

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Agricultural Holdings

Chapter 8 – Compensation for Tenant's Improvements

Amnesty for tenant's improvements

Section 112 – Amnesty for certain improvements by tenant

694. This Chapter provides for certain improvements carried out by the tenant of an agricultural holding to be capable of attracting compensation at waygo in certain circumstances notwithstanding historic anomalies. The duration of this amnesty is three years from the date of section 112 coming into force. During the amnesty, a tenant who intends to claim compensation at the end of the tenancy (at “waygo”) for certain improvements which have been carried out may give notice of this to the landlord in certain circumstances. A tenant may then be able to claim compensation at waygo for that improvement despite a previous failure to meet certain statutory procedures in relation to the improvement, or where paperwork showing that those procedures were followed has been lost, if the landlord does not object to the amnesty notice or if the Land Court considers that in all of the circumstances it is just and equitable for compensation to be payable for the improvement at waygo.
695. This Chapter also provides that a tenant and landlord may enter into an agreement during the amnesty period that an improvement will attract compensation at waygo despite certain previous failures to meet statutory procedures (see section 117). Agreements can relate to improvements in relation to which amnesty notices cannot be given as well as to ones that can.
696. **Section 112** sets out which improvements the amnesty may apply to. Subsection (1) states that the provisions apply to relevant improvements for which a tenant intends to claim compensation under section 34 of the 1991 Act (1991 Act tenants) or section 45 of the 2003 Act (tenants of SLDTs, LDTs or MLDTs).
697. Subsections (2) and (3) provide that a relevant improvement is a Part 1, Part 2 or Part 3 improvement, as defined in subsection (7), which has been completed before the beginning of the “amnesty period”, being the period of three years from when section 112 comes into force.
698. Subsection (4) enables the tenant to give notice of the relevant improvement to the landlord under section 114.
699. Subsection (5) details the circumstances in which the tenant is not entitled to use the amnesty provisions. Subsection (5)(a) excludes Part 1 improvements where the tenant has carried out the improvement without the landlord's consent; or where the landlord gave consent, whether orally or in writing, and the tenant carried out the improvement in a manner substantially different to that which the landlord had consented to. Therefore,

*These notes relate to the Land Reform (Scotland) Act 2016
(asp 18) which received Royal Assent on 22 April 2016*

for example, if the landlord has only consented orally to a Part 1 improvement, that improvement is capable of being within the scope of the amnesty.

- 700. Subsection (5)(b) excludes Part 2 improvements where the tenant had given notice under the relevant sections of the 1991 Act or the 2003 Act but the tenant carried out the improvement in a manner substantially different to that proposed in the notice; the landlord objected to this improvement upon receipt of the notice; or the tenant carried out the improvement in breach of a decision by the Land Court.
- 701. Subsection (5)(c) excludes Part 3 improvements where the tenant had given notice under the relevant section of the 1991 Act and subsequently carried out the improvement in a manner substantially different to the manner proposed in the notice.
- 702. Subsection (6) provides that the amnesty is not to affect the extent to which compensation is recoverable for an improvement under custom, agreement or otherwise, as permitted by the 1991 Act or 2003 Act, in lieu of any compensation under this section. This would include, for example, a pre-existing agreement between landlord and tenant as to the compensation payable in respect of an improvement carried out before 1948, as permitted by section 34(4)(a) of the 1991 Act.
- 703. Subsection (7) explains what is meant by a Part 1, Part 2 and Part 3 improvement by referring to the relevant paragraphs and Parts of the schedules of the 1991 Act.

Section 113 – Amendment of the Agricultural Holdings (Scotland) Acts

- 704. **Section 113** inserts additional sections into the 1991 Act and the 2003 Act to provide for the operation of the amnesty.
- 705. Subsections (1) and (2) insert new sections 34A, and 45A after sections 34 and 45 (the right to compensation for improvements) of the 1991 Act and the 2003 Act respectively. These new sections are entitled “Amnesty under the Land Reform (Scotland) Act 2015” and enable compensation to be payable under section 34 of the 1991 Act and section 45 the 2003 Act when the amnesty provisions are applicable.

Section 114 – Amnesty notice

- 706. **Section 114** sets out the requirements for the amnesty notice.
- 707. Subsections (2) and (3) provide that the amnesty notice must be given to the landlord within the amnesty period as set out in section 112(3), be in writing, be dated, and contain the following information: the names of the tenant and the landlord; the name and address of the holding; details of the relevant improvement; and the tenant’s reasons as to why it is fair and equitable for compensation to be payable for the improvement at waygo.
- 708. Subsection (4) applies section 84(4) of the 1991 Act which ensures the validity of notices given by tenants where the landlord has changed but the tenant has not been notified of this change.
- 709. For the purposes of this Chapter, subsection (5) defines “holding” in the case of an SLDT, LDT or MLDT as meaning the land comprised in the lease.