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

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,

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.

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 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.

Agreements made during amnesty period

Section 117 – Amnesty agreements

719. Section 117 sets out that a landlord and tenant may enter into agreements during the amnesty period setting out that certain improvements carried out by the tenant before the amnesty are to attract compensation at waygo.

720. Subsection (1) states that if no compensation is payable at waygo in resepct of a relevant improvement under section 34 of the 1991 Act or section 45 of the 2003 Act because certain statutory requirements have not been met (subsection (4) defining these requirements), but the parties consider that despite this it would still be fair and equitable for the tenant to be compensated for the improvement at waygo, then the landlord and tenant may enter into a written agreement during the three year amnesty period setting out that the landlord will pay compensation to the tenant at waygo for the improvement.

721. Section 53 of the 1991 Act and section 59 of the 2003 Act set out that, unless those Acts explicitly state otherwise, where they make provision for compensation to be paid then a tenant shall not be entitled to compensation except under that provision. Therefore landlords and tenants may enter into agreements as to compensation at waygo other than as set out in statute but these may not be enforceable. The effect of subsection (2) of section 117 of this Act is that "amnesty agreements" are to be valid notwithstanding section 53 of the 1991 Act and section 59 of the 2003 Act. This means that parties can

enter into written agreements during the amnesty period that compensation at waygo would be fair and equitable notwithstanding that statutory procedures have not been followed and parties can conduct their affairs in the knowledge that these agreements can be relied upon at waygo. Agreements can relate to improvements in relation to which amnesty notices cannot be given as well as to ones in relation to which notices can be given.

722. Subsection (3) of section 117 provides that the amount of compensation to be agreed as payable under an "amnesty agreement" must be as set out in section 36 of the 1991 Act or, as the case may be, under section 47 of the 2003 Act. It may not be any amount as agreed between parties.

723. Subsection (4) defines a "relevant requirement" for the purposes of subsection (1) as one imposed by virtue of Part 4 of the 1991 Act or by virtue of Chapter 1 of Part 4 of the 2003 Act which must ordinarily be complied with in order for the tenant to be entitled to compensation for an improvement under those Acts.

Section 118 – Arbitration and other dispute resolution

724. Section 118 provides that amnesty disputes can be settled by arbitration, and removes two items from the list of matters currently excluded from arbitration.

725. Subsection (1)(a)(i) provides for arbitration under section 116 for 1991 Act leases, and subsection (3)(a)(i) provides for the same in relation to 2003 Act leases, as an alternative to referring an amnesty dispute to the Land Court. Subsections (1)(c) and (3)(c) make it clear that any term of a lease which prevents parties from going to the Land Court on the amnesty is null and void.

726. The effect of subsections (1)(a)(ii) and (3)(a)(ii) is that certain issues currently ineligible to be dealt with by binding arbitration can now be brought to arbitration instead of to the Land Court, if the parties so agree. These are cases where (a) any question of difference between the landlord and tenant arises out of the making of a record of condition, (b) the landlord has objected to an improvement and the tenant has appealed to the Land Court for approval and (c) cases where the Land Court has granted approval and the landlord has said they will carry out the improvement themselves, but failed to do so in a reasonable time, and the tenant has applied to the Land Court to be able to carry the improvement out themselves.