559. Sub-paragraph (4) sets out the specific factors that the Land Court must have regard to when determining the fair rent for the holding. These are the productive capacity of the holding, the rent at which surplus residential accommodation might be let on the open market, and the rent at which the landlord's fixed equipment and land, used for non-agricultural purposes, might be let on the open market.
560. Paragraph 8 states that the rent agreed by the tenant and the landlord, or as determined by the Land Court, if relevant, takes effect from the rent agreement date.
561. Paragraph 9 of schedule 1A creates a power for the Scottish Ministers, by regulations, to make further provision about how productive capacity is to be determined and which information should be provided to the Land Court to make such determination. These regulations are subject to the affirmative procedure.
562. Paragraph 10 of schedule 1A provides further detail on the definition of the surplus residential accommodation on the holding and what the Land Court needs to consider when determining it.
563. Sub-paragraph (1) states that residential accommodation on the holding is considered surplus if it exceeds the accommodation required for the standard labour requirement ("SLR") of the holding.

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564. Sub-paragraph (6) provides a power for the Scottish Ministers, by regulations, to make provision about the SLR of the holding, including how the SLR is to be determined and what information is required from the parties to enable the Land Court to do this. These regulations are subject to the affirmative procedure.
565. Sub-paragraph (2) states that in determining whether the accommodation is surplus, the Land Court may take into account whether the SLR varies (to take account of seasonal workers for example), and must disregard both the sole farmhouse occupied by the tenant and any accommodation that the tenant is prohibited from subletting, subject to sub-paragraph (3).
566. Sub-paragraph (3) provides that where, in the face of a prohibition against sub-letting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation by the Land Court, notwithstanding the prohibition.
567. Sub-paragraph (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing fair rent, the Land Court must take into account all the circumstances including the condition and location of the property. It must also take into account whether the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be. Where the accommodation is not currently let, the Land Court must disregard this fact.
568. Sub-paragraph (5) sets out that if, when determining fair rent, the Land Court has regard to the open market rent for surplus accommodation under paragraph 7(4)(b), then such accommodation is not also to be taken into account as fixed equipment or land under paragraph 7(4)(c).
569. Paragraph 11 of schedule 1A provides that, for the purposes of determining the open market rent for any surplus residential accommodation or any fixed equipment or land used for diversification for rent calculation purposes, “open market rent” means that which would be expected in an open market between a willing landlord and a willing tenant.
570. Paragraph 12 of schedule 1A gives the Land Court the power to phase in the rent over a 3 year period if the new rent is to be 30% or more higher, or 30% or more lower, than the current rent payable (the “original rent”) and it considers that full payment of the rental increase or decrease would cause undue hardship to either the tenant or the landlord. For example, a phasing in of a rental increase would work as follows (if X is the difference between the new rent and the original rent)—

Year 1 – original rent plus 1/3 of X

Year 2 – original rent plus 2/3 of X

Year 3 – new rent (i.e. current rent plus X).

A phasing in of a rental decrease would work as follows (if X is the difference between the original rent and the new rent)—

Year 1 – original rent less 1/3 of X

Year 2 – original rent less 2/3 of X

Year 3 – new rent (i.e. current rent less X).

Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review

Section 102 – Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review

571. Section 9 of the 2003 Act provides the basis for the fixing of rent for an LDT. Section 83 amends section 9 of the 2003 Act in relation to rent reviews for LDTs and also makes provision for the new letting vehicles MLDTs and repairing tenancies.
572. Subsection (2) amends section 9(A1) and (1) of the 2003 Act by including provision for MLDTs and, in relation to section 9(A1), repairing tenancies. The effect is that for both these new tenancies, as well as LDTs, a purported term of the lease that states that a rent review may only be initiated by the landlord, or which states that the rent can only be increased, is void. For MLDTs, where the lease makes no provision for review of rent, then the rent due is to be reviewed and determined in accordance with section 9.
573. Subsection (2) also inserts new subsection (1A) into section 9 of the 2003 Act and this states that the rent payable under a repairing tenancy is to be reviewed and determined in accordance with section 9.
574. Subsections (2) to (8) of section 9 are replaced with new subsections (2), (3) and (4) by section 102(2)(c) of the Act. These state that the notice to review rent is called the “rent review notice” and can be initiated by either the landlord or the tenant in writing.
575. Subsection (3) inserts new sections 9A to 9C, after section 9, which set out the new rent review procedures for LDTs and MLDTs and repairing tenancies.
576. Inserted section 9A sets out requirements for the form and content of the rent review notice. Subsection (1) provides that the rent review notice must be dated and sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the land, the current and proposed rent payable, and the date by which the landlord and tenant must agree the rent (“rent agreement date”).
577. Subsection (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.
578. Subsection (3) provides a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them. These regulations are subject to negative parliamentary procedure.
579. Inserted section 9B sets out how the rent is to be determined.
580. Subsection (1) states that, on review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having particular regard to the productive capacity of the land, the rent at which surplus residential accommodation might be let, and the rent at which the landlord’s fixed equipment or land which is used for non-agricultural purposes might be let.
581. Subsection (2) provides that for the purposes of determining the open market rent for any surplus residential accommodation or any fixed equipment or land used for diversification for rent calculation purposes, “open market rent” means that which would be expected in an open market by a willing landlord to a willing tenant.
582. Subsection (3) contains a power for the Scottish Ministers, by regulations, to make further provision about the productive capacity of land, including how it is to be calculated. These regulations are subject to affirmative parliamentary procedure.
583. Subsection (4) states that the rent determined is to be payable from the “rent agreement date” (as defined in section 9A(1)(e)).

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584. Inserted section 9C explains what is meant by surplus residential accommodation and how this is to be determined.
585. Subsection (1) states that residential accommodation on land comprised in the lease of an LDT, an MLDT or a repairing tenancy is considered surplus if it exceeds the accommodation required for the standard labour requirement (SLR) of the land.
586. Subsection (2) states that in determining whether the accommodation is surplus, consideration may be given as to whether the SLR varies (to take account of seasonal workers for example), and both the sole farmhouse occupied by the tenant and any accommodation that the tenant is prohibited from subletting by the terms of the lease or otherwise (subject to subsection (3)) must be disregarded.
587. Subsection (3) provides that where, in the face of a prohibition against subletting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation notwithstanding the prohibition on subletting.
588. Subsection (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing the fair rent, account must be taken of all the circumstances including the condition and location of the property. Where the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be, then this should also be taken into account. Where the accommodation is not currently let, this must be disregarded.
589. Subsection (5) provides that if, when determining fair rent, regard is given to the open market rent for surplus accommodation under section 9B(1)(b), then such accommodation is not also to be taken into account as fixed equipment or land under section 9B(1)(c).
590. Subsection (6) provides a power for the Scottish Ministers, by regulations, to make provision about the standard labour requirement of land comprised in the lease of an LDT, an MLDT or a repairing tenancy, including how the SLR is to be determined. These regulations are subject to affirmative parliamentary procedure.