*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 1 – Modern Limited Duration Tenancies*

### Modern limited duration tenancies

#### *Section 85 – Modern limited duration tenancies: creation*

414. Section 85 of the Act amends the Agricultural Holdings (Scotland) Act 2003 ("the 2003 Act"), repealing section 5 which provided for the creation of limited duration tenancies ("LDTs"). Subsection (3) inserts section 5A into the 2003 Act, which provides for the creation of modern limited duration tenancies ("MLDTs") for a length of 10 years or more, and enabling short limited duration tenancies ("SLDTs") to be converted into MLDTs where the lease has expired and the tenant has remained in place with the consent of the landlord, or where the lease purports to be for a length of more than five years.

415. Section 85 also inserts section 5B into the 2003 Act, permitting a break clause after five years of an MLDT where the tenant farmer is a new entrant. However, section 5A(5) prohibits such break clauses in leases converted under section 5A(2) to (4). Section 5B, subsection (3) provides a regulation-making power for the Scottish Ministers to make further provision on who new entrants are for the purposes of section 5B.

#### *Section 86 – Modern limited duration tenancies: subletting*

416. Section 86 amends the 2003 Act by inserting a new section 7A after section 7 (assignation and subletting of limited duration tenancies), enabling an MLDT to be sublet only if the lease for the MLDT explicitly allows it.

#### *Section 87 – Modern limited duration tenancies: termination and continuation*

417. Section 87 amends the 2003 Act by inserting new sections 8A, 8B, 8C, 8D and 8E after section 8 (continuation and termination of limited duration tenancies). Section 8A enables an MLDT to be terminated when the landlord and tenant agree to the termination in writing, the agreement to terminate is made after the tenancy has started, and provision is made for compensation to be paid to both parties.

418. Section 8B enables a landlord to terminate an MLDT at the end of the tenancy term, when the landlord has provided written notice to the tenant at least one year but no longer than two years before the expiry of the term. Subsection (3) provides that the termination notice will have no effect unless the landlord has previously provided written confirmation to the tenant of the landlord's intention to terminate the tenancy at least two years but no more than three years before the expiry of the term of the tenancy.

419. Section 8C enables a tenant to terminate an MLDT at the expiry of the term of the tenancy by giving notice to the landlord confirming that the tenant intends to quit the land at the expiry of the term. Such notice must be provided between one and two years before the expiry date of the tenancy.

420. Section 8D sets out the notice process to be used for tenants and landlords when applying the break clause for MLDTs (as inserted in the 2003 Act by section 85 of this Act) which enables a tenancy to be terminated after five years. Subsections (6) and (7) set out the grounds on which a landlord can give notice: in cases when the new entrant is not using the land in accordance with the rules of good husbandry, or is failing to comply with other terms of the MLDT lease.

421. Section 8E provides that an MLDT is extended for a further seven year period unless terminated in accordance with section 8A, 8B or 8C and also provides the ability for a landlord and tenant to extend the term of the MLDT by agreement in writing.

### *Section 88 – Modern limited duration tenancies: fixed equipment*

422. Section 88 amends the 2003 Act by inserting a new section 16A after section 16 (leases not terminated by variation of terms, etc). Section 16A provides for the regulation of fixed equipment in relation to MLDTs. Subsection (1) requires a landlord, within six months of the lease starting, to provide such fixed equipment to enable the tenant to maintain efficient agricultural production for the land as specified by the terms of the lease, and to put the fixed equipment present on the holding into the condition specified in the schedule of fixed equipment. Subsection (2) specifies the information to be provided in the schedule of fixed equipment. Subsection (3) requires that the schedule of fixed equipment must be agreed within 90 days of the tenancy starting and subsection (4) enables the schedule to be varied or substituted if both parties are in agreement.

423. Subsection (5) incorporates a default term into every lease for an MLDT, in the absence of express provision to the contrary, that a landlord is required to renew or replace the fixed equipment as necessary due to natural decay or fair wear and tear. It also confirms that the tenant's liability for fixed equipment extends only to the condition the equipment was in at the time of the completion of the schedule of fixed equipment or to its condition following any improvement, provision, renewal or replacement during the tenancy.

424. Subsection (6) sets out that costs associated with compiling the schedule must be covered equally by the landlord and the tenant, unless agreed otherwise.

425. Subsection (7) states that any agreement which requires the tenant to accept the expense of works that a landlord is required to execute to fulfil a landlord's own obligations will have no effect.

426. Subsection (8) provides that any MLDT lease requiring a tenant to pay all or part of a premium for fire insurance for fixed equipment will be of no effect.

### *Section 89 – Modern limited duration tenancies: irritancy*

427. Section 89 amends the 2003 Act by inserting a new section 18A after section 18 (tenant's right to remove fixtures and buildings). Section 18A(1) enables a tenant and landlord to agree, without prejudice to any rule of law to the contrary, what the grounds for irritancy of an MLDT lease will be.

428. Subsection (2) states that any terms within a lease which provide for irritancy solely on the grounds that the tenant is not resident is to have no effect.

429. Subsection (3) states that where a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, subject to subsections

(4) and (5), what is good husbandry is to be construed in accordance with schedule 6 of the Agriculture (Scotland) Act 1948.

430. Subsection (4) provides that conservation activities are to be treated as being in accordance with the rules of good husbandry if carried out in accordance with any agreement entered into by the tenant under any Act, or if carried out in accordance with the conditions of a grant for any activities paid out of the Scottish Consolidated Fund or any other public grant which the Scottish Ministers may specify by regulations.

431. Subsection (5) requires use of the land, or a change to the land, for a non-agricultural purpose permitted under sections 40 and 41 of the 2003 Act (diversification) to be treated as being use in accordance with the rules of good husbandry.

432. Subsection (6) sets out the process to be followed by a landlord if the landlord intends to irritate the lease, stating that a landlord must confirm in writing to the tenant the timescale for the tenant to remedy the breach, which cannot be less than a year from the date of the notice.

433. Subsection (7) enables the notice served under subsection (6) to be extended by agreement of both the parties or by the Land Court.

434. Subsection (8) provides that a landlord cannot enforce their right to remove the tenant on grounds of irritancy unless the period of the notice or any extension to that notice has expired, the tenant has not remedied the breach, and the landlord has given notice to the tenant of the landlord's intention to enforce the right to remove the tenant at least two months before the date on which the landlord plans to do so.

## Conversion of 1991 Act tenancies

### *Section 90 – Conversion of 1991 Act tenancies into modern limited duration tenancies*

435. Section 90 of the Act amends the 2003 Act by inserting section 2A to allow the conversion of a 1991 Act tenancy into a modern limited duration tenancy. The provision in section 2 of the 2003 Act allowing for conversion from a 1991 Act tenancy to a limited duration tenancy is repealed as no new LDTs will be created (due to the repeal of section 5 of the 2003 Act by section 85(2) of the Act).

436. Subsections (1) and (2) of new section 2A of the 2003 Act state that the tenant and the landlord may agree in writing that the 1991 Act tenancy is to be terminated on a fixed date provided that an MLDT lease of at least 25 years' duration is entered into that comprises the same land under the 1991 Act tenancy and that the MLDT has effect from the date on which the 1991 Act tenancy terminates under the agreement.

437. Subsection (3) provides that the landlord or tenant is entitled to revoke the agreed termination of the 1991 Act tenancy and the planned MLDT lease at any time before the date fixed for termination.

438. Subsection (4) of new section 2A states that on termination of the 1991 Act tenancy, the tenant is entitled to any compensation due for improvements under Part 4 and section 45A of the 1991 Act.

439. Subsection (5) disapplies section 21 of the 1991 Act in relation to 1991 Act tenancies terminated under subsection (1) of this section.

440. Subsection (6) of new section 2A ensures that an MLDT converted from a 1991 Act tenancy may not provide for a break clause.

### *Section 91 - Conversion of limited duration tenancies into modern limited duration tenancies*

441. Section 91 of the Act inserts a new section 2B into the 2003 Act to provide for conversion of LDTs into MLDTs.

442. Subsections (1) and (2) of new section 2B of the 2003 Act state that the tenant and the landlord may agree in writing that the LDT is to be terminated on a fixed date provided that an MLDT lease of a duration not less than the term remaining under the LDT lease is entered into that comprises the same land under the LDT tenancy and that the MLDT has effect from the date on which the LDT terminates under the agreement.

443. Subsection (3) provides that the landlord or tenant is entitled to revoke the agreed termination of the LDT and the planned MLDT lease at any time before the date fixed for termination.

444. Subsection (4) and (5) of new section 2B provide that the tenant is not entitled to compensation under Part 4 of the 2003 Act (or, as the case may be, under the lease) for improvements at the point of conversion but that improvements for which compensation is due upon termination of the LDT are to be regarded as if they were improvements carried out under the MLDT.

445. Subsection (6) disapplies section 8 of the 2003 Act, on the continuation and termination of LDTs, in relation to LDTs terminated under subsection (1) of this section.

446. Subsection (7) of new section 2B ensures that an MLDT converted from an LDT may not provide for a break clause.

## *Chapter 2– Repairing Tenancies*

### *Section 92 – Repairing tenancies: creation*

447. Section 92 amends the 2003 Act by inserting new sections 5C and 5D.

448. Section 5C of the 2003 Act sets out how a repairing tenancy is created. Subsection (1) states that a repairing tenancy is to be for a period of not less than 35 years; it cannot be a 1991 Act tenancy and the lease must expressly state that it is one to which section 5C applies; the land leased cannot be let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord; and during the "repairing period" the tenant is required by the lease to improve the land so as to bring it into a state capable of being farmed in accordance with the rules of good husbandry after the expiry of the repairing period.

449. Subsection (2) defines the duration of the repairing period as at least 5 years from the start of the tenancy or such longer period as is initially agreed between the parties Alternatively, under subsection (3), the repairing period may be extended at any time before its expiry by agreement between the parties, or by the Land Court upon application of either party. The Land Court may extend the repairing period if it considers it appropriate in all the circumstances and by such a period as it considers necessary (subsection (4)). There are significant differences between the requirements on parties to a repairing tenancy during this period and after the expiry of the period.

450. Subsection (5) provides that the lease may contain provision for a break clause.

451. Subsection (6) states that for the purposes of section 5C and 5D, good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

452. Section 5D contains provision exempting the tenant from liability for not farming the land in accordance with the rules of good husbandry during the repairing period.

### *Section 93 – subletting*

453. Section 93 inserts a new section 7C into the 2003 Act which provides that, during the repairing period, the tenant can only sublet the land with the consent of the landlord and that after this period the land may only be sublet if the lease expressly provides for it.

### *Section 94 – Repairing tenancies: termination, continuation and extension*

454. Section 94 inserts new sections 8F and 8G into the 2003 Act. Section 8F applies the same process for the termination, continuation and extension of a repairing tenancy as provided for MLDTs by section 87 of the Act, subject to section 8G.

455. Section 8G provides the process whereby both parties may end a repairing tenancy during the repairing period if it contains a break clause.

456. Subsection (2) of new section 8G states that at any time during the repairing period, the tenant can terminate the tenancy by giving notice to the landlord.

457. Subsection (3) of that section sets out the notice requirements here: the notice must be in writing and given at least 1 year but no more than 2 years before the date specified in the notice on which the tenant intends to quit the land.

458. Subsection (4) of new section 8G states that the landlord may also terminate the tenancy but such termination can only take effect on the expiry of the repairing period. Subsection (5) then sets out the notice requirements here, including that the landlord must give reasons for terminating the tenancy at this point.

459. Subsection (6) prohibits the landlord from terminating the tenancy on the expiry of the repairing period on the grounds that the tenant is not farming the land in accordance with the rules of good husbandry. However the landlord may terminate the tenancy at this point if the tenant is in breach of another provision of the lease.

### *Section 95 – Repairing tenancies: fixed equipment*

460. Section 95 inserts new section 16B into the 2003 Act and makes provision for fixed equipment obligations under the lease. The dividing line provided by the duration of the repairing period is significant in determining parties' obligations.

461. Subsection (1) of section 16B of the 2003 Act provides that the parties must agree a schedule of fixed equipment which the landlord will provide to enable the tenant to maintain efficient production when the repairing period ends.

462. Subsections (2) and (3)> of section 16B state that the schedule must be agreed within 90 days of the tenancy commencing but it may be varied during the life of the lease.

463. Subsection (4) of section 16B provides that the cost of preparing the schedule falls in equal shares on the parties, unless otherwise agreed.

464. Subsection (5) of section 16B states that the tenant must, during the repairing period, provide such fixed equipment as will allow the tenant to maintain efficient production when the repairing period ends; and that the tenant must maintain, renew or replace any such fixed equipment, or that provided by the landlord under subsection (1)(a). But these are default obligations, and the parties may agree otherwise.

465. Subsection (6) of section 16B provides that after the repairing period ends, the landlord must renew and replace the fixed equipment in the schedule of condition where necessary due to fair wear and tear. It also places an obligation on the tenant to maintain fixed equipment after the repairing period ends, but only to the same state of repair as it was in when the repairing period ended (or, if it was improved, provided, renewed or replaced after that point, at the point it was so improved etc). Again, these are default obligations, and the parties may agree otherwise.

466. Subsections (8) and (9) of section 16B prevent any agreement between the landlord and tenant that provides that the tenant is to bear any expense of work that the landlord is required to execute to fulfil their own obligations under the lease, or which provides that the tenant is required to pay whole or part of any fire insurance premium for fixed equipment.

### *Section 96 – Repairing tenancies: resumption of land by landlord*

467. Section 96 inserts a new section 17A into the 2003 Act which prevents the landlord from resuming the land, or any part of it, during the repairing period and until five years after its end. At five years after the end of the repairing period, section 17 of the 2003 Act is applied for the purposes of resuming a repairing tenancy, as it applies in relation to LDTs and MLDTs.

### *Section 97 – Repairing tenancies: irritancy*

468. Section 97 inserts a new section 18B into the 2003 Act which provides that new section 18A of the 2003 Act, relating to irritancy of MLDTs, also applies to repairing tenancies throughout their duration. However subsection (2) qualifies this by providing that any attempt to irritate the lease for breach of the rules of good husbandry will have no effect during the repairing period.

### *Section 98 – Repairing tenancies: compensation*

469. Section 98 inserts a new section 59A into the 2003 Act which gives Scottish Ministers the power to make regulations to apply Part 4 of the 2003 Act – on compensation for improvements to a holding, as well as compensation for disturbance, diversification and other matters – to repairing tenancies, with appropriate modifications to those provisions for the discrete purposes of this new form of tenancy.

## *Chapter 3 – Tenant's Right to Buy*

### *Section 99 – Tenant's right to buy: removal of requirement to register*

470. Sections 24 to 28 of the 2003 Act require a tenant farmer with a 1991 Act tenancy (as defined in section 1(4) of the 2003 Act) to apply to the Keeper of the Registers of Scotland to register their interest in purchasing their holding in the Register of Community Interests in Land ("RCIL") before the tenant can exercise the pre-emptive right to buy. The provisions in section 99 amend Part 2 of the 2003 Act to remove this requirement for 1991 Act tenants to pre-register in the RCIL..

471. Section 99(2) of the Act repeals sections 24 and 25 of the 2003 Act so that tenants will no longer be required to register their interest in purchasing the land comprised in their lease with the Keeper.

472. Subsection (4) amends section 26 of the 2003 Act so that the 1991 Act tenant is no longer required to register interest in order to receive notice from the owner or creditor of their intention to sell the land or part of it. It also removes the requirement on the owner or creditor to inform the Keeper of their intention to sell the land or part of it. A new subsection (3) is inserted after section 26(2) of the 2003 Act which defines "tenant" for the purpose of Part 2 of the 2003 Act as meaning multiple tenants where there are multiple tenants and as not including a sub-tenant. This definition was previously contained in section 25(2) of the 2003 Act, which is repealed by section 99(2) of the Act.

473. Subsection (6) amends section 28(1) and (3) of the 2003 Act by removing references to land being registered under section 25. As section 25 is being repealed, these references are no longer applicable.

474. Subsection (7) repeals section 29(7) of the 2003 Act, removing the requirement on the tenant farmer to send a copy of any notice of intention to exercise the right to buy given under section 31 to the Keeper.

## *Chapter 4 – Sale Where Landlord in Breach*

### *Section 100 – Sale to tenant or third party where landlord in breach of order or award*

475. Section 100 inserts a new Part 2A into the 2003 Act. This enables the tenant to apply to the Land Court for an order for sale of the holding where the landlord is in breach of obligations under the tenancy and this is affecting the tenant's ability to farm in accordance with the rules of good husbandry.

476. Section 38A sets out the circumstances when the tenant can make an application to the Land Court for order for sale.

477. Subsections (1) and (2) of inserted section 38A provide that a tenant can apply to the Land Court for an order for sale if the landlord has failed to comply with a previous order by the Land Court under section 84(1)(b) of the 2003 Act to remedy a breach of obligations to the tenant, or failed to comply with an equivalent arbitral award. The breach in question must be material and the landlord must not have complied with the order or award by the date specified.

478. Inserted section 38A(4) states that the tenant must give notice of the application for the order for sale to the landlord and to any creditor who holds a heritable security over an interest in the land and to anyone else that the Scottish Ministers may prescribe by regulations.

479. Section 38A(5) states that, where a tenant acquired the pre-emptive right to buy under section 28 of the 2003 Act and this right to buy was subsequently extinguished, the tenant may not apply for an order for sale until after the period of 12 months has elapsed from the date the right to buy was extinguished.

480. Inserted section 38B sets out the test which the Land Court is to apply when deciding an application for an order for sale.

481. Subsection (1) of section 38B provides that if the landlord has failed to comply with the order or award issued by the Land Court, then the Land Court has the power to order the sale if it is satisfied that the breach is material; that the order or award has not been complied with within the specified period; that the breach is substantially and adversely affecting the tenant's ability to farm in accordance with the rules of good husbandry; that greater hardship would be caused by not making the order than by making it; and that in all circumstances the order for sale is appropriate.

482. Subsection (2) of section 38B provides the Land Court with the power to make an order for sale despite the fact that the owner has a legal incapacity or disability (for instance, minority or a mental disorder) that would affect the owner's ability to transfer ownership.

483. Subsection (3) states that where the owner is already obliged to transfer ownership to a person other than the tenant – for example, where missives have already been concluded for the sale of the land – the Land Court may not make an order for sale. However, the Land Court can make the order for sale where the transfer is one set out in subsection (4) and where this transfer is or forms part of a scheme or arrangement, or a series of transfers, and the main purpose or effect of which, or one of the main purposes or effects, is the avoidance of the making of an order for sale. The transfers set out in subsection (4) are: if the transfer is not for value; if the transfer is between spouses after they have ceased living together; if the transfer is between companies in the same group; if the transfer is as a result of assumption, resignation or death of one

or more of the partners in a partnership, or the assumption, resignation or death of one or more of the trustees of a trust.

484. Subsection (5) states when it is considered that companies form part of the same group for the purposes of subsection (4)(c).

485. Subsection (6) states that the Land Court must give notice of the order for sale to the Keeper of the Registers of Scotland, the landlord, the owner, any creditor, and any other person whom the Scottish Ministers may prescribe by regulations.

486. Subsection (7) states that the definition of good husbandry, for the purposes of subsection (1)(b), is in schedule 6 of the Agriculture (Scotland) Act 1948.

487. Subsection (8) defines owner in this new Part of the 2003 Act as including persons in whom the land is vested for insolvency and for other purposes listed in paragraph (a), or for the purposes for which a person would be appointed as a judicial factor, under paragraph (b).

488. Inserted section 38C provides the Scottish Ministers with the power to make regulations prohibiting the transfer of ownership of the land which has been subject to an order for sale by the Land Court. These regulations may specify, among other things, exactly what transfers or dealings are allowable and which are prohibited, who is prohibited and for what period; and may also make provision for the inclusion and the removal of certain information in the deeds relating to the land.

489. Section 38D (1) provides that when an order for sale has been made by the Land Court, any pre-emption, redemption or reversion rights or any other rights deriving from any other option to purchase, exercisable over the land to which the order for sale relates, will be suspended from the date when the Land Court makes the order. These rights will be revived when the transfer of the land is completed, or if the transfer is not completed before the end of the period set out in subsection (2) – or, if the order for sale ceases to have effect, on the end of that period, or on the order ceasing to have effect, whichever occurs first. Subsections (4) and (5) of section 38D give the Scottish Ministers the power to make regulations to further provide for the suspension and revival of other rights in or over land in respect of which an order for sale has been made. The regulations may among other things specify the rights to which the regulations do and don't apply, the period that these rights are suspended for and the circumstances in which the rights are revived.

490. Section 38E(1) provides that, where the Land Court has ordered the sale of the land and where an appeal by the owner has been brought and dismissed, or the period in which to lodge an appeal has elapsed, the tenant has the right to buy the land.

491. Subsections (2) and (3) state that the tenant must give notice of intention to buy the land to the following people: the owner, the Land Court and the Keeper of the Registers of Scotland.

492. Subsection (4) states that this notice must be given within 28 days of the day after the appeal was dismissed or the day after the last day on which an appeal could be lodged.

493. Subsections (5) and (6) state that, if at any stage the tenant decides not to proceed with the purchase, notice must be given to the same group of people listed above. If the tenant does not give notice of intention to purchase within 28 days or if notice is given that the tenant does not wish to proceed, the tenant's right to buy is extinguished.

494. Inserted section 38F outlines the procedure for the tenant buying the land.

495. Subsection (2) requires the tenant to make an offer to buy the land at a price agreed between the tenant and the seller, or where no such agreement is available, at either the price assessed by an independent valuer or the price determined by an appeal against such an independent valuation. The tenant is not under any obligation to buy, if the parties do not agree on price or do not wish to appeal against the valuation. Under these

circumstances the tenant should give notice that they do not want to proceed with the purchase as specified under section 38E(5).

496. Subsections (3) and (4) state that the offer must specify the date of entry and the date of payment of the price, and when these dates should occur.

497. Subsection (5) states that the offer to buy may also include any conditions which are necessary or expedient to achieve completion of the transfer of the land.

498. Subsection (6) places an obligation on the seller to provide the tenant with the deeds and other documents that the tenant needs to complete title and transfer ownership of the land; and a consequent obligation to transfer title.

499. Inserted section 38G makes provision for the process for the appointment of the valuer and valuation of the land where the tenant and the landlord cannot agree a price.

500. Sections 33 to 36 of the 2003 Act deal with the appointment of a valuer and the valuation procedures in relation to a tenant's right to buy under Part 2 of that Act. These sections will apply, subject to certain modifications set out in section 38G, when the Land Court orders sale of the land, as outlined in inserted section 38B and the tenant exercises the right to buy.

501. Section 33 of the 2003 Act provides for the appointment of a valuer where a price is not agreed between a landlord and a tenant, section 34 provides for the procedure for the valuation of the land, and section 35 covers special provision where the buyer is a general partner in a limited partnership. These provisions will apply when the court orders sale of the land, with slight modifications as outlined in section 38G(2)(a) to (c). In particular section 33(5), which provides for the requirement of two valuers and an oversman, does not apply here.

502. Section 36 of the 2003 Act contains further provisions for valuation procedures and these are to apply when the court orders sale of the land, with modifications as outlined in subsection (2)(d). A new subsection is inserted after section 36(6) which states that, if the Land Court has made an order requiring the seller to complete the sale and the seller complies with this order but the tenant does not proceed with the purchase, the tenant is then liable for any expenses of the valuer met by the seller under section 36(5).

503. Section 37 of the 2003 Act, regarding appeals to the Lands Tribunal against valuation, and section 38, regarding referral of certain matters by the Lands Tribunal to the Land Court, apply when the court orders sale of the land, with modifications.

504. Inserted section 38H sets out the procedure if a seller fails to complete a transaction to transfer ownership of the land.

505. Subsections (1) and (2) provide that, if the seller has not, within the period fixed or agreed, supplied the tenant with the documents necessary to enable the tenant to complete the transfer of ownership, or has not concluded the missives or taken all the steps which the seller could reasonably have taken to conclude the missives, the tenant may under subsection (3) apply to the Land Court for an order directing the seller to carry out the necessary actions required to complete the sale, within such period as is specified by the order.

506. Subsection (4) provides the Land Court with the power to authorise its principal clerk to complete and deliver the necessary documents to enable the transfer of ownership if the seller does not comply with the order to conclude missives or transfer the ownership of land.

507. Inserted section 38I sets out the procedure if a tenant fails to complete a transaction to transfer ownership.

508. Subsections (1) and (2) provide that, if a tenant has not, within the period fixed or agreed, concluded the missives or taken all the steps which the tenant could reasonably

have taken in the time available to conclude the missives, the seller may under subsection (3) apply to the Land Court for an order directing the tenant to carry out the necessary actions required to complete the sale within such period as is specified by the order.

509. Subsection (4) provides that the tenant's right to buy is extinguished if the tenant fails to comply with an order by the Land Court to take the necessary steps to complete the transfer of ownership. Alternatively, if the Land Court has not issued an order for either party to conclude missives and they have not been concluded, either within a 12 month period from when the tenant first gave notice of intention to buy or within the extended period granted by the Land Court in response to an application by the tenant, then the tenant's right to buy would also be extinguished.

510. Inserted section 38J sets out the procedure for completion of sale to the tenant

511. Subsections (1) and (2) state that the price to be paid for the land should be made by the "final settlement date", which is a date that has been agreed or specified by an order of the Land Court.

512. Subsection (3) states that if, on the final settlement date, the seller is not able to transfer ownership of the land to the tenant, the price, or the sum fixed by the valuer, is to be entrusted to the Land Court, until either title is transferred, or the tenant gives notice that the tenant does not want to proceed with the transaction, or the Land Court orders its release.

513. Subsection (4) provides that, if the tenant has not paid the price for the land by the final settlement date, then the right to buy is extinguished except in circumstances where the seller has been unable to transfer title to the tenant by the final settlement date.

514. Subsection (5) provides that any security that burdened the land prior to the transfer of ownership to the tenant ceases to have effect after the transfer of ownership has occurred and title to the land is registered in the Land Register of Scotland.

515. Subsections (7) and (8) provide that the tenant is required to pay any outstanding amount due to any creditors who have an interest in the land, and this amount will be deducted from the price the tenant gives to the seller.

516. Subsection (9) provides that the validity of a title passed to a tenant under new Part 2A is unaffected by any legal incapacity or disability of the previous owner.

517. Inserted section 38K sets out the effect of extinguishing the right to buy.

518. Where the tenant's right to buy is extinguished under the new order for sale provisions, the tenant may exercise the pre-emptive right to buy under section 28 of the 2003 Act, providing that 12 months has elapsed since the right to buy is extinguished under the new order for sale provisions.

519. Inserted section 38L outlines the circumstances in which sale to a third party may arise.

520. Subsections (1), (2) and (3) provide that, where a tenant's right to buy has been extinguished, the tenant may within 28 days of that date make an application to the Land Court to order sale of the land on the open market.

521. Subsection (4) requires the tenant to give notice of the application for sale to the owner, any creditor with an interest in the land and any other persons that the Scottish Ministers prescribe by regulations.

522. Subsection (5) gives the Land Court the power, upon consideration of all the circumstances, to vary order the sale to allow sale of the land on the open market.

523. Subsection (6) states that the original order for sale ceases to have effect where no application has been made by the tenant under subsection (2) for the Land Court to

vary the order for sale to allow sale of the land on the open market, or where such an application has been made and is refused by the Land Court.

524. Inserted section 38M outlines the procedure for sale to a third party.

525. Subsection (1) enables the Scottish Ministers to make further provision by regulations about the sale of land on the open market to a third party. These regulations could make provision to prevent the sale of the land on the open market to the tenant or a family member of either the tenant or the landlord. Subsection (2) sets out a list of the matters that these regulations may make provision for.

526. Inserted section 38N sets out certain restrictions on notices to quit for a period of 10 years following the sale of the land to a third party.

527. Subsection (3)(a) prevents the landlord from issuing an incontestable notice to quit in the two circumstances set out in section 22(2)(a) and (b) of the 1991 Act. The first is where the notice to quit relates to permanent pasture which has traditionally been let annually for seasonal grazing or kept in the landlord's possession and which has been let for a definite and limited period as arable land. The second circumstance is where the notice to quit is given on the ground that the land is required for a use, other than agriculture, for which planning permission requires to be obtained or has been obtained.

528. Subsection (3)(b) modifies the incontestable notice to quit provision in section 22(2)(c) of the 1991 Act so that an incontestable notice to quit is possible where the Land Court, on an application by the new landlord, grants a certificate of bad husbandry.

529. Subsection (5) inserts new subsections into section 26 of the 1991 Act to provide that where the tenant's failure to farm in accordance with the rules of good husbandry is attributable to a material breach of the former landlord's obligations, which were the basis for the sale order, then no certificate of bad husbandry can be given.

530. Subsection (6) amends section 43 of the 1991 Act to provide that if a notice to quit on the permanent pasture ground is upheld by the Land Court then compensation continues not to be payable for disturbance of that.

531. Inserted section 38O makes provision for payment by the tenant or third party who has bought the land to the former owner where the land is sold within 10 years.

532. Subsections (1) and (2) provide that if, before the end of 10 years after acquiring the land following an order for sale by the Land Court, the tenant or third party who bought the land on the open market (the original buyer) sells the land on at a price higher than the price paid to the person from whom the land was bought (the original seller), then the original buyer must pay to the original seller a proportion of the difference between what the original buyer paid the original seller for the land and the price at which the original buyer subsequently sells the land.

533. Subsection (3) sets out what the proportion of the difference that must be paid to the original seller should be. This percentage varies depending at what stage within the 10 year period the land is sold.

534. Subsection (4) provides the Scottish Ministers with the power to make further provision by regulations about the amount that the original buyer must make to the original seller. Subsection (5) makes it clear that this includes circumstances where only part of the land bought under the order for sale is subsequently sold or circumstances where no payment at all is required. The regulations may also exclude from this "claw-back" calculation any increase in the value of the land, as subsequently sold, which is due to specified factors: for instance, improvements which were carried out by the tenant.

535. Inserted section 38P sets out compensation provisions.

536. Subsection (1) provides that any person who has incurred a loss or expense as a result of complying with their obligations under Part 2A of the 2003 Act (as inserted by

section 100 of this Act), or as a result of the failure of the tenant to complete the purchase after giving notice of intention to buy the land, is entitled to recover compensation from the Scottish Ministers.

537. Subsection (2) provides the Scottish Ministers with the power to make, by regulations, provision about, among other things, what losses and expenses will be covered by the compensation provisions and the amount of compensation payable.

538. Subsection (3) provides for a reference to be made to the Lands Tribunal for Scotland on whether and what amount of compensation is payable.

## *Chapter 5 – Rent Review*

### 1991 Act tenancies: rent review

539. Section 13 of the 1991 Act provides the basis for the fixing of rent for a 1991 Act tenancy (as defined in section 1(4) of the 2003 Act).

540. Section 101 amends section 13 of the 1991 Act by introducing a new schedule, schedule 1A of the 1991 Act, which sets out the new rent review procedures for 1991 Act tenancies.

541. Paragraph 1 of schedule 1A sets out the initiation process of the rent review notice.

542. Sub-paragraphs (1) and (2) set out that the notice must be in writing and can be initiated by either the tenant or the landlord.

543. Sub-paragraph (3) states that a notice initiating a review of rent is called a "rent review notice".

544. Sub-paragraph (4) states that the provisions are applicable to all 1991 Act tenancies. This is any lease of an agricultural holding which was entered into before 27 November 2003, the date of the commencement of section 1 of the 2003 Act, or which was entered into in writing on or after that date but prior to the commencement of the tenancy and which expressly states that the 1991 Act is to apply in relation to the tenancy.

545. Paragraph 2 of schedule 1A sets out provisions for the form and content of the rent review notice.

546. Sub-paragraph (1) sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the holding, the current and proposed rent payable. The rent review notice also sets out the "rent agreement date" which is the date by which the landlord and tenant must agree the rent. Sub-paragraph (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.

547. Sub-paragraph (3)(a) sets out that the rent agreement date cannot fall earlier than 12 months or later than two years from the date on which the rent review notice is served.

548. Sub-paragraph (4) creates a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them.

549. Paragraph 3 of schedule 1A provides details around the timing of the rent review notice.

550. Sub-paragraph (1) provides that a rent review notice can be served only if the rent agreement date is three years after the beginning of the tenancy; three years after the date from which any previous variation in rent took effect; and three years after the date of any ruling by the Land Court that the rent should remain unchanged.

551. Sub-paragraph (2) lists a number of exceptions where a rent review can take place within three years from a date on which a previous variation in rent took effect. These are variations of rent under section 14, 15(1) or 31 of the 1991 Act. It also includes:

variations arising either under the exercise or revocation of an option to tax under schedule 10 of the Value Added Tax Act 1994 or from a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.

552. Paragraph 4 of schedule 1A details the circumstances when a rent review notice can be withdrawn. When a notice has been served and no agreement has been reached between the parties as to the new rent payable, and the Land Court has not made a determination as to what rent is payable, then the person who served the rent review notice may withdraw it, but only with the consent of the other party.

553. Paragraph 5 of schedule 1A states that a rent review notice ceases to have effect on the earliest of the following: the date it is withdrawn; the date the parties reach agreement as to rent payable; the day after the rent agreement date if there is no referral made to the Land Court or, if a referral is made to the Land Court, the date on which it determines what the rent payable should be.

554. Paragraph 6 of schedule 1A provides for the ability of parties to refer the determination of the rent to the Land Court after a rent review notice has been issued and where they cannot reach agreement.

555. Sub-paragraphs (2) and (3) state that either party can refer the matter to the Land Court upon receipt of the rent review notice but may not do so after the rent agreement date.

556. Paragraph 7 of schedule 1A sets out the powers of the Land Court upon referral by either the tenant or landlord for determination of the rent.

557. Sub-paragraph (2) states that upon referral to the Land Court, a determination can be made to either vary the rent payable or leave it unchanged.

558. Sub-paragraph (3) sets out the new rent review test whereby the Land Court determines a fair rent taking account of all the circumstances.

559. Sub-paragraph (4) sets out the specific factors that the Land Court must have regard to when determining the fair rent for the holding. These are the productive capacity of the holding, the rent at which surplus residential accommodation might be let on the open market, and the rent at which the landlord's fixed equipment and land, used for non-agricultural purposes, might be let on the open market.

560. Paragraph 8 states that the rent agreed by the tenant and the landlord, or as determined by the Land Court, if relevant, takes effect from the rent agreement date.

561. Paragraph 9 of schedule 1A creates a power for the Scottish Ministers, by regulations, to make further provision about how productive capacity is to be determined and which information should be provided to the Land Court to make such determination. These regulations are subject to the affirmative procedure.

562. Paragraph 10 of schedule 1A provides further detail on the definition of the surplus residential accommodation on the holding and what the Land Court needs to consider when determining it.

563. Sub-paragraph (1) states that residential accommodation on the holding is considered surplus if it exceeds the accommodation required for the standard labour requirement ("SLR") of the holding.

564. Sub-paragraph (6) provides a power for the Scottish Ministers, by regulations, to make provision about the SLR of the holding, including how the SLR is to be determined and what information is required from the parties to enable the Land Court to do this. These regulations are subject to the affirmative procedure.

565. Sub-paragraph (2) states that in determining whether the accommodation is surplus, the Land Court may take into account whether the SLR varies (to take account of seasonal

workers for example), and must disregard both the sole farmhouse occupied by the tenant and any accommodation that the tenant is prohibited from subletting, subject to sub-paragraph (3).

566. Sub-paragraph (3) provides that where, in the face of a prohibition against sub-letting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation by the Land Court, notwithstanding the prohibition.

567. Sub-paragraph (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing fair rent, the Land Court must take into account all the circumstances including the condition and location of the property. It must also take into account whether the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be. Where the accommodation is not currently let, the Land Court must disregard this fact.

568. Sub-paragraph (5) sets out that if, when determining fair rent, the Land Court has regard to the open market rent for surplus accommodation under paragraph 7(4)(b), then such accommodation is not also to be taken into account as fixed equipment or land under paragraph 7(4)(c).

569. Paragraph 11 of schedule 1A provides that, for the purposes of determining the open market rent for any surplus residential accommodation or any fixed equipment or land used for diversification for rent calculation purposes, "open market rent" means that which would be expected in an open market between a willing landlord and a willing tenant.

570. Paragraph 12 of schedule 1A gives the Land Court the power to phase in the rent over a 3 year period if the new rent is to be 30% or more higher, or 30% or more lower, than the current rent payable (the "original rent") and it considers that full payment of the rental increase or decrease would cause undue hardship to either the tenant or the landlord. For example, a phasing in of a rental increase would work as follows (if X is the difference between the new rent and the original rent)—

Year 1 – original rent plus 1/3 of X

Year 2 – original rent plus 2/3 of X

Year 3 – new rent (i.e. current rent plus X).

A phasing in of a rental decrease would work as follows (if X is the difference between the original rent and the new rent)—

Year 1 – original rent less 1/3 of X

Year 2 – original rent less 2/3 of X

Year 3 – new rent (i.e. current rent less X).

## Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review

### *Section 102 – Limited duration tenancies, modern limited duration tenancies and repairing tenancies: rent review*

571. Section 9 of the 2003 Act provides the basis for the fixing of rent for an LDT. Section 83 amends section 9 of the 2003 Act in relation to rent reviews for LDTs and also makes provision for the new letting vehicles MLDTs and repairing tenancies.

572. Subsection (2) amends section 9(A1) and (1) of the 2003 Act by including provision for MLDTs and, in relation to section 9(A1), repairing tenancies. The effect is that for

both these new tenancies, as well as LDTs, a purported term of the lease that states that a rent review may only be initiated by the landlord, or which states that the rent can only be increased, is void. For MLDTs, where the lease makes no provision for review of rent, then the rent due is to be reviewed and determined in accordance with section 9.

573. Subsection (2) also inserts new subsection (1A) into section 9 of the 2003 Act and this states that the rent payable under a repairing tenancy is to be reviewed and determined in accordance with section 9.

574. Subsections (2) to (8) of section 9 are replaced with new subsections (2), (3) and (4) by section 102(2)(c) of the Act. These state that the notice to review rent is called the "rent review notice" and can be initiated by either the landlord or the tenant in writing.

575. Subsection (3) inserts new sections 9A to 9C, after section 9, which set out the new rent review procedures for LDTs and MLDTs and repairing tenancies.

576. Inserted section 9A sets out requirements for the form and content of the rent review notice. Subsection (1) provides that the rent review notice must be dated and sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the land, the current and proposed rent payable, and the date by which the landlord and tenant must agree the rent ("rent agreement date").

577. Subsection (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.

578. Subsection (3) provides a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them. These regulations are subject to negative parliamentary procedure.

579. Inserted section 9B sets out how the rent is to be determined.

580. Subsection (1) states that, on review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having particular regard to the productive capacity of the land, the rent at which surplus residential accommodation might be let, and the rent at which the landlord's fixed equipment or land which is used for non-agricultural purposes might be let.

581. Subsection (2) provides that for the purposes of determining the open market rent for any surplus residential accommodation or any fixed equipment or land used for diversification for rent calculation purposes, "open market rent" means that which would be expected in an open market by a willing landlord to a willing tenant.

582. Subsection (3) contains a power for the Scottish Ministers, by regulations, to make further provision about the productive capacity of land, including how it is to be calculated. These regulations are subject to affirmative parliamentary procedure.

583. Subsection (4) states that the rent determined is to be payable from the "rent agreement date" (as defined in section 9A(1)(e)).

584. Inserted section 9C explains what is meant by surplus residential accommodation and how this is to be determined.

585. Subsection (1) states that residential accommodation on land comprised in the lease of an LDT, an MLDT or a repairing tenancy is considered surplus if it exceeds the accommodation required for the standard labour requirement (SLR) of the land.

586. Subsection (2) states that in determining whether the accommodation is surplus, consideration may be given as to whether the SLR varies (to take account of seasonal workers for example), and both the sole farmhouse occupied by the tenant and any

accommodation that the tenant is prohibited from subletting by the terms of the lease or otherwise (subject to subsection (3)) must be disregarded.

587. Subsection (3) provides that where, in the face of a prohibition against subletting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation notwithstanding the prohibition on subletting.

588. Subsection (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing the fair rent, account must be taken of all the circumstances including the condition and location of the property. Where the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be, then this should also be taken into account. Where the accommodation is not currently let, this must be disregarded.

589. Subsection (5) provides that if, when determining fair rent, regard is given to the open market rent for surplus accommodation under section 9B(1)(b), then such accommodation is not also to be taken into account as fixed equipment or land under section 9B(1)(c).

590. Subsection (6) provides a power for the Scottish Ministers, by regulations, to make provision about the standard labour requirement of land comprised in the lease of an LDT, an MLDT or a repairing tenancy, including how the SLR is to be determined. These regulations are subject to affirmative parliamentary procedure.

## *Chapter 6 – Assignation of and Succession to Agricultural Tenancies*

### Assignation

### *Section 103 – Assignation of 1991 Act tenancies*

591. Section 103 makes provision about the persons to whom a 1991 Act tenancy may be assigned.

592. Section 10A of the 1991 Act makes provision for the assignation of 1991 Act tenancies. Under the current legislation, the tenant can assign the tenancy to any of the persons who would be entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964.

593. Section 103 amends section 10A of the 1991 Act by inserting a new subsection (1A), which extends the class of person that a tenancy can be assigned to. Subsection (3) of section 103 sets out the people to whom, under the new subsection (1A), the tenant can assign the tenancy. Those that are already entitled to be assigned the tenancy under the Succession Act as mentioned above still remain so, including cousins of the tenant. However, this Act extends the right to a number of additional people as set out in subsection (1A)(b) to (n).

594. Currently, under section 10A(3), the landlord can withhold consent to the proposed assignee, if there are reasonable grounds for doing so. Section 103(5) and (6) of the Act amends section 10A of the 1991 Act so that, while the landlord can still withhold consent for a person who is *not* a near relative if there are reasonable grounds, the Act limits the grounds for objecting to a near relative. The inserted subsection (3A) removes reasonable grounds as a valid reason for objection so that the only grounds on which a landlord can withhold consent to assignation to a near relative are the following: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, or that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

595. The inserted subsection (3B) provides that this last ground of objection does not apply where the person is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years of the date notice was given of the intention to assign. That person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

596. Subsection (6) inserts a new subsection (6) into section 10A of the 1991 Act to define "near relative" for the purposes of new subsections (3A) and (3B).

### *Section 104 – Assignation of limited duration tenancies*

597. Subsection (2) amends section 7 of the 2003 Act by inserting new subsections (3A), (3B) and (5A).

598. Currently, under section 7(3), the landlord can withhold consent to the proposed assignee of an LDT if there are reasonable grounds for doing so.

599. Section 104(2) amends section 7 of the 2003 Act so that, while the landlord can still withhold consent for a person who is *not* a near relative if there are reasonable grounds, the Act limits the grounds for objecting to a near relative. The inserted subsection (3A) removes reasonable grounds as a valid reason for objection so that the only grounds on which a landlord can withhold consent to assignation to a near relative are the following: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, or that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

600. The inserted subsection (3B) provides that this last ground of objection does not apply where the person is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years of the date notice was given of the intention to assign. The person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

601. Section 104(2)(c) inserts a new subsection (5A) into section 7 which defines "near relative" for the purposes of new subsections (3A) and (3B).

### *Section 105 – Assignation of modern limited duration tenancies*

602. Section 105 amends the 2003 Act by making provision for the assignation of MLDTs, inserting a new section 7B into the 2003 Act.

603. Subsection (1) of the inserted section 7B provides for an assignation of an MLDT tenancy if the landlord provides consent after receiving written notice from the tenant.

604. Subsection (2) provides that the tenant must provide the landlord with written notice of intention to assign an MLDT. The notice must contain details of the proposed assignee, the terms of the assignation and the date from which it is to take effect.

605. Subsections (3) and (4) provide that if the proposed assignee is not a near relative, then the landlord can withhold consent on any reasonable grounds. If the proposed assignee is a near relative then the landlord's grounds for objection are limited to three circumstances. These are the following: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, and that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

606. Subsection (5) provides that this last ground of objection does not apply where the person is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years. The person is also

required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

607. Subsection (6) requires the landlord to give written notice to the tenant indicating withholding of consent within 30 days of receiving the tenant's notice of intention to assign. If no such notice is provided by the landlord, it is taken that consent has been given.

608. Subsection (7) defines "good husbandry" by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

609. Subsection (8) defines "near relative" of the tenant for the purposes of subsection (4).

### *Section 106 – Assignation of repairing tenancies*

610. Section 106 makes provision for the assignation of repairing tenancies by inserting a new section 7D into the 2003 Act.

611. Subsections (1) to (6) of new section 7D make provision about assignation of a repairing tenancy during the repairing period, as defined in new subsection 5C of the 2003 Act. Under subsection (1) the tenant may assign the tenancy if the landlord provides consent after receiving notice from the tenant in accordance with subsection (2).

612. Subsection (2) provides that the tenant must provide the landlord with written notice of intention to assign a repairing tenancy. The notice must contain details of the proposed assignee, the terms of the proposed assignation and the date from which it is to take effect.

613. Subsection (3) provides that the landlord can withhold consent to the proposed assignee during the repairing period if there are reasonable grounds for doing so. In particular, the landlord may withhold consent if they are not satisfied that the proposed assignee would have the ability to pay the rent. They can also withhold consent if they are not satisfied that the proposed assignee would have the financial resources or skills or experience necessary to bring the land up to a standard where it could be farmed in accordance with the rules of good husbandry after the repairing period.

614. Subsection (4) provides that this last ground of objection (on skills or experience required) does not apply where the proposed assignee is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years. The proposed assignee must also have made arrangements for the holding to be farmed efficiently while the course is completed.

615. Subsection (5) requires the landlord to give written notice to the tenant indicating withholding of consent within 30 days of receiving the tenant's notice of intention to assign. If no such notice is provided by the landlord, it is taken that consent has been given.

616. Subsection (6) defines "good husbandry" by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

617. At the end of the repairing period, subsection (7) provides that the provisions contained in new section 7B of the 2003 Act, pertaining to the assignation of an MLDT, apply to the assignation of a repairing tenancy.

## Succession

### *Section 107 – Bequest of 1991 Act tenancies*

618. Section 11 of the 1991 Act sets out the procedure for bequest of 1991 Act tenancies, including entitlement and procedure for the landlord to object to the bequest. Under the current legislation, the tenant can bequeath the tenancy to any of the persons who would be entitled to succeed to their estate on intestacy by virtue of the Succession (Scotland)

Act 1964 and to the tenant's son or daughter-in-law. Section 107 amends section 11 by inserting a new subsection (1A), which expands the class of persons who are entitled to be the beneficiary of a bequest.

619. Section 107 sets out the persons to whom the tenant, under the new subsection (1A), can bequeath the tenancy. Those that are already entitled to be the beneficiary under the Succession Act as mentioned above still remain so, as do the tenant's son and daughter-in-law. However, this right has been extended to a number of additional people as set out in subsection (1A)(c) to (n).

### *Section 108 – Limited duration tenancies, modern limited duration tenancies and repairing tenancies: succession*

620. Section 108 outlines the provisions for succession to LDTs, MLDTs and repairing tenancies.

621. Subsection (1) amends section 16 of the Succession (Scotland) Act 1964 to make provision for the new letting vehicles, MLDTs and repairing tenancies.

622. Subsection (3) amends section 21 of the 2003 Act, making provision for MLDTs and repairing tenancies by inserting a new subsection (1A) which expands the class of persons who are entitled to be the beneficiary of a bequest of an LDT, an MLDT or a repairing tenancy.

## Landlord's objection to tenant's successor

### *Section 109 – Objection by landlord to legatee or acquirer on intestacy*

623. Section 109 sets out a new objection process by a landlord to a legatee or acquirer.

624. Section 11 of the 1991 Act sets out the provisions for bequest of leases for 1991 Act tenancies, including the objection process. Section 12 of the 1991 Act outlines the right of the landlord to object to an acquirer of a lease under a 1991 Act tenancy on intestacy.

625. Section 109 amends sections 11 and 12 of the 1991 Act by repealing the relevant subsections which deal with the objection process and by inserting, after section 12, new sections 12A, 12B and 12C, which outline the procedures that the landlord is required to follow if the landlord wishes to object to a legatee or an acquirer under a 1991 Act tenancy.

626. Inserted section 12A outlines the procedure when the landlord is objecting to a near relative (legatee or acquirer) of the deceased tenant. The Act limits the grounds that the landlord has when objecting to a near relative.

627. Subsections (1) and (2) provide that, if a legatee or an acquirer who is a near relative of the deceased tenant gives notice to the landlord of intention to take on the tenancy, the landlord is entitled, within one month, to serve a counter-notice to that person stating that the landlord objects to receiving the person as a tenant under the lease.

628. Subsection (3) states that the landlord's grounds of objection to a near relative are limited to three circumstances. The three grounds available to the landlord for objection are: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, or that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

629. Subsection (4) states that this last ground of objection does not apply where the person is engaged in a course of relevant agricultural training, or will begin such training before the end of the period of six months beginning with the date on which notice was given to the landlord of the acquisition, and also states that the training must be completed

within four years of that date. That person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

630. Subsection (5) provides that the landlord has one month after serving the counter-notice to apply to the Land Court for an order, in the case of a legatee, declaring the bequest to be null and void or, in the case of an acquirer, terminating the lease.

631. Subsection (6) states that, if any of the grounds of objection available to the landlord are established to the satisfaction of the Land Court, the Court is required to make an order, in the case of a legatee, declaring the bequest to be null and void and, in the case of an acquirer, terminating the lease, effective from either Whitsunday or Martinmas, as the court specifies.

632. Subsection (7) provides that, if the grounds of objection are not found, the Land Court must make an order declaring that the legatee or the acquirer is the new tenant under the lease and the lease is binding on the landlord from the date of death of the deceased tenant.

633. Subsection (8) states that, where the landlord does not make such an application to the Land Court within the one month period, the counter-notice becomes invalid and the lease is binding on the landlord and the legatee or acquirer from the date of the deceased tenant's death.

634. Section 12B sets out the procedure for objection by the landlord when the legatee or the acquirer is not a near relative of the deceased tenant.

635. Subsections (1) and (2) provide that, if a legatee or an acquirer who is not a near relative of the deceased tenant gives notice to the landlord of intention to take on the tenancy, the landlord is entitled, within one month, to serve a counter-notice to that person stating that the landlord objects to receiving the person as a tenant under the lease. The landlord has the power in the case of a legatee to declare the bequest to be null and void, and, in the case of an acquirer, to terminate the lease with effect from Whitsunday or Martinmas as the landlord specifies, but which must be at least one year and not more than two years from the date of the counter-notice.

636. Subsection (3) provides that the legatee or acquirer may make an appeal to the Land Court, within one month of receiving the counter-notice.

637. Subsections (4) and (5) state that if the legatee or acquirer can establish on any reasonable ground, to the satisfaction of the Land Court, why the bequest should not be null and void or why the lease should not be terminated, the Land Court must make an order quashing the counter-notice. If not, the Land Court must make an order confirming the counter-notice.

638. Inserted section 12C sets out supplementary provisions for landlord's objection.

639. Subsections (1) and (2) provide that the legatee or acquirer is to have possession of the holding, pending the outcome of any objection by the landlord under section 12A or 12B. The legatee or the acquirer must have received consent from the executor and there must be no order from the Land Court directing otherwise.

640. Subsection (3) provides that, in the case of a legatee, if the bequest is declared null and void, the right to the lease is to be treated as part of the intestate estate of the deceased tenant in accordance with the Succession (Scotland) Act 1964.

641. Subsection (4) provides that, in the case of an acquirer, if the lease is terminated, that termination is to be treated as termination of the acquirer's tenancy of the holding for the purposes of the compensation provisions in Parts 4 and 5 of the 1991 Act. Subsection (5) also states that the acquirer is not entitled to compensation for disturbance.

642. Subsection (5) of section 109 of the Act repeals section 25 of the 1991 Act relating to the termination of tenancies acquired by succession. The ability of the landlord to object

to an incoming tenant who has succeeded to the tenancy on the death of the previous tenant is replaced by the objection procedure in new sections 12A to 12B. Part 4 of schedule 2 of the Act also contains other amendments and repeals consequential on this change, including the repeal of schedule 2 of the 1991 Act (which contained the grounds on which a landlord could object to a near relative under section 25).

## *Chapter 7 – Relinquishing and Assignation of 1991 Act Tenancies*

### *Section 110– Tenant's offer to relinquish 1991 Act tenancy*

643. Section 110 inserts a new Part 3A into the 1991 Act to provide for a process whereby a 1991 Act tenant can relinquish their tenancy to the landlord in exchange for compensation or, if the landlord does not buy them out, can assign the tenancy to a new entrant or progressing farmer for the tenancy's market value.

644. New section 32A of the 1991 Act sets out that the provisions of the new Part 3A are to apply to those 1991 Act tenancies where the tenant wishes to quit the tenancy before the date by which the tenancy could otherwise be brought to an end by notice of intention to quit or, failing which, assign their tenancy as above.

645. Section 32B gives the Scottish Ministers power to make regulations to define a new entrant and a progressing farmer for the purposes of this new process. These regulations are subject to negative parliamentary procedure.

646. Section 32C provides that a tenant can serve the landlord with a "notice of intention to relinquish", which says that the tenant will relinquish the tenancy if the landlord pays compensation as calculated under this new process (in section 32L). The tenant must send a copy of the notice to the Tenant Farming Commissioner (established by Part 2 of the Act) at the same time as serving it on the landlord.

647. Section 32D enables Ministers to make regulations about the form and content of notices of intention to relinquish. Subsection (2) gives examples of what these regulations might cover. These regulations are subject to negative parliamentary procedure.

648. Section 32E sets out circumstances in which a tenant may not serve a notice of intention to relinquish. These include where the tenant has already served a notice of intention to quit; where the tenant has not complied with written demands to pay rent or remedy breaches; where the landlord has already served an incontestable notice to quit; and where the landlord has served a contestable notice to quit that is still being considered by the Land Court or has been consented to by the Land Court (or in equivalent appeal situations).

649. Section 32F sets out some restrictions on a landlord's ability to issue a notice to quit once the tenant has issued a notice of intention to relinquish. The restrictions apply until the tenancy is terminated under Part 3A or until the window within which the tenant can assign the tenancy under this Part has expired. A landlord may still issue an incontestable notice to quit during this period on grounds that are due to failings on the part of the tenant.

650. Section 32G, subsections (1) to (3) provide that within 14 days of the notice to relinquish being served on the tenant, the Tenant Farming Commissioner must appoint a suitable person to calculate the amount of compensation payable by the landlord to the tenant as a result of the tenant quitting their tenancy. Ministers may specify a different period by regulations subject to negative parliamentary procedure.

651. Subsection (4) provides that the valuer who will calculate the compensation due to the tenant must be suitably qualified and independent of both the tenant and the landlord.

652. Subsection (6) requires the Tenant Farming Commissioner to give written notice to the tenant and the landlord of the name and address of the valuer appointed.

653. Section 32H sets out the objection process in respect of the valuer appointed by the Tenant Farming Commissioner.

654. Subsection (2) provides that either the tenant or the landlord may object to the valuer on the grounds that the valuer is not independent of either party or does not have the necessary qualifications, knowledge and experience to carry out the valuation.

655. Subsection (3) enables either the tenant or the landlord to apply to the Land Court to appoint an alternative valuer to the one appointed by the Tenant Farming Commissioner.

656. Subsection (4) states that either party has 14 days from the date of the Tenant Farming Commissioner's notice under section 32G(6) and must state the ground of objection to the valuer. They may propose the name of an alternative valuer in their application.

657. Subsection (5) and (6) state that the Land Court may reject the objection or appoint an alternative valuer and that the Court's decision is final.

658. Section 32I states that the tenant is liable for the costs of the valuer, whether the valuer is appointed by the Tenant Farming Commissioner or the Land Court. In cases where the valuer has been appointed by the Tenant Farming Commissioner, and these expenses have been met by the Commissioner, they are entitled to recover these expenses from the tenant.

659. Section 32J sets out how the valuer must assess the value of the holding: the valuation must include both the value of the land as if it was sold with vacant possession and the value of the land as if it was sold with the sitting tenant. The valuer must also assess the amount of compensation that would be due to the tenant at waygo, and the amount of compensation that would be due to the landlord for dilapidations.

660. Subsection (2) sets out that in assessing the value of the land the valuer must have regard to the value that would be likely to be agreed between a reasonable seller and a reasonable buyer and sets out a number of things that the valuer should and should not take into account in calculating the valuation.

661. Subsection (5) enables Scottish Ministers by regulations to add, remove or vary the description of a matter which the valuer must take account of or not take account of, when assessing the value of the land. These regulations are subject to affirmative parliamentary procedure.

662. Section 32K makes further provision on the valuation process, stating that for the purposes of carrying out their work, the valuer may enter onto the land; make any reasonable request of the landlord and tenant; and may invite them to make written representations about the assessment.

663. Section 32L sets out the step-by-step calculation for how the compensation payable by the landlord to the tenant is to be assessed by the valuer, if the landlord accepts the notice of intention to relinquish. This is: 50% of the difference in value between the land if vacant and the land with the sitting tenant; plus the compensation the tenant would be entitled to at waygo; minus any compensation the landlord is entitled to for dilapidations.

664. Section 32M details the "notice of assessment" which the valuer must prepare and serve on the landlord and tenant.

665. Subsections (1) and (2) provide that the valuer must complete the valuation within eight weeks of being appointed and serve notice in writing to both the tenant and the landlord.

666. Subsections (3) to (6) state that this notice of assessment must set out the findings of the valuation including how the valuer arrived at the values and amounts stated, and any other information which the valuer considers appropriate.

667. Subsection (7) states that a copy of the notice of assessment must be sent to the Tenant Farming Commissioner.

668. Section 32N sets out the process for appealing to the Lands Tribunal against the valuer's assessment.

669. Subsections (1) and (2) state that either party may appeal to the Lands Tribunal against a notice of assessment, stating what the grounds of appeal are, within 21 days of being served the notice of assessment.

670. Subsection (3) states that the Lands Tribunal may reassess the value or amount of compensation calculated by the valuer and may determine the amount payable by the landlord to the tenant if the landlord were to accept the tenant's notice of intention to relinquish.

671. Subsections (4) and (5) provide that as part of the appeal proceedings the following people are entitled to be heard: the owner of the land, any creditors in standard securities, and the valuer.

672. Subsections (6) and (7) state that the Lands Tribunal is to give written reasons for its decision and that its decision is final.

673. Section 32O requires the Lands Tribunal to refer to the Land Court any issue of law which arises during an appeal which may competently be determined by that Court, unless it considers it inappropriate to make such a reference.

674. Section 32P sets out the process for withdrawing a notice of intention to relinquish.

675. Subsections (1) and (2) allow a tenant to withdraw their notice of intention to relinquish at any time up until a) 35 days from the date the valuer provided their assessment, or b) if either the tenant or landlord appealed the valuation, then 14 days from the Lands Tribunal's decision on the appeal.

676. Subsection (3) requires that in order to withdraw their notice of intention to relinquish, the tenant must give written notice of such withdrawal to the landlord, and send copies to the Tenant Farming Commissioner and to the valuer.

677. Subsection (4) provides that where the tenant withdraws their notice of intention to relinquish, and a valuer has already been appointed by the Tenant Farming Commissioner, then the valuer's appointment comes to an end. If no valuer has been appointed at the time of withdrawal then none need be appointed.

678. Section 32Q sets out the process involved where the landlord wishes to accept the notice of intention to relinquish.

679. Subsections (2) to (7) specify that if the landlord wishes to proceed with buying out the tenant's interest, they must send the tenant a "notice of acceptance" within 28 days of the expiry of the tenant's option to withdraw the notice of intention to relinquish. The notice, a copy of which must be sent to the Tenant Farming Commissioner, must state that the landlord will pay the tenant the sum calculated by the valuer (or, as the case may be, determined by the Lands Tribunal), which must be paid within six months of the expiry of the tenant's option to withdraw, in exchange for the tenant quitting the tenancy. Under subsections (2)(b) and (5), the landlord must pay the compensation within six months of the expiry of the tenant's option to withdraw the notice to relinquish.

680. Subsection (8) gives Ministers a power to make regulations about the form and content of the landlord's notice of acceptance. These regulations are subject to negative parliamentary procedure.

681. Section 32R, subsections (1) and (2) provide that, if the landlord does not wish to buy out the tenant's interest, the landlord may serve the tenant a "notice of declinature",

within 28 days of the expiry of the tenant's option to withdraw the notice of intention to relinquish.

682. Subsection (3) requires the landlord to send a copy of the notice to the Tenant Farming Commissioner and the valuer, if appointed.

683. Subsection (4) states that following the serving of the notice of declinature, if a valuer has been appointed, the valuer's appointment comes to an end; and if none has been appointed then none need be appointed.

684. Section 32S, subsections (1) and (2) enable the landlord to withdraw their notice of acceptance within a specified period, by serving a "notice of withdrawal" in writing to the tenant.

685. Subsection (3) requires the notice to be copied to the Tenant Farming Commissioner.

686. Subsection (4) provides that if the landlord withdraws in this way the tenant is entitled to recover from the landlord any loss or expense incurred because of action the tenant took based on having received the landlord's notice of acceptance.

687. Section 32T provides that where the landlord does pay the compensation within six months of the period specified in section 32P(5) then the tenancy comes to an end at the end of that six-month period or on such earlier date as both parties agree. Subsection (3) disapplies the notice to quit provisions of the 1991 Act here. Subsection (4) confirms that any other compensation or payment to which the parties may be entitled that is not mentioned in section 32I(1)(b) is preserved despite the payment of the compensation figure under section 32Q(2)(b).

688. Section 32U, subsections (1) and (2) state that if the landlord declines the notice to relinquish, fails to accept it within the specified period, or accepts it and fails to pay the compensation required within the specified period, then the tenant has one year to assign the tenancy.

689. Section 32V applies section 10A of the 1991 Act (which deals with lifetime assignation) with modifications for the particular circumstances of Part 3A. The modification of subsection (3) of section 10A of the 1991 Act has the effect that the landlord may withhold consent to the proposed assignee if the person is not a new entrant or progressing in farming or on other reasonable grounds.

690. The modification comprised in subsection (3A) of section 10A provides that 'reasonable grounds' include where the landlord is not satisfied that the proposed assignee has the necessary financial resources, or the landlord is not satisfied that the proposed assignee has the skills or experience needed, in order to farm the land in accordance with the rules of good husbandry.

691. The modification comprised in subsection (3B) states that if the proposed assignee is a new entrant then the landlord cannot object on the ground that the proposed assignee lacks skills or experience provided the new entrant is on, or shortly to begin, relevant training, and has arranged for the land to be farmed efficiently until they have completed their training.

692. Section 32W sets out where the definitions of each of the key terms used in these provisions can be found.

### *Section 111 – Tenant's offer to relinquish 1991 Act tenancy: consequential modifications*

693. Section 111 makes consequential modifications to the 1991 and 2003 Acts in light of new Part 3A of the 1991 Act. In particular, new section 74A is inserted into the 2003 Act by section 111(4) of the Act. This provides that the Scottish Ministers may make regulations to disapply the new Part 3A process to tenants in certain types of partnership, such as limited partnerships; to allow general partners in certain types of

limited partnership to be treated as if they were a tenant under the new Part 3A process; and to apply this new process to tenants in certain types of partnership with appropriate modifications. These regulations are subject to affirmative parliamentary procedure.

## *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.

## *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.

### *Section 120 – Rent increase for certain improvements by landlord*

752. Section 120(1) to (3) amends section 15 of the 1991 Act by inserting a new subsection (1)(d), which enables a landlord to increase the rent prior to the next rent review for improvements he has undertaken by serving notice on the tenant within six months of the completion of the improvement if, upon receipt of the landlord improvement notice, the tenant does not object to the improvement, or, if the tenant does object, the Land Court approves the improvement.

753. Section 120(4) to (6) amends section 10 of the 2003 Act by inserting a new subsection (1)(d), which enables a landlord to increase the rent prior to the next rent review for improvements he has undertaken by serving notice on the tenant within six months of the completion of the improvement if, upon receipt of the landlord improvement notice, the tenant does not object to the improvement, or, if the tenant does object, the Land Court approves the improvement.

## *Chapter 10 – Diversification*

### *Section 121 – Use of land for non-agricultural purposes: objection to notice of diversification*

754. Section 121 amends section 40 of the 2003 Act on diversification – that is, non-agricultural use – of 1991 Act tenancies, LDTs, MLDTs and repairing tenancies (and section 39 of the 2003 Act is amended by schedule 2 of the Act to insert reference to MLDTs and repairing tenancies). New subsection (5A) of section 40 (as inserted by section 121(2)(b) of the Act) provides that where the landlord objects to the tenant's notice of diversification, the land may only be used according to the purpose specified in the notice if the landlord withdraws the objection, does not go to Land Court for the objection to be upheld under new section 40A, or the Land Court has determined that the objection is unreasonable under section 41 of the 2003 Act. New subsection (5A) also provides that in these circumstances the use of the land by the tenant is subject to any reasonable conditions imposed by the landlord or, as the case may be, the Land Court.

755. New subsection (5B), as inserted by section 121(2)(b) of the Act, makes provision for the date when the diversified use can begin. New subsection (14), as inserted by section 121(2)(c), provides that where the landlord withdraws the objection before the landlord's window for proceeding to the Land Court under section 40A has expired, then the landlord must notify the tenant in writing of the withdrawal, but can impose reasonable conditions at that point in relation to the use of the land for the non-agricultural purpose.

756. New section 40A, inserted by section 121(3) of the Act, provides that where the landlord gives notice of an objection under section 40(11)(a) of the 2003 Act, the landlord may apply to the Land Court within 60 days of the giving of the notice of the objection for a determination that it is reasonable. The objection ceases to have effect if the landlord does not apply to the Land Court in this way or if the notice of objection is withdrawn within 60 days of the notice of objection being given.

### *Section 122 – Use of land for non-agricultural purposes: requests for information*

757. Section 122 amends section 40 of the 2003 Act separately to provide that where the landlord has made a request for information about the intended new non-agricultural use of the land, or the finance or management of the business, or other relevant information as specified in section 40(9)(a)(i) to (iii) of the 2003 Act, the new non-agricultural use may begin 70 days from the date the landlord requests that information. Under subsection (6) of section 40, as amended by section 122(2)(b) of the Act, the landlord has 30 days (from the date the tenant gave the notice of diversification to the landlord) to make a single request for the information.

## *Chapter 11 – Irritancy for Non-Payment of Rent*

### *Section 123 – Irritancy for non-payment of rent*

758. Section 123 amends section 18 of the 2003 Act by providing that an SLDT or an LDT cannot be irritated for non-payment of rent unless the landlord has given the tenant a written notice to pay the rent and the tenant has not done this within two months of the date of the demand.