

Draft Order laid before the Scottish Parliament under section 25(2)(b)(i) of the Public Services Reform (Scotland) Act 2010 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

**REGULATORY REFORM
LANDLORD AND TENANT**

The Public Services Reform (Agricultural
Holdings) (Scotland) Order 2011

Made - - - - 2011

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 17(1) and (9) of the Public Services Reform (Scotland) Act 2010⁽¹⁾ (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers consider that the relevant conditions in section 18(2) of the Act are satisfied.

The Scottish Ministers have consulted in accordance with section 26 of the Act.

The Scottish Ministers have laid a draft of this Order and an explanatory document before the Scottish Parliament in accordance with section 25(2)(b) of the Act.

In accordance with section 25(2)(c) of the Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

PART 1

INTRODUCTORY PROVISIONS

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 and comes into force on the day after the day on which it is made.

(2) In this Order—

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

(1) asp 8.

(2) 1991 c.55.

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

PART 2

AMENDMENT OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991

2. The 1991 Act is amended in accordance with articles 3 to 5.

Substitution of definition of “two-man unit” in Schedule 2

3. In Schedule 2 (grounds for consent to operation of notices to quit a tenancy where section 25(3) applies)—

(a) in Part I (grounds for consent to operation of notice to quit a tenancy let before 1 January 1984) and Part II (grounds for consent to operation of notice to quit a tenancy let on or after 1 January 1984) in Cases 2, 3, 6 and 7, for “two-man unit” substitute “viable unit”;

(b) in Part III (supplementary)—

(i) in paragraph 1, for the definition of “two-man unit” substitute—

““viable unit” means an agricultural unit which in the opinion of the Land Court is capable of providing an individual occupying it with full-time employment and the means to pay—

(a) the rent payable in respect of the unit; and

(b) for adequate maintenance of the unit.”; and

(ii) in paragraph 2, for “two-man unit” substitute “viable unit”.

Annulment of post lease agreements under section 5

4. For section 5(4B) (fixed equipment and insurance premiums)⁽⁴⁾ substitute—

“(4B) This subsection is complied with if—

(a) subject to subsection (4BA), no later than 6 months before the date from which any variation of rent will take effect, the tenant gave written notice to the landlord stating that the agreement is to be nullified on that date;

(b) the rent is reviewed in accordance with the terms of the tenancy or is determined by the Land Court in accordance with section 13 of this Act; and

(c) on the date referred to in paragraph (a)—

(i) the buildings and other fixed equipment are in a reasonable state of repair; or

(ii) if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then.

(4BA) Where a rent review is initiated less than 6 months before any variation of rent would take effect, subsection (4B)(a) is complied with if notice is given when it is initiated, or as soon as reasonably practicable thereafter.”.

(3) 2003 asp 11 (“the 2003 Act”).

(4) Subsection (4B) was inserted by section 60 of the 2003 Act.

Amendment of section 13

5. In section 13(1) (variation of rent)(5), after “Act,” insert, “following notice in writing served on the other party,”.

PART 3

AMENDMENT OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

6. The 2003 Act is amended in accordance with articles 7 to 9.

Reduction in the minimum term of a limited duration tenancy from 15 years to 10 years

7.—(1) In section 5 (limited duration tenancies)—

- (a) in subsection (1)(a), for “fifteen” substitute “10”; and
- (b) in subsections (3) and (4), for “15” (wherever it appears) substitute “10”.

(2) In section 8(6) (continuation and termination of limited duration tenancies), for “fifteen” substitute “10”.

Conversion of a short limited duration to a limited duration tenancy by agreement

8. For section 5(2) (limited duration tenancies), substitute—

“(2) Where—

- (a) at any time before the expiry of the term of a short limited duration tenancy, the landlord and tenant agree in writing to convert the tenancy to a limited duration tenancy; or
- (b) the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of 5 years (including such a term fixed by virtue of section 4(2) or (3)) with the consent of the landlord,

the tenancy has effect as if it were for a term of 10 years commencing at the start of the term of the short limited duration tenancy, and the tenancy is, by virtue of this subsection, a limited duration tenancy.”.

Amendment to section 16 (fixed equipment)

9. For section 16(1) to (5) (fixed equipment etc.), substitute—

“(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.

(5) Section 13(1) was amended by the 2003 Act, Schedule 1, paragraph 15(a)(i) and (ii).

(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.”.

PART 4

SAVINGS PROVISIONS

Savings

10.—(1) Articles 3, 4, 7, 8 and 9 are subject to paragraphs (2), (3), (4), (5) and (6) below, respectively.

(2) Where—

- (a) notice to quit is given to a tenant of an agricultural holding who was a near relative of the deceased tenant from whom he or she acquired right to the lease of the holding; and
- (b) the deceased tenant died prior to the day on which this Order comes into force,

section 25(3) of, and Schedule 2 to, the 1991 Act shall continue to have effect as if the amendments made by article 3 had not been made.

(3) Where in respect of a review of rent the landlord or the tenant has served a written notice on the other party intimating his or her intention to have the rent payable for the holding reviewed before this Order comes into force, section 5(4B) of the 1991 Act shall continue to have effect as if the substitution made by article 4 had not been made.

(4) In respect of a limited duration tenancy commenced before this Order comes into force, sections 5 and 8 of the 2003 Act shall continue to have effect as if the amendment made by article 7 had not been made.

(5) In respect of a short limited duration tenancy that has converted to a limited duration tenancy before this Order comes into force, section 5(2) of the 2003 Act shall continue to have effect as if the substitution made by article 8 had not been made.

(6) In respect of a short limited duration tenancy or a limited duration tenancy commenced before this Order comes into force, section 16 of the 2003 Act shall continue to have effect as if the substitution made by article 9 had not been made.

(7) Words or expressions—

- (a) used in paragraph (2) have the same meaning as they have in the 1991 Act;
- (b) used in paragraphs (4) to (6) have the same meaning as they have in the 2003 Act.

St Andrew's House,
Edinburgh

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Agricultural Holdings (Scotland) Act 1991 (“1991 Act”) and the Agricultural Holdings (Scotland) Act 2003 (“2003 Act”).

Amendment of the 1991 Act

Two-man unit

Part III (supplementary) of Schedule 2 to the 1991 Act defines “two-man unit”, a term which appears in Parts I and II of that Schedule which set out the grounds for giving consent to the operation of notices to quit a tenancy where section 25(3) applies.

Article 3(b)(i) replaces the definition of “two-man unit” with “viable unit”; viability is predicated upon the capability of the agricultural unit to provide an individual occupying it with full time employment, the means to pay the rent and for adequate maintenance of the unit. Article 3(a) and (b)(ii) make changes consequent to that substitution.

Annulment of post lease agreements

Section 5(4A) to (4C) of the 1991 Act applies to agreements entered into under section 5(3) of the 1991 Act (which was repealed by the 2003 Act) whereby the landlord and tenant entered into agreements to alter their respective responsibilities in relation to fixed equipment (“post lease agreements”). Section 5(4A) and (4C) sets out the general principle that such agreements continue to have effect but can be nullified if subsection (4B) is complied with.

Article 4 substitutes subsection (4B), to provide that a tenant who wishes to have a post lease agreement nullified must notify the landlord of that fact in writing no later than 6 months before the date from which any variation of rent will take effect. Nullification has effect from the date from which any variation takes effect. On the date the variation takes effect it remains a requirement that the buildings and other fixed equipment are in a reasonable state of repair; or if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then. Subsection (4BA) provides a shorter period of notice in cases where a rent review is initiated at less than 6 months’ notice.

Minor amendment to section 13

Section 13(1) of the 1991 Act requires that a party wishing to have the rent reviewed may have the question of what rent should be payable for the holding with effect from the review date referred to the Land Court. Article 5 amends section 13 to reinstate the wording that was deleted by paragraph 15 of the Schedule to the 2003 Act, to clarify that intimation of intention to make such a referral to the Land Court must be made by written notice.

Amendment of the 2003 Act

Reduction in the minimum term of a limited duration tenancy from 15 years to 10 years

Section 5(1) of the 2003 Act defines a Limited Duration Tenancy (“LDT”) as an agricultural tenancy (other than a 1991 Act tenancy) of at least 15 years duration. Article 7(1)(a) reduces the minimum term of an LDT from 15 years to 10 years. Article 7(1)(b) and (2) makes amendments consequent to this provision.

Conversion of a short limited duration to a limited duration tenancy by agreement

Section 5(2) of the 2003 Act provides that where a tenant under a Short Limited Duration Tenancy (“SLDT”) continues in occupation beyond the expiry date with the landlord’s consent and the period of occupation exceeds 5 years the tenancy becomes an LDT from the expiry of the 5 year period. Article 8 substitutes subsection (2) of section 5 to give parties the option to convert an SLDT to an LDT, in writing, prior to the expiry of the SLDT; the resultant LDT has effect as if it had commenced at the start of the SLDT.

Fixed equipment

Article 9 substitutes subsections (1) to (5) of section 16 of the 2003 Act. Its replacement provides for the landlord’s obligations regarding the provision of fixed equipment to be determined by reference to the use of the land as specified in the lease (section 16(1)(a)). The fixed equipment is to be provided and put into the condition specified in the schedule of fixed equipment within six months of the commencement of the tenancy, unless that is not reasonably practicable because of an obligation on the landlord arising under another enactment (section 16(1)(a) and (b)). New section 16(2) requires tenants and landlords to agree in writing a schedule of fixed equipment specifying the fixed equipment the landlord will provide and its condition. The cost of preparing such a specification is to be borne by the parties equally, unless otherwise agreed (section 16(5)). New section 16(3) makes provision for the parties to amend the schedule of fixed equipment. Section 16(4) describes the extent of the tenant’s duties as respects the maintenance of the fixed equipment provided.

Savings

Article 10 saves certain provisions of the 1991 Act and 2003 Act so that they continue to apply in the circumstances specified.