

POLICY NOTE

THE LAND REFORM (SCOTLAND) ACT 2016 (SUPPLEMENTARY, CONSEQUENTIAL, TRANSITORY AND SAVING PROVISIONS) REGULATIONS 2017

SSI 2017/416

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 127(1) and (2) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). It is subject to the affirmative 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 provisions of Part 10 of the 2016 Act relating to the introduction of the Modern Limited Duration Tenancy (“MLDT”) are being brought into force by SSI 2017/299. The provisions will come into force on 30th November 2017. These Regulations make supplementary, consequential, transitory and saving provisions which are necessary on the coming into force of the provisions of the 2016 Act relating to MLDTs.

Policy Objective

3. The overall policy objective of Part 10 of the 2016 Act is to modernise legislation relating to agricultural tenancies. The creation of two new types of agricultural tenancy is provided for: the MLDT and the Repairing Tenancy (“RT”). The provisions of the 2016 Act which provide for the creation of MLDTs are commenced with effect on 30 November 2017 by SSI 2017/299. The relevant provisions of the 2016 Act which provide for the creation of RTs are not yet in force.

4. Paragraph 1 of schedule 1 amends the Opencast Coal Act 1958 (“1958 Act”). Paragraph 1(2) of schedule 1 inserts references to MLDTs into section 24(10) of the 1958 Act. Section 24 of the 1958 Act makes provision about the rights of tenants of agricultural holdings to compensation for improvements where that land on which these improvements are made is compulsorily acquired for the purpose of opencast coal extraction. The effect of this amendment is to extend the provisions of section 24 to MLDTs. Paragraph 1(3) of schedule 1 widens the definition of “agricultural holding” in section 52(2) of the 1958 Act to include MLDTs and RTs. Paragraph 1 of schedule 2 makes a transitory provision so that the reference to “a repairing tenancy”, inserted by paragraph 1 of schedule 1 into section 52(2), is to be ignored until section 92 of the 2016 Act (repairing tenancies: creation) comes into force.

5. Paragraph 2 of schedule 1 amends the Land Compensation (Scotland) Act 1973 (“1973 Act”). Paragraph 2(2) inserts references to MLDTs and RTs into section 31(3)(c)(i) of the 1973 Act. Section 31 of the 1973 Act allows for compensation to be paid out in respect of agricultural land which is compulsorily acquired in connection with public works, where the conditions in that section are met. Section 31(3)(c) refers to certain types of agricultural tenancies. This amendment adds MLDTs and RTs to the list of tenancies that section 31(3)(c) applies to. Paragraph 2(3) of schedule 1 widens the definition of “agricultural holding” in section 80(1) of the 1973 Act to include MLDTs and RTs.

Paragraph 2 of schedule 2 makes a transitory provision so that the references to “a repairing tenancy”, inserted by paragraph 2 of schedule 1 into sections 31(3)(c)(i) and 80(1) of the 1973 Act, are to be ignored until section 92 of the 2016 Act (repairing tenancies: creation) comes into force.

6. Paragraph 3 of schedule 1 amends section 8(5) of the Land Tenure Reform (Scotland) Act 1974 (“1974 Act”). Section 8(1) of the 1974 Act provides that no part of property which is subject to a long lease can be used as or as part of a private dwelling-house. Section 8(5)(aa) of the 1974 Act provides that section 8(1) does not apply to certain types of agricultural tenancies. This amendment extends the application of section 8(5)(aa) of the 1974 Act to MLDTs and RTs. The effect of this is to allow for part of the subjects of MLDTs and RTs to be used as a private dwelling-house. Paragraph 3 of schedule 2 makes a transitory provision so that the reference to a “a repairing tenancy”, inserted by paragraph 3 of schedule 1 into section 8(5)(aa), is to be ignored until section 92 of the 2016 Act (repairing tenancies: creation) comes into force.

7. Paragraph 4 of schedule 1 amends section 13(8) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (“1981 Act”). Section 13 of the 1981 Act allows for the court to make an order transferring the tenancy of a matrimonial home from one spouse to another spouse in certain circumstances. Section 13(7) of the 1981 Act provides that such an order cannot be made where the matrimonial home is on or pertains to land comprised in an agricultural lease. This amendment extends the definition of “agricultural lease” to MLDTs and RTs for the purposes of section 13 of the 1981 Act. This will mean that an order under section 13 of the 1981 Act will not be permissible where the tenancy is an MLDT or an RT. Paragraph 4 of schedule 2 makes a transitory provision so that the reference to “a repairing tenancy”, inserted by paragraph 4 of schedule 1 into section 13(8) of the 1981 Act, is to be ignored until section 92 of the 2016 Act (repairing tenancies: creation) comes into force.

8. Paragraph 5 of schedule 1 extends the definition of “statutorily protected tenancy” in section 25(1) of the Rent (Scotland) Act 1984 (“1984 Act”) to MLDTs and RTs for the purposes of Part III (Protection against Harassment and Eviction without due process of Law) of the 1984 Act. Paragraph 5 of schedule 2 makes a transitory provision so that the reference to “a repairing tenancy”, inserted by paragraph 5 of schedule 1 into section 25(1) of 1984 Act, is to be ignored until section 92 of the 2016 Act (repairing tenancies: creation) comes into force.

9. Section 90 of the 2016 Act repeals section 2 of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”) and inserts a new section 2A into that Act. Section 90 is being commenced with effect on 30th November 2017 by SSI 2017/299. Paragraph 6 of schedule 1 modifies the Agriculture Act 1986 (“the 1986 Act”) to take account of the repeal of section 2 of the 2003 Act and the introduction of section 2A into that Act. Paragraph 6 of schedule 2 makes saving provision so that paragraph 2(2) of the 1986 Act will continue to refer to section 2(1) of the 2003 Act and to LDTs in certain circumstances related to conversion of a 1991 Act tenancy to an LDT.

10. Schedule 4 of the Housing (Scotland) Act 1988 (“1988 Act”) sets out the types of tenancies which may not be “assured tenancies” for the purposes of the 1988 Act. Paragraph 7 of schedule 1 amends paragraph 6 of schedule 4 to the 1988 Act to include MLDTs and RTs within the list of agricultural tenancies which cannot be “assured tenancies”. Paragraph 7 of schedule 2 makes a transitory provision so that the reference to “a repairing tenancy”,

inserted by paragraph 7 of schedule 1 into paragraph 6 of Schedule 4 to the 1988 Act, is to be ignored until section 92 of the 2016 Act (repairing tenancies: creation) comes into force.

11. Paragraph 8 of schedule 1 modifies section 10A(1) of the 2003 Act to remove a reference to section 5 of the 2003 Act. This is supplemental to the repeal of section 5 by section 85(2) of the 2016 Act, which is commenced with effect on 30th November 2017, subject to saving provision, by SSI 2017/299.

12. Section 102 of the 2016 Act amends the provisions of the 2003 Act relating to rent review in respect of LDTs, and also applies those amended provisions to MLDTs and RTs. However, section 102 is not yet in force. In order that there is a statutory rent review process applying in respect of MLDTs, paragraph 8 of schedule 2 temporarily modifies section 9 of the 2003 Act to apply the existing rent review system that applies to LDTs under the 2003 Act to MLDTs. These modifications are temporary and will cease to have effect when section 102 of the 2016 Act comes into force in relation to MLDTs.

Consultation

13. 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

14. Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were carried out in relation to 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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