

# LAND REFORM (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 10 – Agricultural Holdings**

#### *Chapter 9 – Improvements by Landlord*

#### *Section 119 – Notice required for certain improvements by landlord*

727. **Section 119** amends the 1991 Act by inserting new sections 14A to 14F after section 14 to provide for a formal process of notice and objection when landlords of agricultural holdings intend to carry out certain improvements.
728. Inserted section 14A states that the section applies to a “relevant improvement”, which means any improvement set out in schedule 5 of the 1991 Act which is not intended to be carried out at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following its approval by the Land Court; or as required by the Scottish Ministers.
729. Subsections (3) and (4) of section 14A require the landlord to give written notice (a “landlord improvement notice”) to the tenant before carrying out a relevant improvement, the exception being in the case of an emergency improvement.
730. Subsection (5) of section 14A states that a landlord improvement notice must be dated and contain the following information: the names of the tenant and the landlord, the address of the holding, details of the intended improvement and the landlord’s reasons as to why the improvement is necessary to enable the tenant to farm in accordance with the rules of good husbandry.
731. Inserted section 14B sets out the objection process available to the tenant. The tenant may object to the proposed improvement within two months of receiving the landlord improvement notice by giving written notice to the landlord. This notice must be dated and state the tenant’s reasons as to why the improvement is not necessary to enable the tenant to farm in accordance with the rules of good husbandry.
732. Inserted section 14C provides that, within two months of receiving the written objection from the tenant, the landlord may apply to the Land Court to approve the proposed improvement. The Land Court may withhold its approval or may approve the improvement unconditionally or with certain terms attached. Before approving a relevant improvement, the Land Court must be satisfied that it is necessary to enable the tenant to farm in accordance with the rules of good husbandry.
733. Inserted section 14D requires the landlord to give written notice to the tenant stating when the landlord intends to carry out the improvement, which, unless the tenant and landlord agree otherwise, should not be earlier than two weeks before the landlord intends to start carrying out the improvement. This notice requirement applies where the landlord is intending to carry out an improvement at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the

improvement himself following its approval by the Land Court; required by the Scottish Ministers; or after the landlord has issued a landlord improvement notice and the tenant has not objected, or the tenant's objection has been dismissed by the Land Court.

734. Subsection (4) of section 14D allows the landlord to serve a new notice where the improvement has not already begun to be carried out and there is a good reason for the postponement of the improvement.
735. Subsections (5) and (6) of section 14D state that where the landlord has given notice of an improvement and work has started on the improvement, the landlord may, at any time before the expiry of the date given in the notice, extend the period during which the improvement is carried out by giving notice in writing to the tenant, if the landlord has a good reason for extending this period.
736. Subsection (7) of section 14D indicates the effect of section 14F: that these notice procedures do not apply where the improvement is an emergency one.
737. Inserted section 14E states that where a landlord has carried out an improvement and a notice under section 14A was not given to the tenant (and the improvement was not an emergency improvement), the tenant objected to the improvement and the Land Court has not approved the improvement, or the improvement was in breach of any decision by the Land Court, then any such improvement is to be disregarded in any subsequent rent review and in assessing the tenant's responsibilities in relation to good husbandry, and in relation to fixed equipment under section 5(2)(b)(ii) of the 1991 Act.
738. Inserted section 14F provides that, where a landlord or tenant considers that an emergency improvement is required, the notice requirements set out in sections 14A(3), and 14D(2), (3) (5) and (6) do not apply. Subsection (2)(a)-(e) outlines which improvements are to be classified as emergency improvements: for instance, improvements which are necessary for preventing the spread of disease among livestock, as per the requirements of the Animal Health and Welfare (Scotland) Act 2006.
739. Section 119(3) and (4) amends the 2003 Act by inserting new sections 10A to 10F after section 10 of that Act to provide for a formal process of notice and objection when landlords of agricultural holdings intend to carry out certain improvements.
740. Subsection (1) of new section 10A states that the section applies where the landlord of an SLDT, LDT, MLDT or repairing tenancy intends to carry out a relevant improvement. But in respect of repairing tenancies, section 10A does not apply during the repairing period.
741. Subsection (3) of section 10A states that the section applies to a "relevant improvement", which means an improvement set out in schedule 5 of the 1991 Act which is not intended to be carried out at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following its approval by the Land Court; or as required by the Scottish Ministers.
742. Subsection (4) of section 10A requires the landlord to give written notice (a "landlord improvement notice") to the tenant before carrying out a relevant improvement, the exception being in the case of an emergency improvement.
743. Subsection (6) of section 10A states that a landlord improvement notice must be dated and contain the following information: the names of the tenant and the landlord, the address of the holding, details of the intended improvement and the landlord's reasons as to why the improvement is necessary to enable the tenant to farm in accordance with the rules of good husbandry.
744. Inserted section 10B sets out the objection process available to the tenant. The tenant may object to the proposed improvement within two months of receiving the landlord improvement notice, by giving written notice to the landlord. This notice must be dated

and state the tenant's reasons as to why the improvement is not necessary to enable the tenant to farm in accordance with the rules of good husbandry.

745. Inserted section 10C provides that, within two months of receiving the written objection from the tenant, the landlord may apply to the Land Court to approve the proposed improvement. The Land Court may withhold its approval or may approve the improvement unconditionally or with certain terms attached. Before approving a relevant improvement, the Land Court must be satisfied that it is necessary to enable the tenant to farm in accordance with the rules of good husbandry.
746. Inserted section 10D requires the landlord to give written notice to the tenant stating when the landlord intends to carry out the improvement, which, unless the tenant and landlord agree otherwise, should not be earlier than two weeks before the landlord intends to start carrying out the improvement. This notice requirement applies where the landlord is intending to carry out an improvement at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following approval of it by the Land Court; required by the Scottish Ministers; or after the landlord has issued a landlord improvement notice and the tenant has not objected, or the tenant's objection has been dismissed by the Land Court. Such notice is not required for an emergency improvement.
747. Subsection (4) of section 10D allows the landlord to serve a new notice where the improvement has not already begun to be carried out and there is a good reason for the postponement of the improvement.
748. Subsections (5) and (6) of section 10D state that where the landlord has given notice of an improvement and work has started on the improvement, the landlord may, at any time before the expiry of the date given in the notice, extend the period during which the improvement is carried out by giving notice in writing to the tenant, if the landlord has a good reason for extending this period.
749. Subsection (7) of section 10D indicates the effect of section 10F: that these notice procedures do not apply where the improvement is an emergency one.
750. Inserted section 10E states that where a landlord has carried out an improvement and a notice under section 10A was not given to the tenant (and the improvement was not an emergency improvement), the tenant objected to the improvement and the Land Court has not approved the improvement, or the improvement was in breach of any decision by the Land Court, then any such improvement is to be disregarded in any subsequent rent review and in assessing the tenant's responsibilities in relation to good husbandry, and in relation to fixed equipment under section 16(4)(b) (for SLDTs and LDTs) and section 16A(5)(b)(ii) (for MLDTs) of the 2003 Act.
751. Inserted section 10F provides that, where a landlord or tenant considers that an emergency improvement is required, the notice requirements of sections 10A(4) and 10D(2), (3), (5) and (6) do not apply. Subsection (2)(a)-(e) outlines which improvements are classified as an emergency: for instance, improvements which are necessary for preventing the spread of disease among livestock, as per the requirements of the Animal Health and Welfare (Scotland) Act 2006.