



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 10

#### AGRICULTURAL HOLDINGS

### CHAPTER 6

#### ASSIGNATION OF AND SUCCESSION TO AGRICULTURAL TENANCIES

##### *Assignment*

#### **103**      **Assignment of 1991 Act tenancies**

- (1) Section 10A of the 1991 Act (assignment and subletting of tenancy) is amended as follows.
- (2) In subsection (1), for “any of the persons who would be entitled to succeed to his estate on intestacy by virtue of the Succession (Scotland) Act 1964 (c.41)” substitute “any one of the persons mentioned in subsection (1A)”.
- (3) After that subsection insert—
  - “(1A) The persons referred to in subsection (1) are—
    - (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant’s estate on intestacy by virtue of the Succession (Scotland) Act 1964,
    - (b) a spouse or civil partner of a child of the tenant,
    - (c) a spouse or civil partner of a grandchild of the tenant,
    - (d) a spouse or civil partner of a brother or sister of the tenant,
    - (e) a brother or sister of the tenant’s spouse or civil partner,
    - (f) a spouse or civil partner of such a brother or sister,
    - (g) a child (including a step-child) of such a brother or sister,
    - (h) a grandchild (including a step-grandchild) of such a brother or sister,
    - (i) a step-child of the tenant,
    - (j) a spouse or civil partner of such a step-child,

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- (k) a descendant of such a step-child,
- (l) a step-brother or step-sister of the tenant,
- (m) a spouse or civil partner of such a step-brother or step-sister,
- (n) a descendant of such a step-brother or step-sister.”.

(4) In subsection (3), for “The” substitute “Subject to subsection (3A), the”.

(5) After that subsection insert—

“(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 holding 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 holding with reasonable efficiency.

(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 holding is farmed with reasonable efficiency until the person completes that course.”.

(6) After subsection (5) insert—

“(6) In this section and in sections 12A and 12B, “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,
- (l) a child of such a brother or sister,
- (m) a grandchild of such a brother or sister.”.

## **104      Assignment of limited duration tenancies**

(1) The 2003 Act is amended as follows.

(2) In section 7 (assignation and subletting of limited duration tenancies)—

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- (a) in subsection (3), for “The” substitute “Subject to subsection (3A), the”,
- (b) after that subsection insert—
  - “(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.
  - (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.”,
- (c) after subsection (5) insert—
  - “(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,
    - (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.”.

## **105      Assignment of modern limited duration tenancies**

- (1) The 2003 Act is amended as follows.
- (2) After section 7A (as inserted by section 86) insert—

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### **“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, the terms upon which the assignment 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 assignment 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 assignment 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 assignment.
- (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,

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- (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.”.

## **106 Assignment of repairing tenancies**

- (1) The 2003 Act is amended as follows.
- (2) After section 7C (as inserted by section 93) insert—

### **“7D Assignment of repairing tenancies**

- (1) During the repairing period, a lease constituting a repairing 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 during the repairing period; and the notice must include the particulars of the proposed assignee, the terms upon which the assignment is to be made and the date on which it is to take effect.
- (3) The landlord may withhold consent to the proposed assignment during the repairing period 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 investment in the land in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry, or
  - (b) has the skills or experience that would be required properly to manage and improve the land in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry.
- (4) The ground of objection in subsection (3)(b) 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.

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- (5) Any such withholding of consent during the repairing period (and the grounds for withholding it) is to be intimated in writing to the tenant within 30 days of the giving of notice under subsection (2); and, if no such intimation is made, the landlord is deemed to have consented to the proposed assignment.
- (6) For the purposes of subsection (3), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (7) After the expiry of the repairing period, section 7B applies to the assignment of a lease constituting a repairing tenancy as to the assignment of a lease constituting a modern limited duration tenancy.”.