



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 10

#### AGRICULTURAL HOLDINGS

### CHAPTER 2

#### REPAIRING TENANCIES

#### 92      **Repairing tenancies: creation**

- (1) The 2003 Act is amended as follows.
- (2) After section 5B (as inserted by section 85) insert—

#### **“5C Repairing tenancies: creation**

- (1) Where—
  - (a) agricultural land is let under a lease entered into on or after the coming into force of this section for a term of not less than 35 years,
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord,
  - (c) the lease does not constitute a 1991 Act tenancy,
  - (d) the lease requires the tenant, during the repairing period, to improve the land comprised in the lease 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, and
  - (e) the lease expressly states that this section is to apply to the tenancy, the tenancy is, by virtue of this subsection, a repairing tenancy.
- (2) In this Part, the “repairing period” is the period, beginning with the commencement of the tenancy, of—
  - (a) 5 years, or
  - (b) such longer period—

*Status: This version of this chapter contains provisions that are prospective.*

*Changes to legislation: Land Reform (Scotland) Act 2016, CHAPTER 2 is up to date with all changes known to be in force on or before 27 April 2023. 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) View outstanding changes*

- (i) as the landlord and tenant may agree under this paragraph or, as the case may be, under subsection (3)(a), or
  - (ii) as the Land Court may determine under subsection (3)(b).
- (3) The repairing period may be extended at any time before its expiry—
- (a) by the landlord and tenant by agreement, or
  - (b) by the Land Court on the application of either the landlord or the tenant.
- (4) On an application under subsection (3)(b), the Land Court may extend the repairing period—
- (a) if it considers it appropriate in all the circumstances to do so, and
  - (b) by such period as it determines necessary in all the circumstances.
- (5) A lease constituting a repairing tenancy may contain a provision that the tenancy may be terminated in accordance with section 8G (a “break clause”).
- (6) In this section and section 5D, what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

#### **5D Repairing tenancies: exemption from rules of good husbandry during repairing period**

- (1) Where a lease constituting a repairing tenancy does not include provision mentioned in subsection (2), such provision is incorporated.
- (2) The provision is that during the repairing period the tenant cannot be held liable for not farming the land comprised in the lease in accordance with the rules of good husbandry.”.

#### **Commencement Information**

**II** S. 92 in force at 23.12.2016 for specified purposes by [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [regs. 3-15](#))

PROSPECTIVE

### **93 Repairing tenancies: subletting**

- (1) The 2003 Act is amended as follows.
- (2) After section 7B (as inserted by section 105) insert—

#### **“7C Subletting of repairing tenancies**

- (1) During the repairing period, a tenant may not sublet the land comprised in a lease constituting a repairing tenancy without the consent of the landlord.
- (2) After the expiry of the repairing period, a tenant may sublet the land comprised in a lease constituting a repairing tenancy only on such basis as the lease expressly permits.”.

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PROSPECTIVE

## 94 Repairing tenancies: termination, continuation and extension

- (1) The 2003 Act is amended as follows.
- (2) After section 8E (as inserted by section 87) insert—

### “8F Termination, continuation and extension of repairing tenancies

- (1) Subject to section 8G, sections 8A to 8C apply to the termination of a repairing tenancy as to the termination of a modern limited duration tenancy.
- (2) Section 8E applies to the continuation and extension of a repairing tenancy as to the continuation and extension of a modern limited duration tenancy.

### 8G Termination of repairing tenancies subject to break clause

- (1) This section applies where the lease constituting a repairing tenancy contains a break clause by virtue of section 5C(5).
- (2) At any time until the expiry of the repairing period, the tenant may terminate the tenancy 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 a date specified in the notice, which is to be no later than the expiry of the repairing period, and
  - (b) be given not less than 1 year nor more than 2 years before the date specified in the notice.
- (4) The landlord may terminate the tenancy on the expiry of the repairing period 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 repairing period, 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 the repairing period.
- (6) The landlord—
  - (a) may not give notice under subsection (4) on the grounds that the tenant is not farming the land in accordance with the rules of good husbandry,
  - (b) may give notice under subsection (4) if the tenant is otherwise failing to comply with any other provision of the lease.
- (7) For the purposes of subsection (6), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.”

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PROSPECTIVE

## 95      **Repairing tenancies: fixed equipment**

- (1) The 2003 Act is amended as follows.
- (2) After section 16A (as inserted by section 88) insert—

### **“16B Repairing tenancies: fixed equipment**

- (1) Where a lease constituting a repairing 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 during the repairing period as will enable the tenant to maintain efficient production, after the expiry of the repairing period, as respects the use of the land as specified in the lease,
  - (b) the condition of such fixed equipment, and
  - (c) any fixed equipment on the land which may be disregarded for the purposes of subsections (5) and (6),
 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.
- (2) The schedule of fixed equipment must be agreed before the expiry of the period of 90 days beginning with the commencement of the tenancy.
- (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) 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.
- (5) Unless the lease makes provision to the contrary, there is incorporated in every such lease an undertaking by the tenant that the tenant will, during the repairing period—
  - (a) provide such fixed equipment, and
  - (b) effect such maintenance, renewal or replacement of the fixed equipment provided by the tenant by virtue of paragraph (a) and by the landlord by virtue of subsection (1)(a),
 as may be necessary to enable the tenant to maintain efficient production, after the expiry of the repairing period, as respects the use of the land as specified in the lease.
- (6) 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, after the expiry of the repairing period, effect such renewal or replacement of the fixed equipment specified in the schedule of fixed equipment as may be rendered necessary by natural decay or by fair wear and tear, and

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- (b) a provision that the liability of the tenant in relation to the maintenance of fixed equipment, after the expiry of the repairing period, 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) at the expiry of the repairing period, or
  - (ii) in the case of equipment improved, provided, renewed or replaced, after the expiry of the repairing period, immediately after it was so improved, provided, renewed or replaced.
- (7) Subsections (5) and (6) do not apply to any fixed equipment specified in the schedule of fixed equipment by virtue of subsection (1)(c).
- (8) Any agreement between the landlord and tenant which purports to provide for the tenant, whether during the repairing period or after its expiry, 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.
- (9) Any term of a lease constituting a repairing tenancy that requires the tenant, whether during the repairing period or after its expiry, 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.”.

PROSPECTIVE

## 96 Repairing tenancies: resumption of land by landlord

- (1) The 2003 Act is amended as follows.
- (2) After section 17 insert—

### “17A Resumption of land by landlord: repairing tenancies

- (1) Until 5 years have elapsed from the date of expiry of the repairing period, the landlord may not resume the land or any part of the land comprised in the lease constituting the repairing tenancy.
- (2) After 5 years have elapsed from the date of expiry of the repairing period, section 17 applies to the resumption of the land or any part of the land comprised in a lease constituting a repairing tenancy as it applies to the resumption of the land or any part of the land comprised in a lease constituting a limited duration tenancy or a modern limited duration tenancy.”.

PROSPECTIVE

## 97 Repairing tenancies: irritancy

- (1) The 2003 Act is amended as follows.
- (2) After section 18A (as inserted by section 89)—

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### **“18B Irritancy of lease and good husbandry: repairing tenancies**

- (1) Subject to subsection (2), section 18A applies to the irritancy of a lease constituting a repairing tenancy as it applies to the irritancy of a lease constituting a modern limited duration tenancy.
- (2) During the repairing period, section 18A has effect as if, after subsection (2), there were inserted—
  - “(2A) 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 using the land in accordance with the rules of good husbandry is of no effect.”.

## **98      Repairing tenancies: compensation**

- (1) The 2003 Act is amended as follows.
- (2) After section 59 insert—

### **“59A Compensation under repairing tenancies**

The Scottish Ministers may by regulations provide that Part 4, in its application to repairing tenancies, has effect with such modifications as the regulations may specify.”.

#### **Commencement Information**

**I2**    **S. 98** in force at 23.12.2016 for specified purposes by [S.S.I. 2016/365](#), [reg. 2](#), [sch.](#) (with [regs. 3-15](#))

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.S.I. 2017/299, regs. 5-14, by [S.S.I. 2017/370 reg. 34](#)