

## **POLICY NOTE**

### **THE LAND REFORM (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 5 AND TRANSITORY PROVISIONS) REGULATIONS 2017**

#### **S.S.I. 2017/20 (C. 3)**

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 130(2) and 130(4) of the Land Reform (Scotland) Act 2016 (“the Act”). It is not subject to any Parliamentary procedure.

#### **Background**

2. The Bill for the Act received Royal Assent on 22nd April 2016. Part 10 of the Act contains provisions which reform the law on agricultural holdings. The provisions contained within Chapter 8 of Part 10 of the Act are brought into force by this instrument. The provisions being commenced relate to compensation for tenant’s improvements (“amnesty”). The provisions of the Act relating to agricultural holdings are being commenced in several stages. These Regulations are the fifth set of Commencement Regulations bringing provisions of the Act into force, and the second instrument which brings into force some of the provisions of the Act which relate to agricultural holdings.

#### **Policy Objective**

3. The overall policy objective of Part 10 of the Act is to modernise legislation relating to agricultural holdings. Chapter 8 of Part 10 introduces a three year amnesty period, during which time tenants have the opportunity to serve notice on landlords that specific relevant improvements are to be treated as tenant’s improvements capable of compensation at waygo, if certain criteria are met.

4. The policy objective of these amnesty provisions is to give tenants an opportunity to establish entitlement to compensation for improvements that were not previously notified or consented to, or where notice and consent were given but records of such are not available. It is to help both sides have a clearer idea of their respective rights and liabilities in the event of termination of the tenancy.

5. Regulation 1(1) of this instrument provides that these Regulations will come into force on 13th March 2017. Regulation 2 has the effect that sections 112 to 118 of the Act come into force on 13th June 2017.

6. The amnesty period begins when section 112(5) of the Act is brought into force. Bringing section 112 into force on 13th June 2017 means that the three year amnesty period will begin on that day. The purpose of this three month lead in period between the coming into force of these Regulations and the coming into force of section 112 of the Act is to enable parties to gather together any relevant paperwork that may prove useful during the amnesty process.

7. Sections 112 and 114 of the Act set out the process by which tenants can claim compensation for certain improvements that were not previously notified or consented to, or in circumstances where the tenant met the relevant legal notice or consent requirements but

does not possess a record that these requirements were met. The provisions also enable tenants who received oral consent to certain improvements and those who carried out improvements in a manner different to that consented to, to claim compensation for improvements (provided this difference was immaterial).

**8.** During the three year amnesty period (beginning on 13th June 2017) a tenant may serve a notice on their landlord that specific relevant improvements are to be treated as tenant's improvements, capable of compensation at waygo, provided that certain criteria are met. A tenant can only serve an amnesty notice for improvements that were completed before the amnesty period begins. In addition, the improvement must be a "relevant improvement" within the meaning of section 112 of the Act and satisfy the criteria set out in that section.

**9.** In the amnesty notice the tenant must provide details of, among other things, the relevant improvement and set out the reasons why it is fair and equitable that they be compensated for the improvement at waygo.

**10.** Section 113 of the Act makes necessary consequential amendment to the Agricultural Holdings (Scotland) Act 1991 ("the 1991 Act") and the Agricultural Holdings (Scotland) Act 2003 ("the 2003 Act").

**11.** Section 115 of the Act sets out the objection process. Within two months of receiving the amnesty notice, the landlord may send a notice to the tenant in writing that the landlord objects to the compensation claim for the relevant improvement (or part of it). The notice of objection must contain the landlord's reasons for objecting to the relevant improvement (or part of it). There are 3 grounds on which the landlord can object. These are:

- that it is not fair and equitable for compensation to be payable for the relevant improvement on the tenant quitting the holding at the termination of the tenancy;
- that the landlord carried out the improvement in whole or in part; and
- that the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed to such benefit in writing.

**12.** Upon receipt of the notice of objection, the tenant may, within a period of two months apply to the Scottish Land Court ("the Land Court") for approval of the relevant improvement. The Land Court may withhold approval, approve it unconditionally or, approve it on reduced terms. Before granting an approval the Land Court must be satisfied that the landlord has or will benefit from the improvement and that it is just and equitable for the landlord to pay compensation.

**13.** No compensation will be payable to the tenant if the Land Court determines that the landlord carried out the improvement or that the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed to such benefit in writing.

**14.** Section 117 of the Act makes provision that where compensation is not payable because a relevant requirement has not been met, a landlord and tenant may still enter into a written agreement during the amnesty period, that the landlord will compensate the tenant for the improvement on the tenant quitting the holding at the termination of the tenancy. Such an

agreement is to be known as an “amnesty agreement”. “Relevant requirement” is defined in section 117(4) of the Act.

**15.** Section 118 of the Act makes consequential amendments to the 1991 Act, the Scottish Land Court Act 1993, and the 2003 Act. These changes are necessary for the amnesty process established in Chapter 8 to function correctly.

### **Transitory Provisions**

**16.** The Act creates a new type of agricultural holding known as a Modern Limited Duration Tenancy (“MLDT”). Section 85 of the Act which establishes MLDTs has not yet been fully commenced. This means that MLDTs do not yet exist. However, some of the provisions of the Act being commenced by these Regulations contain references to MLDTs. For this reason it is necessary to include transitory provision in these Regulations to treat those references to MLDTs as if they are temporarily not there. This means that the references to MLDTs will effectively be ignored until such time as section 85 of the Act is fully commenced, and MLDTs come into existence.

**17.** Regulation 3 of these Regulations temporarily removes the reference to an MLDT from section 112(1)(b) of the Act. Regulation 4 of these Regulations temporarily removes the reference to an MLDT from section 45A of the 2003 Act (section 45A is inserted into the 2003 Act by section 113 of the Act). Regulation 5 of these Regulations temporarily removes the reference to an MLDT from section 114 of the Act.

**18.** Until section 85 of the Act is commenced, the amnesty provisions are relevant to 1991 Act tenancies, and those tenants with Short Limited Duration Tenancies (SLDTs) and Limited Duration Tenancies (LDTs) only.

### **Consultation**

**19.** No formal consultation was required to be carried out in relation to these Regulations. However, as part of the drafting of the Land Reform (Scotland) Bill, a formal consultation exercise was carried out between December 2014 and February 2015, with an analysis of responses published in May 2015. The link below shows the relevant consultation documents: <http://www.gov.scot/Topics/archive/consultation>.

**20.** In addition, informal discussions took place with stakeholders about the most appropriate timescale for the lead-in period for the amnesty provisions, with the general consensus amongst stakeholders being three months. Informal consultation with stakeholders will continue to take place during the implementation process.

### **Impact Assessment and Financial Effects**

**21.** Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were carried out in relation to the Land Reform (Scotland) Bill (which became the Act). The Financial Memorandum which was prepared for that Bill considered the financial impact and remains valid. The links below show the relevant documentation.

Link to the Equality Impact Assessment: <http://www.gov.scot/Resource/0048/00480754.pdf>

Link to the Business and Regulatory Impact Assessment:

<http://www.gov.scot/Resource/0048/00481018.pdf>

The Financial Memorandum can be found at:

<http://www.parliament.scot/parliamentarybusiness/Bills/90675.aspx>

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