

POLICY NOTE

THE LAND REFORM (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 6, TRANSITORY AND SAVING PROVISIONS) (MODERN LIMITED DURATION TENANCIES) MISCELLANEOUS AMENDMENTS REGULATIONS 2017

S.S.I. 2017/370

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 127(1) and 130(2), (3) and (4) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). It is subject to the negative Parliamentary procedure.

Policy Objective

3. The Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Savings Provisions) (Modern Limited Duration Tenancies) Miscellaneous Amendment Regulations 2017 amends the Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Savings Provisions) Regulations 2017 (“the first principal instrument”) and the Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 (“the second principal instrument”), which were laid before the Scottish Parliament on 19th September 2017.

4. During Parliamentary scrutiny of the first principal instrument and the second principal instrument, the Delegated Powers and Law Reform Committee identified an error in the first principal instrument in regulation 1(2). The definition of limited duration tenancy in that regulation incorrectly cross references the 2016 Act, whereas it should have cross referenced the Agricultural Holdings (Scotland) Act 2003. Regulation 3 of these Regulations corrects this by substituting “the 2003” for “that” in the definition of limited duration tenancy in regulation 1(2) of the first principal instrument.

5. The Delegated Powers and Law Reform Committee also queried the drafting of regulations 5 to 13 of the first principal instrument and paragraphs 2, 3, 5 and 6 of schedule 2 of the second principal instrument. These regulations and paragraphs make provision on a transitory basis to require references to repairing tenancies inserted into various enactments to be read as if they were omitted until such time as the provisions of the 2016 Act relating to repairing tenancies come into force. The Delegated Powers and Law Reform Committee considered that these transitory provisions could have been more clearly expressed if the precise wording which falls to be either omitted or modified (as the case may be) is quoted. The Scottish Government has accepted that it may have been clearer to draft the provisions in this way. Regulation 4 of these Regulations substitutes new provisions for regulations 5 to 14 of the first principal instrument. While the Delegated Powers and Law Reform Committee did not query the drafting of regulation 14, that regulation is also substituted so that the drafting of that regulation is consistent with the other transitory provisions in the first principal instrument. Regulations 6 and 7 of these Regulations substitute new provisions for paragraphs 2,3,5 and 6 of schedule 2 of the second principal instrument.

Consultation

6. 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

7. 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/SPBill176AFMS042016.pdf](http://www.parliament.scot/S4_Bills/Land%20Reform%20(Scotland)%20Bill/SPBill176AFMS042016.pdf)

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