

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Agricultural Holdings

Chapter 8 – Compensation for Tenant’s Improvements

Objection to amnesty notice and referral to Land Court

Section 115 – Objection by landlord

710. **Section 115** sets out the objection process for the landlord.
711. Subsection (1) provides that within two months of receiving the amnesty notice from the tenant, the landlord can object on certain grounds to the relevant improvement by giving written notice to the tenant. Compensation is then not payable to the tenant unless the improvement is approved by the Land Court under section 116.
712. Subsection (2) states that the written notice must be dated and must state the landlord’s reasons for objecting to the relevant improvement.
713. Subsection (3) provides that the objection by the landlord must be on one or more of three grounds. These are: that it is not fair and equitable for compensation to be payable at way-go for the relevant improvement; that the landlord carried out the improvement in whole or in part; or that the landlord gave or allowed a benefit to the tenant, in return for the tenant carrying out the improvement, regardless of whether or not the landlord agreed such benefit in writing. Such benefit need not necessarily be a financial contribution but it must be measurable in financial terms e.g. the supply of materials.

Section 116 – Referral to Land Court

714. **Section 116** sets out the procedure for referral of the improvement to the Land Court.
715. Subsection (1) enables the tenant, within two months of receiving the notice of objection from the landlord, to make an application to the Land Court for approval of the relevant improvement for the purposes of compensation under section 34 of the 1991 Act or section 45 of the 2003 Act.
716. Subsection (2) gives the Land Court the power to withhold approval of the relevant improvement or approve it either unconditionally or under specific terms.
717. Subsection (3) provides that, for the Land Court to approve a relevant improvement, it must be satisfied that the landlord has benefitted or would benefit from the improvement and that it is fair and equitable in all the circumstances for the landlord to be liable to pay compensation for the relevant improvement at waygo.
718. Subsection (4) states that no compensation is payable to the extent that the Land Court determines that the landlord carried out the improvement; or that the tenant received a benefit in return for carrying out the improvement, regardless of whether or not the

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

landlord agreed such benefit in writing. Such a benefit may have been monetary or non-monetary but must be measurable in financial terms e.g. the supply of materials. Otherwise the amount of compensation for the improvement will be determined by section 36 of the 1991 Act or, as the case may be, by section 47 of the 2003 Act: the operation of those sections flows from the application of section 34 of the 1991 Act and of section 45 of the 2003 Act.