

2017 No. 299 (C. 23)

LANDLORD AND TENANT

**The Land Reform (Scotland) Act 2016 (Commencement No. 6,
Transitory and Saving Provisions) Regulations 2017**

<i>Made</i>	- - - -	<i>14th September 2017</i>
<i>Laid before the Scottish Parliament</i>		<i>19th September 2017</i>
<i>Coming into force</i>	- -	<i>30th November 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 130(2), (3) and (4) of the Land Reform (Scotland) Act 2016(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) Regulations 2017 and come into force on 30th November 2017.

(2) In these Regulations—

“1991 Act tenancy” has the same meaning as in section 93 of the 2003 Act (interpretation)(b);

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003;

“the 2016 Act” means the Land Reform (Scotland) Act 2016; and

“limited duration tenancy” has the same meaning as in section 93 of that Act(c).

Appointed day

2.—(1) 30th November 2017 is the day appointed for the coming into force of the provisions of the 2016 Act specified in column 1 of the table in the schedule (the subject matter of which is described in column 2 of that table).

(2) Where a purpose is specified in column 3 of that table in relation to any provision specified in column 1, that provision comes into force on 30th November 2017 only for that purpose.

(a) 2016 asp 18 (“the 2016 Act”).

(b) The Agricultural Holdings (Scotland) Act 2003 (asp 11) (“the 2003 Act”).

(c) The definition of “limited duration tenancy” in section 93 of the 2003 Act is substituted by paragraph 7(30)(a) of schedule 2 of the 2016 Act. That paragraph is commenced by these Regulations.

Saving provision: conversion from 1991 Act tenancy to limited duration tenancy

3.—(1) Despite its repeal by section 90(2) of the 2016 Act, section 2 of the 2003 Act (conversion from 1991 Act tenancy to limited duration tenancy) continues to have effect in respect of—

- (a) an agreement between a landlord and a tenant under a 1991 Act tenancy to terminate that tenancy, where—
 - (i) that agreement is in accordance with section 2(1)(a) of the 2003 Act;
 - (ii) that agreement was made before 30th November 2017; and
 - (iii) the date specified in that agreement as being the date on which the termination is to have effect is on or after 30th November 2017; and
- (b) a lease constituting a limited duration tenancy entered into in order to comply with section 2(1)(b) of the 2003 Act, which—
 - (i) is for a term of not less than 25 years;
 - (ii) comprises or includes the same land as that comprised in the 1991 Act tenancy being terminated by an agreement to which paragraph (1)(a) applies; and
 - (iii) has effect from the date on which the termination under that agreement has effect.

(2) Where section 2 of the 2003 Act continues to have effect by virtue of paragraph (1), the modification made by paragraph 3 of schedule 2 of the 2016 Act has no effect in relation to—

- (a) an agreement to which paragraph (1)(a) applies; or
- (b) a lease constituting a limited duration tenancy to which paragraph (1)(b) applies.

Saving provision: limited duration tenancies

4. Despite its repeal by section 85(2) of the 2016 Act, section 5 of the 2003 Act (limited duration tenancies) continues to have effect in relation to a limited duration tenancy in existence immediately before 30th November 2017.

Transitory provision: modern limited duration tenancies

5. Until the coming into force of section 92 of the 2016 Act (repairing tenancies: creation) for all purposes, section 5A(1)(c) of the 2003 Act (modern limited duration tenancies)(a) is to be read as if the reference to “a repairing tenancy”(b) was omitted.

Transitory provision: Sheriff Courts (Scotland) Act 1907

6. Until the coming into force of section 92 of the 2016 Act for all purposes, section 37A of the Sheriff Courts (Scotland) Act 1907 (removings: exception for certain tenancies)(c) is to be read as if the reference to “repairing tenancies” was omitted.

(a) Section 5A was inserted by section 85(3) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). Section 85(3) is commenced by these Regulations.

(b) Section 92 of the 2016 Act provides for the establishment of a new type of tenancy to be known as “a repairing tenancy”. Section 92 of the 2016 Act has not yet been commenced.

(c) 1907 c.51. Section 37A was inserted by paragraph 1 of the schedule of the Agricultural Holdings (Scotland) Act 2003. Section 37A is amended by paragraph 1 of schedule 2 of the 2016 Act. Paragraph 1 of schedule 2 of the 2016 Act is commenced by these Regulations.

Transitory provision: Succession (Scotland) Act 1964

7. Until the coming into force of section 92 of the 2016 Act for all purposes, section 16(4A), (4C) and (9) of the Succession (Scotland) Act 1964 (provisions relating to leases)(a) is to be read as if references to “a repairing tenancy” were omitted.

Transitory provision: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

8. Until the coming into force of section 92 of the 2016 Act for all purposes, section 7(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (interpretation of sections 4 to 6)(b) is to be read as if the reference to “a repairing tenancy” was omitted.

Transitory provision: Crofters (Scotland) Act 1993

9. Until the coming into force of section 92 of the 2016 Act for all purposes, the following provisions of the Crofters (Scotland) Act 1993(c) are to be read as if references to “a repairing tenancy” were omitted:—

- (a) section 3A(9)(a)(ii) (new crofts)(d);
- (b) section 29(1)(b) (miscellaneous provisions regarding subleases of crofts)(e); and
- (c) section 29B(b)(v) (status of tenant under a short lease)(f).

Transitory provision: Children (Scotland) Act 1995

10. Until the coming into force of section 92 of the 2016 Act for all purposes, section 76(11)(a) of the Children (Scotland) Act 1995 (exclusion orders)(g) is to be read as if the reference to “a repairing tenancy” was omitted.

Transitory provision: Town and Country Planning (Scotland) Act 1997

11. Until the coming into force of section 92 of the 2016 Act for all purposes, section 35(7) of the Town and Country Planning (Scotland) Act 1997 (notice etc. of applications to owners and agricultural tenants)(h) is to be read as if the reference to “a repairing tenancy” was omitted.

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- (a) 1964 c.41. Section 16(4A) and (4C) was inserted by section 20 of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”). Section 16(9) was relevantly amended by paragraph 2 of the schedule of the 2003 Act. Section 16(4A), (4C) and (9) is further amended by section 108(1) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). Section 108(1) is commenced by these Regulations.
 - (b) 1985 c.73. Section 7 is amended by paragraph 2 of schedule 2 of the 2016 Act. Paragraph 2 of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (c) 1993 c.44.
 - (d) Section 3A was inserted by section 6 of the Crofting Reform etc. Act 2007 (asp 7). Section 3A(9)(a)(ii) is amended by paragraph 4 of schedule 2 of the 2016 Act. Paragraph 4 of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (e) Section 29(1) was amended by paragraph 49(a) of the schedule of the 2003 Act. Section 29(1)(b) is further amended by paragraph 4 of schedule 2 of the 2016 Act.
 - (f) Section 29B was inserted by section 39 of the Crofting Reform (Scotland) Act 2010 (asp 14). Section 29B is amended by paragraph 4 of schedule 2 of the 2016 Act.
 - (g) 1995 c.36. Section 76(11)(a) was amended by paragraph 12 of the schedule of the 2003 Act. Section 76(11)(a) is further amended by paragraph 5 of schedule 2 of the 2016 Act. Paragraph 5 of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (h) 1997 c.8. Section 35(7) was amended by paragraph 51 of the schedule of the 2003 Act. Section 35(7) is further amended by paragraph 6 of schedule 2 of the 2016 Act. Paragraph 6 of schedule 2 of the 2016 Act is commenced by these Regulations.

Transitory provision: Agricultural Holdings (Scotland) Act 2003

12. Until the coming into force of section 92 of the 2016 Act for all purposes, the following provisions of the 2003 Act are to be read as if references to “a repairing tenancy” or “repairing tenancies” (as the case may be) were omitted:—

- (a) section 10(1) (increase in rent: landlord’s improvements)(**a**);
- (b) section 11 (variation of rent by Land Court)(**b**);
- (c) section 12(1)(b) (right of tenant to withhold rent)(**c**);
- (d) section 13(1) (written leases and the revision of certain leases)(**d**);
- (e) section 14 (freedom of cropping and disposal of produce)(**e**);
- (f) section 15 (permanent pasture)(**f**);
- (g) section 19(1) (resumption and irritancy: supplementary)(**g**);
- (h) section 21(1) (bequest of lease)(**h**);
- (i) section 22(1) and (3) (right of landlord to object to acquirer of tenancy)(**i**);
- (j) section 23 (effect of termination of tenancy where tenant deceased)(**j**);
- (k) section 39(1)(d) (use of land for non-agricultural purposes)(**k**);
- (l) section 42(1)(d) (tenant’s right to timber)(**l**);
- (m) section 70(1)(b) (rights of certain persons where tenant is a partnership)(**m**);
- (n) section 77(2)(a)(iib) and (4) (resolution of disputes by Land Court)(**n**); and
- (o) section 81(a) (clauses in leases as to resolution of disputes)(**o**).

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- (a) Section 10(1) is amended by paragraph 7(3) of schedule 2 of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). Paragraph 7(3) of schedule 2 of the 2016 Act is commenced by these Regulations. Other amendments were made to section 10(1) by section 120 of the 2016 Act.
 - (b) Section 11 is amended by paragraph 7(4) of schedule 2 of the 2016 Act. Paragraph 7(4) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (c) Section 12(1)(b) is amended by paragraph 7(5) of schedule 2 of the 2016 Act. Paragraph 7(5) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (d) Section 13(1) is amended by paragraph 7(6) of schedule 2 of the 2016 Act. Paragraph 7(6) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (e) Section 14 is amended by paragraph 7(7) of schedule 2 of the 2016 Act. Paragraph 7(7) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (f) Section 15 is amended by paragraph 7(8) of schedule 2 of the 2016 Act. Paragraph 7(8) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (g) Section 19(1) is amended by paragraph 7(10) of schedule 2 of the 2016 Act. Paragraph 7(10) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (h) Section 21(1) was amended by section 108(3)(a)(ii) of the 2016 Act. Section 21(1) is further amended by section 108(3)(a)(i) of the 2016 Act. Section 108(3)(a)(i) of the 2016 Act is commenced by these Regulations.
 - (i) Section 22(1) and (3) is amended by paragraph 7(11) of schedule 2 of the 2016 Act. Paragraph 7(11) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (j) Section 23 is amended by paragraph 7(12) of schedule 2 of the 2016 Act. Paragraph 7(12) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (k) Section 39(1) is amended by paragraph 7(13) of schedule 2 of the 2016 Act. Paragraph 7(13) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (l) Section 42(1) is amended by paragraph 7(14) of schedule 2 of the 2016 Act. Paragraph 7(14) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (m) Section 70(1)(b) is amended by paragraph 7(26) of schedule 2 of the 2016 Act. Paragraph 7(26) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (n) Section 77(2)(a) is amended by paragraph 7(27) of schedule 2 of the 2016 Act. Paragraph 7(27) of schedule 2 of the 2016 Act is commenced by these Regulations.
 - (o) Section 81 is amended by paragraph 7(28) of schedule 2 of the 2016 Act. Paragraph 7(28) of schedule 2 of the 2016 Act is commenced by these Regulations.

Transitory provision: Antisocial Behaviour etc. (Scotland) Act 2004

13. Until the coming into force of section 92 of the 2016 Act for all purposes, section 83(6)(f)(i) of the Antisocial Behaviour etc. (Scotland) Act 2004 (registration of certain landlords: application for registration)(**a**) is to be read as if the reference to “repairing tenancy” was omitted.

Transitory provision: Housing (Scotland) Act 2006

14. Until the coming into force of section 92 of the 2016 Act for all purposes, section 12(1)(c)(i) of the Housing (Scotland) Act 2006 (tenancies to which repairing standard duty applies)(**b**) is to be read as if head (E) was omitted.

FERGUS EWING

A member of the Scottish Government

St Andrew’s House,
Edinburgh
14th September 2017

(a) 2004 asp 8. Section 83(6)(f) was inserted by article 2(b) of S.S.I. 2005/650. Section 83(6)(f)(i) is amended by paragraph 8 of schedule 2 of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). Paragraph 8 of schedule 2 of the 2016 Act is commenced by these Regulations.

(b) 2006 asp 1. Section 12(1)(c)(i) is amended by paragraph 9 of schedule 2 of the 2016 Act. Paragraph 9 of schedule 2 of the 2016 Act is commenced by these Regulations.

SCHEDULE

Regulation 2(1) and (2)

PROVISIONS OF THE 2016 ACT COMING INTO FORCE ON 30th NOVEMBER 2017

<i>Column 1</i> <i>Provisions of the 2016 Act</i>	<i>Column 2</i> <i>Subject-matter</i>	<i>Column 3</i> <i>Purpose</i>
Section 85	Modern limited duration tenancies: creation	For all remaining purposes
Section 86	Modern limited duration tenancies: subletting	
Section 87	Modern limited duration tenancies: termination and continuation	
Section 88	Modern limited duration tenancies: fixed equipment	
Section 89	Modern limited duration tenancies: irritancy	For all remaining purposes
Section 90	Conversion of 1991 Act tenancies into modern limited duration tenancies	
Section 91	Conversion of limited duration tenancies into modern limited duration tenancies	
Section 105	Assignment of modern limited duration tenancies	
Section 108	Limited duration tenancies, modern limited duration tenancies and repairing tenancies: succession	For all remaining purposes
Section 129(2) and schedule 2 so far as they relate to paragraphs 1 to 6, 8 and 9 of schedule 2	Minor and consequential modifications	
Section 129(2) and schedule 2 so far as they relate to paragraph 7(1) of schedule 2	Minor and consequential modifications	For the purpose of commencing paragraph 7(2) to (16)(a) and (17) to (28) and (30)(a) of schedule 2 of the 2016 Act.
Section 129(2) and schedule 2 so far as they relate to paragraph 7(2) to (16)(a) and (17) to (28) and (30)(a) of schedule 2	Minor and consequential modifications	

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to bringing into force particular provisions of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). The Bill for the 2016 Act received Royal Assent on 22nd April 2016. Sections 125 to 127, 130 and 131 came into force on 23rd April 2016.

Regulation 2(1) and the schedule appoint 30th November 2017 for the coming into force of the provisions of the 2016 Act specified in column 1 of the table in the schedule. Regulation 2(2) provides that, where a purpose is specified in the third column of that table, the associated provision comes into force for that purpose only. The subject-matter of the provisions commenced by the schedule relate to the creation of a new type of agricultural tenancy to be known as a modern limited duration tenancy.

Section 2 of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”) is repealed by section 90(2) of the 2016 Act (which is commenced by these Regulations). This repeal means that it will no longer be possible to convert a 1991 Act tenancy into a limited duration tenancy under section 2 of the 2003 Act. Regulation 3 makes a saving provision to the effect that such conversions will continue to be possible in certain circumstances. This is where, before 30th November 2017, a landlord and tenant reached an agreement to convert a 1991 Act tenancy into a limited duration tenancy and the date of the conversion specified in the agreement is on or after 30th November 2017. Any such agreement must be in accordance with section 2 of the 2003 Act.

Section 5 of the 2003 Act is repealed by section 85(2) of the 2016 Act (which is commenced by these Regulations). Regulation 4 makes a saving provision to the effect that section 5 will continue to apply in relation to any limited duration tenancy which was in existence before 30th November 2017. This is required for the cross-references to section 5 in the substituted definition of “limited duration tenancy” contained in section 93 of the 2003 Act to make sense.

The 2016 Act also provides for the creation of an another new type of agricultural tenancy to be known as a “repairing tenancy”. Certain of the provisions of schedule 2 of the 2016 Act, which are being commenced by these Regulations, insert references to “repairing tenancies” into various enactments. The relevant provisions of the 2016 Act, which provide for the creation of repairing tenancies, are not yet in force. Regulations 5 to 14 make transitory provisions so that the references to a “repairing tenancy” or “repairing tenancies” (as the case may be) inserted into various enactments by the provisions of schedule 2 of the 2016 Act are to be ignored until such time as section 92 of the 2016 Act comes into force for all purposes. That section provides for the creation of repairing tenancies, and it is currently only in force for the purpose of making regulations in relation to repairing tenancies.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Land Reform (Scotland) Act 2016 have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provisions of the 2016 Act</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 1	1st October 2016	S.S.I. 2016/193
Section 2	1st October 2016	S.S.I. 2016/193
Section 3	1st October 2017	S.S.I. 2016/193
Section 4(1) to (5)	1st November 2016	S.S.I. 2016/250
Section 4(6) to (8)	1st April 2017	S.S.I. 2016/250
Section 5	1st November 2016	S.S.I. 2016/250
Section 6	1st April 2017	S.S.I. 2016/250
Section 7	1st November 2016	S.S.I. 2016/250
Section 8	1st April 2017	S.S.I. 2016/250

<i>Provisions of the 2016 Act</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 9	1st April 2017	S.S.I. 2016/250
Section 10	1st November 2016	S.S.I. 2016/250
Section 11	1st November 2016	S.S.I. 2016/250
Section 12(1), (2), (3)(a), (4) and (5)	1st November 2016	S.S.I. 2016/250
Section 12(3)(b) (partially)	1st November 2016	S.S.I. 2016/250
Section 13	1st November 2016	S.S.I. 2016/250
Section 14	1st November 2016	S.S.I. 2016/250
Section 15	1st November 2016	S.S.I. 2016/250
Section 16	1st November 2016	S.S.I. 2016/250
Section 17	1st November 2016	S.S.I. 2016/250
Section 18	1st November 2016	S.S.I. 2016/250
Section 19	1st November 2016	S.S.I. 2016/250
Section 20	1st November 2016	S.S.I. 2016/250
Section 21(1) and (2)	1st November 2016	S.S.I. 2016/250
Section 21(3)	1st April 2017	S.S.I. 2016/250
Section 22(1), (2), (3)(a)(ii) and (iii) and (b), (4) and (5)	1st April 2017	S.S.I. 2016/250
Section 22(3)(a)(i)	1st October 2017	S.S.I. 2016/250
Section 23	1st April 2017	S.S.I. 2016/250
Section 24	1st April 2017	S.S.I. 2016/250
Section 25	1st April 2017	S.S.I. 2016/250
Section 26	1st April 2017	S.S.I. 2016/250
Section 27(1), (2)(a) to (f) and (h) to (i) and (3) to (9)	1st April 2017	S.S.I. 2016/250
Section 28	1st April 2017	S.S.I. 2016/250
Section 29	1st April 2017	S.S.I. 2016/250
Section 30	1st April 2017	S.S.I. 2016/250
Section 31	1st April 2017	S.S.I. 2016/250
Section 32	1st April 2017	S.S.I. 2016/250
Section 33	1st April 2017	S.S.I. 2016/250
Section 34	1st April 2017	S.S.I. 2016/250
Section 35	1st April 2017	S.S.I. 2016/250
Section 36	1st April 2017	S.S.I. 2016/250
Section 37	1st April 2017	S.S.I. 2016/250
Section 38	1st April 2017	S.S.I. 2016/250
Section 44	1st November 2016	S.S.I. 2016/250
Section 74	28th June 2016	S.S.I. 2016/193
Section 75	28th June 2016	S.S.I. 2016/193
Section 76	28th June 2016	S.S.I. 2016/193
Section 77	28th June 2016	S.S.I. 2016/193
Section 78	28th June 2016	S.S.I. 2016/193
Section 79	28th June 2016	S.S.I. 2016/193
Section 80	28th June 2016	S.S.I. 2016/193
Section 81	28th June 2016	S.S.I. 2016/193
Section 82	28th June 2016	S.S.I. 2016/193
Section 83	31st December 2016	S.S.I. 2016/372
Section 84	31st December 2016	S.S.I. 2016/372
Section 85(1) and (3) (partially)	23rd December 2016	S.S.I. 2016/365
Section 89 (partially)	23rd December 2016	S.S.I. 2016/365
Section 92 (partially)	23rd December 2016	S.S.I. 2016/365
Section 98 (partially)	23rd December 2016	S.S.I. 2016/365
Section 100 (partially)	23rd December 2016	S.S.I. 2016/365

<i>Provisions of the 2016 Act</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 101 (partially)	23rd December 2016	S.S.I. 2016/365
Section 102 (partially)	23rd December 2016	S.S.I. 2016/365
Section 103	23rd December 2016	S.S.I. 2016/365
Section 104	23rd December 2016	S.S.I. 2016/365
Section 107	23rd December 2016	S.S.I. 2016/365
Section 108(2) and (3)(a)(ii) and (b)	23rd December 2016	S.S.I. 2016/365
Section 109	23rd December 2016	S.S.I. 2016/365
Section 110 (partially)	23rd December 2016	S.S.I. 2016/365
Section 111(2) and (4) (partially)	23rd December 2016	S.S.I. 2016/365
Section 112	13th June 2017	S.S.I. 2017/20
Section 113	13th June 2017	S.S.I. 2017/20
Section 114	13th June 2017	S.S.I. 2017/20
Section 115	13th June 2017	S.S.I. 2017/20
Section 116	13th June 2017	S.S.I. 2017/20
Section 117	13th June 2017	S.S.I. 2017/20
Section 118	13th June 2017	S.S.I. 2017/20
Section 119	23rd December 2016	S.S.I. 2016/365
Section 120	23rd December 2016	S.S.I. 2016/365
Section 121	23rd December 2016	S.S.I. 2016/365
Section 122	23rd December 2016	S.S.I. 2016/365
Section 123	23rd December 2016	S.S.I. 2016/365
Section 124	23rd December 2016	S.S.I. 2016/365
Section 129(2) and schedule 2 so far as they relate to paragraph 7(1) of schedule 2 (partially)	23rd December 2016	S.S.I. 2016/365
Section 129(2) and schedule 2 so far as they relate to paragraphs 7(16)(b) and 14 to 19 of schedule 2	23rd December 2016	S.S.I. 2016/365
Section 129(2) and schedule 2 so far as they relate to paragraph 7(29) and (30)(b) of schedule 2 (partially)	23rd December 2016	S.S.I. 2016/365

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