

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Agricultural Holdings

Chapter 8 – Compensation for Tenant’s Improvements

Agreements made during amnesty period

Section 117 – Amnesty agreements

719. **Section 117** sets out that a landlord and tenant may enter into agreements during the amnesty period setting out that certain improvements carried out by the tenant before the amnesty are to attract compensation at waygo.
720. Subsection (1) states that if no compensation is payable at waygo in respect of a relevant improvement under section 34 of the 1991 Act or section 45 of the 2003 Act because certain statutory requirements have not been met (subsection (4) defining these requirements), but the parties consider that despite this it would still be fair and equitable for the tenant to be compensated for the improvement at waygo, then the landlord and tenant may enter into a written agreement during the three year amnesty period setting out that the landlord will pay compensation to the tenant at waygo for the improvement.
721. Section 53 of the 1991 Act and section 59 of the 2003 Act set out that, unless those Acts explicitly state otherwise, where they make provision for compensation to be paid then a tenant shall not be entitled to compensation except under that provision. Therefore landlords and tenants may enter into agreements as to compensation at waygo other than as set out in statute but these may not be enforceable. The effect of subsection (2) of section 117 of this Act is that “amnesty agreements” are to be valid notwithstanding section 53 of the 1991 Act and section 59 of the 2003 Act. This means that parties can enter into written agreements during the amnesty period that compensation at waygo would be fair and equitable notwithstanding that statutory procedures have not been followed and parties can conduct their affairs in the knowledge that these agreements can be relied upon at waygo. Agreements can relate to improvements in relation to which amnesty notices cannot be given as well as to ones in relation to which notices can be given.
722. Subsection (3) of section 117 provides that the amount of compensation to be agreed as payable under an “amnesty agreement” must be as set out in section 36 of the 1991 Act or, as the case may be, under section 47 of the 2003 Act. It may not be any amount as agreed between parties.
723. Subsection (4) defines a “relevant requirement” for the purposes of subsection (1) as one imposed by virtue of Part 4 of the 1991 Act or by virtue of Chapter 1 of Part 4 of the 2003 Act which must ordinarily be complied with in order for the tenant to be entitled to compensation for an improvement under those Acts.

Section 118 – Arbitration and other dispute resolution

724. **Section 118** provides that amnesty disputes can be settled by arbitration, and removes two items from the list of matters currently excluded from arbitration.
725. Subsection (1)(a)(i) provides for arbitration under section 116 for 1991 Act leases, and subsection (3)(a)(i) provides for the same in relation to 2003 Act leases, as an alternative to referring an amnesty dispute to the Land Court. Subsections (1)(c) and (3)(c) make it clear that any term of a lease which prevents parties from going to the Land Court on the amnesty is null and void.
726. The effect of subsections (1)(a)(ii) and (3)(a)(ii) is that certain issues currently ineligible to be dealt with by binding arbitration can now be brought to arbitration instead of to the Land Court, if the parties so agree. These are cases where (a) any question of difference between the landlord and tenant arises out of the making of a record of condition, (b) the landlord has objected to an improvement and the tenant has appealed to the Land Court for approval and (c) cases where the Land Court has granted approval and the landlord has said they will carry out the improvement themselves, but failed to do so in a reasonable time, and the tenant has applied to the Land Court to be able to carry the improvement out themselves.