

## **POLICY NOTE**

### **THE LAND REFORM (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 6, TRANSITORY AND SAVING PROVISIONS) REGULATIONS 2017**

#### **SSI 2017/299 (C. 23)**

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

#### **Background**

2. The Bill for the 2016 Act received Royal Assent on 22nd April 2016. Part 10 of the 2016 Act contains provisions which reform the law on agricultural tenancies. A number of the provisions of the 2016 Act are brought into force by this instrument. The provisions contained within Chapter 1 of Part 10 of the 2016 Act are brought into force by this instrument, as well as some other provisions relating to Modern Limited Duration Tenancies. These Regulations are the sixth set of Commencement Regulations bringing provisions of the 2016 Act into force, and the third instrument which brings into force some of the provisions of the 2016 Act which relate to agricultural tenancies.

#### **Policy Objective**

3. The overall policy objective of Part 10 of the 2016 Act is to modernise legislation relating to agricultural tenancies. Chapter 1 of Part 10 introduces the Modern Limited Duration Tenancy (“MLDT”) as an option for future agricultural tenancies. This replaces the existing Limited Duration Tenancy (“LDT”) option set out in the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”). LDTs in existence immediately before the coming into force of these Regulations will continue to exist.

4. The policy intention of the MLDT is to offer increased flexibility to landlords and tenants to negotiate lease provisions in relation to fixed equipment, rent and to meet their needs, and encourage landlords to let to new entrants to farming, and to encourage new entrants to take up farming opportunities.

4. Regulation 2(1) of these Regulations provides that a number of provisions of the 2016 Act will come into force on 30th November 2017. Those provisions which are being commenced are listed in column 1 of the table in schedule of these Regulations. Regulation 2(2) provides that where a purpose is specified in the third column of that table the associated provisions come into force for that purpose only.

5. Section 85 of the 2016 Act is commenced by these Regulations. Section 85 repeals section 5 of the 2003 Act, which provides for the creation of LDTs, and inserts a new section 5A into that Act. This means that going forward, any new agricultural tenancy entered into for a term of not less than 10 years, other than a 1991 Act tenancy, will be an MLDT and any lease for a term of more than 5 years but less than 10 years will be considered to be an MLDT with a duration of 10 years. New section 5B is also inserted, which allows that a lease constituting an MLDT may contain a 5 year break clause where the tenant under the lease is a new entrant to farming. Such a break clause must be in accordance with the new section 8D

of the 2003 Act, which is inserted by section 87 of the 2016 Act, which is commenced by these Regulations. Separate regulations setting out who is to be considered a new entrant will also come into force on 30th November 2017. The intention of section 5B is to encourage landlords to let to new entrants, and to encourage new entrants to take up farming, giving more flexibility to meet evolving needs by allowing both parties the ability to end the tenancy, if the arrangement is not working.

6. Regulation 4 of these Regulations makes saving provision which provides that section 5 of the 2003 Act will continue to apply in relation to any limited duration tenancy in existence before 30th November 2017, so that cross-references to section 5 in section 93 of the 2003 Act (which provides a definition of LDT for on-going purposes) makes sense.

7. Sections 86 to 89 of the 2016 Act are commenced by these Regulations. These provisions insert new sections into the 2003 Act to enable MLDT to have complementary and tailored provisions to those covering existing LDTs in relation to subletting, termination and continuation, fixed equipment and irritancy. The MLDT is intended to be an enhanced tenancy vehicle rather than an entirely new one.

8. Section 90 of the 2016 Act is commenced by these Regulations. That section repeals section 2 of the 2003 Act, removing the ability to convert a 1991 Act tenancy into an LDT, as this will become defunct. Additionally, new section 2A is inserted into the 2003 Act, which allows conversion into an MLDT. Regulation 3 of the Regulations makes savings provision so that, where in certain circumstances a landlord and tenant have reached an agreement before 30th November 2017 to convert a 1991 Act tenancy into a LDT on or after 30th November 2017, this continues to be possible. Section 91 inserts new section 2B into the 2003 Act to allow existing LDTs to convert into MLDTs. This allows flexibility for tenant and landlord.

9. These Regulations also commence provisions in other chapters of Part 10 which also relate to MLDTs. Section 105 of the 2016 Act inserts a new section 7B into the 2003 Act, which provides for assignation of an MLDT in a similar way to the provisions applying to LDTs, as amended by the 2016 Act. Section 108 of the 2016 Act amends the Succession (Scotland) Act 1964 and the 2003 Act to ensure MLDTs are covered by the amendments made to the succession provisions by the 2016 Act in the 2003 Act.

10. The 2016 Act also provides for the creation of another new type of agricultural tenancy, to be known as a Repairing Tenancy (“RT”). Certain paragraphs of schedule 2 of the 2016 Act, which are commenced by these Regulations, make minor and consequential modifications of various enactments to insert references to MLDTs and RTs. Section 92 of the 2016 Act provides for the creation of RTs but has not yet been commenced. Regulations 5 to 14 make transitory provision so that references to a “Repairing Tenancy” or “Repairing Tenancies” inserted into various enactments by the provisions of schedule 2 of the 2016 Act are to be ignored until section 92 of the 2016 Act comes into force for all purposes.

## **Consultation**

11. No formal consultation was required to be carried out in relation to these Regulations. However, as part of the preparation and development 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. Informal consultation with

stakeholders will continue to take place during the implementation process. The link below shows the relevant consultation documentation: <https://consult.scotland.gov.uk/land-reform-and-tenancy-unit/land-reform-scotland/>

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

12. 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 2016 Act). The Financial Memorandum which was prepared for the 2016 Act 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>

Link to the Financial Memorandum:  
[http://www.parliament.scot/S4\\_Bills/Land%20Reform%20\(Scotland\)%20Bill/SPBill176AFM/S042016.pdf](http://www.parliament.scot/S4_Bills/Land%20Reform%20(Scotland)%20Bill/SPBill176AFM/S042016.pdf)

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