



# Land Reform (Scotland) Act 2016

## 2016 asp 18

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th March 2016 and received Royal Assent on 22nd April 2016**

An Act of the Scottish Parliament to make provision for a land rights and responsibilities statement; to establish the Scottish Land Commission, provide for its functions and the functions of the Land Commissioners and the Tenant Farming Commissioner; to make provision about access to, and provision of, information about owners and controllers of land; to make provision about engaging communities in decisions relating to land; to enable certain persons to buy land to further sustainable development; to make provision for non-domestic rates to be levied on shootings and deer forests; to make provision about the change of use of common good land; to make provision about the management of deer on land; to make provision about access rights to land; to amend the law on agricultural holdings to provide for new forms of agricultural tenancy, to remove the requirement to register before tenants of certain holdings can exercise a right to buy, to provide a new power of sale where a landlord is in breach of certain obligations, to provide about rent reviews, to expand the list of the persons to whom holdings can be assigned or bequeathed and to whom holdings can be transferred on intestacy and to make provision about landlords' objections to such successor tenants, to provide for certain holdings to be relinquished where landlords agree or assigned to persons new to or progressing in farming, to provide for a 3 year amnesty period in relation to certain improvements carried out by tenants, and to provide for notice of certain improvements proposed by landlords; and for connected purposes.

### PART 1

#### LAND RIGHTS AND RESPONSIBILITIES STATEMENT

##### **1 Land rights and responsibilities statement**

- (1) The Scottish Ministers must prepare and publish a land rights and responsibilities statement.
- (2) A “land rights and responsibilities statement” is a statement of principles for land rights and responsibilities in Scotland.
- (3) In preparing the statement, the Scottish Ministers must have regard to the desirability of—

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- (a) promoting respect for, and observance of, relevant human rights,
  - (b) promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant,
  - (c) encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998),
  - (d) furthering the reduction of inequalities of outcome which result from socio-economic disadvantage,
  - (e) supporting and facilitating community empowerment,
  - (f) increasing the diversity of land ownership, and
  - (g) furthering the achievement of sustainable development in relation to land.
- (4) For the purposes of subsection (3)(a)—
- (a) “relevant human rights” means such human rights as the Scottish Ministers consider to be relevant to the preparation of the statement, and
  - (b) in considering what human rights are relevant human rights, Ministers may consult the Scottish Commission for Human Rights and such other persons or bodies as they consider appropriate.
- (5) For the purposes of subsection (3)(b), “internationally accepted principles and standards for responsible practices in relation to land” include the principles and standards contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security issued by the Food and Agriculture Organization of the United Nations and endorsed by the Committee on World Food Security on 11 May 2012.
- (6) In this section “human rights” means—
- (a) the Convention rights (within the meaning of section 1 of the Human Rights Act 1998), and
  - (b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom, including the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 subject to—
    - (i) any amendments in force in relation to the United Kingdom for the time being, and
    - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

**Commencement Information**

**II** S. 1 in force at 1.10.2016 by S.S.I. 2016/193, reg. 2(2)

**2 Publication and review of land rights and responsibilities statement**

- (1) The Scottish Ministers must publish the first land rights and responsibilities statement and lay it before the Scottish Parliament before the end of the period of 12 months beginning with the day on which this section comes into force.
- (2) Before complying with subsection (1), the Scottish Ministers must publish a draft of the statement and consult such persons as they consider appropriate.

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- (3) The Scottish Ministers must lay before the Scottish Parliament a report setting out—
  - (a) the consultation process undertaken in order to comply with subsection (2), and
  - (b) the ways in which views expressed during that process have been taken account of in preparing the statement (or stating that no account has been taken of such views).
- (4) The Scottish Ministers must review the first statement before the end of the period of 5 years beginning with the day on which the Scottish Ministers published the statement.
- (5) In carrying out the review of the statement, the Scottish Ministers must consult such persons as they consider appropriate.
- (6) If, following the review under subsection (4), the Scottish Ministers consider that it is not appropriate to prepare a revised statement, they must lay before the Scottish Parliament a report setting out—
  - (a) the consultation process undertaken in order to comply with subsection (5), and
  - (b) the reasons why they consider that it is not appropriate to prepare a revised statement.
- (7) If, following the review under subsection (4), the Scottish Ministers consider that it is appropriate to prepare a revised statement, they must—
  - (a) publish the revised statement and lay it before the Scottish Parliament, and
  - (b) lay before the Scottish Parliament a report setting out—
    - (i) the consultation process undertaken in order to comply with subsection (5), and
    - (ii) the reasons why they consider that it is appropriate to prepare a revised statement.
- (8) The Scottish Ministers must review the statement, or revised statement, before the end of each period of 5 years beginning with the day on which they last laid before the Scottish Parliament the report under subsection (6) or, as the case may be, (7)(b).
- (9) Subsections (5) to (7) apply to the review of a statement, or revised statement, under subsection (8) as they apply to the review of the first statement under subsection (4).

#### Commencement Information

**I2** S. 2 in force at 1.10.2016 by S.S.I. 2016/193, reg. 2(2)

VALID FROM 01/10/2017

### **3 Duty to promote land rights and responsibilities statement**

The Scottish Ministers must, in exercising their functions and so far as reasonably practicable, promote the principles set out in the land rights and responsibilities statement.

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## PART 2

### THE SCOTTISH LAND COMMISSION

#### CHAPTER 1

##### THE COMMISSION

###### *Establishment*

#### 4 The Scottish Land Commission

- (1) The Scottish Land Commission (in Gaelic, Coimisean Fearainn na h-Alba) is established by this section.
- (2) In this Act, it is referred to as “the Commission”.
- (3) The Commission is a body corporate.
- (4) The Commission is to consist of the following members—
  - (a) five Land Commissioners, and
  - (b) the Tenant Farming Commissioner.
- (5) The Scottish Ministers may by regulations amend subsection (4)(a) so as to alter the number of Land Commissioners.
- (6) The Commission has the functions conferred by section 6.
- (7) The Land Commissioners have the functions conferred by section 22.
- (8) The Tenant Farming Commissioner has the functions conferred by section 24.

#### Commencement Information

**I3** S. 4(1)(5) in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

#### 5 Status

- (1) The Commission is not a servant or agent of the Crown.
- (2) It does not enjoy any status, immunity or privilege of the Crown.
- (3) Its property is not property of, or property held on behalf of, the Crown.
- (4) Its members and staff—
  - (a) are not servants or agents of the Crown,
  - (b) have no status, immunity or privilege of the Crown,
  - (c) are not to be regarded as civil servants.

#### Commencement Information

**I4** S. 5 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

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## Functions of the Commission

VALID FROM 01/04/2017

### 6 Functions of the Commission

The functions of the Commission are—

- (a) to provide the Land Commissioners and Tenant Farming Commissioner with the property, staff and services needed to perform their respective functions, and
- (b) to make such arrangements as are appropriate and practicable for the co-ordination of the performance of those respective functions.

### 7 General powers

(1) The Commission may do anything which it considers—

- (a) to be necessary or expedient for the purposes of, or in connection with, the exercise of—
  - (i) its functions,
  - (ii) the functions of the Land Commissioners,
  - (iii) the functions of the Tenant Farming Commissioner,
- (b) to be conducive to the exercise of those respective functions.

(2) In particular, the Commission may—

- (a) enter into contracts,
- (b) acquire and dispose of land,
- (c) co-operate with any person,
- (d) obtain advice or assistance from any person who is, in the Commission's opinion, qualified to give it,
- (e) pay any such person such fees, remuneration and allowances as the Commission may determine.

#### Commencement Information

**I5** S. 7 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

VALID FROM 01/04/2017

## Strategic plan and programme of work

### 8 Strategic plan

(1) The Commission must prepare a strategic plan setting out how the Commission, the Land Commissioners and the Tenant Farming Commissioner propose to exercise their respective functions for the period to which the plan relates.

(2) A strategic plan must, in particular, set out—

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- (a) the objectives and priorities of—
    - (i) the Commission,
    - (ii) the Land Commissioners,
    - (iii) the Tenant Farming Commissioner,
  - (b) estimates of the costs of the exercise of their respective functions of—
    - (i) the Commission,
    - (ii) the Land Commissioners,
    - (iii) the Tenant Farming Commissioner.
- (3) The Commission must submit the strategic plan to the Scottish Ministers—
- (a) in the case of the first plan, before the end of the period of 6 months beginning with the day on which this section comes into force,
  - (b) in the case of each subsequent plan, before the end of the period of 3 years beginning with the day on which the Commission last submitted its strategic plan.
- (4) The Scottish Ministers may—
- (a) approve the strategic plan,
  - (b) approve the strategic plan with such modifications as they consider appropriate in consultation with the Commission,
  - (c) reject the strategic plan and direct the Commission to submit a revised plan before the end of such period as the Scottish Ministers may determine.
- (5) Where the Scottish Ministers approve the strategic plan under subsection (4)(a) or (4)(b), the Commission must as soon as practicable—
- (a) publish the plan in such form as it considers appropriate, and
  - (b) lay a copy of the plan before the Scottish Parliament.
- (6) The Commission—
- (a) must comply with any direction to submit a revised strategic plan under subsection (4)(c),
  - (b) may from time to time submit a revised strategic plan.
- (7) Subsections (4) and (5) apply to a revised strategic plan as they apply to a strategic plan.

## **9 Programme of work**

- (1) The Land Commissioners must prepare a programme of work setting out—
  - (a) information on any proposed reviews under section 22(1)(a),
  - (b) information on any other activities,
  - (c) timetables for the programme.
- (2) The Commission must submit the Land Commissioners' programme of work to the Scottish Ministers when it submits the strategic plan under section 8.
- (3) The Commission must—
  - (a) publish the programme of work in such form as it considers appropriate, and
  - (b) lay a copy of the programme before the Scottish Parliament.
- (4) The Commission may from time to time submit a revised programme of work.

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(5) Subsection (3) applies to a revised programme of work as it applies to a programme of work.

### Membership

## 10 Membership

- (1) The Scottish Ministers are to appoint the members of the Commission.
- (2) The Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment.
- (3) Each member is to be appointed for such period, not exceeding 5 years, as the Scottish Ministers may determine.
- (4) Subject to sections 11, 12 and 13, an appointed member holds and vacates office on such terms and conditions as the Commission may, with the approval of the Scottish Ministers, determine.
- (5) The Scottish Ministers may reappoint as a member a person who is or has been a member.
- (6) Subsections (2) and (3) apply to a reappointment under subsection (5) as they apply to an appointment under subsection (1).
- (7) The Scottish Ministers must select one of the Land Commissioners to chair the Commission.

### Commencement Information

**I6** S. 10 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

## 11 Eligibility for appointment

- (1) In appointing members to the Commission, the Scottish Ministers must—
  - (a) have regard among other things to the desirability of the Commission (taken as a whole) having expertise or experience in—
    - (i) land reform,
    - (ii) law,
    - (iii) finance,
    - (iv) economic issues,
    - (v) planning and development,
    - (vi) land management,
    - (vii) community empowerment,
    - (viii) environmental issues,
    - (ix) human rights,
    - (x) equal opportunities,
    - (xi) the reduction of inequalities of outcome which result from socio-economic disadvantage, and

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- (b) encourage equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In appointing the Land Commissioners, the Scottish Ministers must take every reasonable step to ensure that at least one of the Commissioners is a speaker of the Gaelic language.
- (3) In appointing the Tenant Farming Commissioner, the Scottish Ministers must ensure that the person appointed has expertise or experience in agriculture.
- (4) When the Scottish Ministers refer an appointment to the Scottish Parliament for approval under section 10(2), they must lay before the Scottish Parliament a statement as to how they have complied with the duties in subsections (1) to (3).
- (5) In subsection (1) “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part 2 of schedule 5 of the Scotland Act 1998.

#### Commencement Information

**I7** S. 11 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

## 12 Disqualification from membership

- (1) A person may not be appointed as a member of the Commission if that person is or has been at any time during the previous 12 months—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) an officer-holder of the Scottish Administration,
  - (e) a councillor of any local authority.
- (2) A person may not be appointed as the Tenant Farming Commissioner if that person is the owner or tenant of land subject to a relevant tenancy.
- (3) In this Part “relevant tenancy” means—
  - (a) a tenancy to which the 1991 Act applies, or
  - (b) a tenancy under sections 4, 5, 5A or 5C of the 2003 Act (new types of tenancy).
- (4) A person's appointment as a member ceases if, during the person's period of appointment, any of subsection (1)(a) to (e) applies to that person.
- (5) A person's appointment as the Tenant Farming Commissioner ceases if, during the person's period of appointment, subsection (2) applies to that person.

#### Commencement Information

**I8** S. 12(1)(2)(3)(a)(4)(5) in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

**I9** S. 12(3)(b) in force at 1.11.2016 for specified purposes by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)



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### 13 Resignation and removal

- (1) A member of the Commission may resign at any time by giving notice in writing to the Scottish Ministers.
- (2) The Scottish Ministers may by giving notice in writing revoke the appointment of a person as a member if satisfied that the person—
  - (a) is insolvent,
  - (b) has been convicted of a criminal offence in relation to which the member has been sentenced to imprisonment for a period of 3 months or more,
  - (c) is incapacitated by physical illness or mental disorder,
  - (d) has been absent from meetings of the Commission for a period exceeding 6 months without the permission of the Commission, or
  - (e) is otherwise unable or unfit to exercise any of the functions of a member or is unsuitable to continue as a member.
- (3) For the purposes of subsection (2)(a) a person becomes insolvent when—
  - (a) the person's estate is sequestrated,
  - (b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,
  - (c) a voluntary arrangement proposed by the person is approved,
  - (d) the person's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
  - (e) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (d) anywhere in the world.

#### Commencement Information

**I10** S. 13 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

### *Remuneration and staff*

### 14 Remuneration, allowances and pensions

- (1) The Commission may pay its members and employees—
  - (a) such remuneration as the Commission may, with the approval of the Scottish Ministers, determine, and
  - (b) such allowances in respect of expenses properly incurred in the exercise of the Commission's functions as may be so determined.
- (2) The Commission may, with the approval of the Scottish Ministers—
  - (a) pay (or make arrangements for the payment of),
  - (b) make payments towards the provision of,
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,such pensions, allowances or gratuities to any member or employee or former member or employee of the Commission as the Commission may determine.
- (3) Those pensions, allowances or gratuities may include pensions, allowances or gratuities by way of compensation for loss of office.

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**Commencement Information**

**I11** S. 14 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

**15 Staff**

- (1) The Commission is to employ a person as chief executive.
- (2) The first chief executive is to be appointed by the Scottish Ministers on such terms as they may determine.
- (3) Each subsequent chief executive is to be appointed—
  - (a) by the Commission with the approval of the Scottish Ministers,
  - (b) on such terms and conditions as the Commission may, with the approval of the Scottish Ministers, determine.
- (4) The Commission may employ any other staff necessary for the exercise of its functions.
- (5) The Commission's staff are to be employed on such terms and conditions as the Commission may, with the approval of the Scottish Ministers, determine.

**Commencement Information**

**I12** S. 15 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

*Operational matters*

**16 Validity of things done**

The validity of anything done by the Commission is not affected by—

- (a) a vacancy in membership,
- (b) a defect in the appointment of a member,
- (c) a person's membership having ended under section 13.

**Commencement Information**

**I13** S. 16 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

**17 Committees**

- (1) The Commission may establish committees for any purpose relating to—
  - (a) its functions,
  - (b) the functions of the Land Commissioners,
  - (c) the functions of the Tenant Farming Commissioner.
- (2) The Commission may authorise any committee to exercise such of its functions, and to such extent, as it may determine.

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- (3) Nothing in subsection (2) affects the responsibility of the Commission for the exercise of its functions.
- (4) The Commission may appoint a person who is not a member of the Commission to be a member of a committee.
- (5) The Commission may pay to a person who is not a member of the Commission and who is appointed to a committee—
  - (a) such remuneration as the Commission may, with the approval of the Scottish Ministers, determine, and
  - (b) such allowances in respect of expenses properly incurred in the exercise of the functions of the Commission, of the Land Commissioners or of the Tenant Farming Commissioner as may be so determined.
- (6) A committee must comply with any directions given to it by the Commission.

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**Commencement Information**

**I14** S. 17 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

## 18 Regulation of procedure

- (1) The Commission must establish and maintain a register of interests.
- (2) Otherwise, the Commission may regulate its own procedure and those of its committees, including the quorum at any meeting.

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**Commencement Information**

**I15** S. 18 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

### *Accounts and annual report*

## 19 Accounts

- (1) The Commission must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare in respect of each financial year a statement of accounts.
- (2) The Commission must send the statement of accounts to the Scottish Ministers by such date as the Scottish Ministers may direct.
- (3) The Commission must comply with any other directions which the Scottish Ministers may give them in relation to the matters mentioned in subsection (1).
- (4) The Commission must make its audited statement of accounts and accounting records available so that they may be inspected by any person.

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### Commencement Information

**I16** S. 19 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with regs. 3, 4)

## 20 Annual report

- (1) As soon as practicable after the end of each financial year, the Commission must prepare a report setting out—
  - (a) an assessment of its performance in carrying out its functions, including—
    - (i) the functions of the Commission,
    - (ii) the functions of the Land Commissioners,
    - (iii) the functions of the Tenant Farming Commissioner,
  - (b) an assessment of the performance by the Commission and its members in achieving the main objectives set out in any strategic plan having effect during that year,
  - (c) an assessment of the performance by the Land Commissioners in relation to any programme of work having effect during that year,
  - (d) such other information as the Commission considers appropriate.
- (2) The Commission must—
  - (a) publish each annual report in such form as the Commission considers appropriate,
  - (b) provide a copy of each annual report to the Scottish Ministers, and
  - (c) lay a copy of each annual report before the Scottish Parliament.
- (3) The Commission—
  - (a) may publish such other reports and information on matters relevant to its functions as it considers appropriate,
  - (b) where it does so, must lay a copy of each report before the Scottish Parliament.

### Commencement Information

**I17** S. 20 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with regs. 3, 4)

### *Application of public bodies legislation*

## 21 Application of legislation relating to public bodies

- (1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), at the appropriate place in alphabetical order insert— “ The Scottish Land Commission ”.
- (2) In the Freedom of Information (Scotland) Act 2002, in Part 7 of schedule 1 (Scottish public authorities: others), after paragraph 90 insert—
 

“90A The Scottish Land Commission.”.
- (3) In the Public Services Reform (Scotland) Act 2010—

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- (a) in schedule 5 (improvement of public functions: listed public bodies), at the appropriate place in alphabetical order insert— “ Scottish Land Commission ”,
- (b) in schedule 8 (information on exercise of public functions: listed public bodies), at the appropriate place in alphabetical order insert— “ Scottish Land Commission ”.

#### Commencement Information

**I18** S. 21(1)(2) in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

VALID FROM 01/04/2017

## CHAPTER 2

### THE LAND COMMISSIONERS

#### *Functions of the Land Commissioners*

#### **22 Functions of the Land Commissioners**

- (1) The functions of the Land Commissioners are, on any matter relating to land in Scotland—
  - (a) to review the impact and effectiveness of any law or policy,
  - (b) to recommend changes to any law or policy,
  - (c) to gather evidence,
  - (d) to carry out research,
  - (e) to prepare reports,
  - (f) to provide information and guidance.
- (2) The Land Commissioners must consider and advise on any such matter as the Scottish Ministers may refer to them.
- (3) In exercising their functions the Land Commissioners must—
  - (a) have regard to—
    - (i) the land rights and responsibilities statement prepared under section 1 or revised under section 2,
    - (ii) the strategic plan prepared under section 8,
    - (iii) the programme of work prepared under section 9,
  - (b) collaborate with the Tenant Farming Commissioner.
- (4) In so far as the exercise of their functions relates to agriculture and agricultural holdings, the Land Commissioners must have regard to the exercise of the Tenant Farming Commissioner's functions conferred by section 24.
- (5) In this section a “matter relating to land in Scotland” includes—
  - (a) ownership and other rights in land,
  - (b) management of land,

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- (c) use of land,
- (d) the land use strategy prepared under section 57 of the Climate Change (Scotland) Act 2009.

*Land Commissioners: delegation of functions*

**23 Land Commissioners: delegation of functions**

- (1) The Land Commissioners may authorise the following to exercise such of their functions, and to such extent, as they may determine—
  - (a) any committee,
  - (b) any employee of the Commission,
  - (c) any other person.
- (2) Nothing in subsection (1) affects the responsibility of the Land Commissioners for the exercise of their functions.

VALID FROM 01/04/2017

**CHAPTER 3**

THE TENANT FARMING COMMISSIONER

*Functions of the Tenant Farming Commissioner*

**24 Functions of the Tenant Farming Commissioner**

- (1) The functions of the Tenant Farming Commissioner are—
  - (a) to prepare codes of practice on agricultural holdings in accordance with section 27,
  - (b) to promote the codes of practice in accordance with section 28,
  - (c) to inquire into alleged breaches of the codes of practice in accordance with sections 29 to 34,
  - (d) to prepare a report on the operation of agents of landlords and tenants in accordance with section 36,
  - (e) to prepare recommendations for a modern list of improvements to agricultural holdings in accordance with section 37,
  - (f) to refer for the opinion of the Land Court any question of law relating to agricultural holdings in accordance with section 38,
  - (g) to collaborate with the Land Commissioners in the exercise of their functions to the extent that those functions relate to agriculture and agricultural holdings,
  - (h) to exercise any other functions conferred on the Commissioner by any enactment.

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- (2) The Tenant Farming Commissioner must exercise the Commissioner's functions with a view to encouraging good relations between landlords and tenants of agricultural holdings.
- (3) The Scottish Ministers must—
  - (a) review the Tenant Farming Commissioner's functions before the end of the period of 3 years beginning with the day on which this section comes into force,
  - (b) publish the findings of the review as soon as practicable.
- (4) In carrying out a review under subsection (3), the Scottish Ministers must—
  - (a) invite the Tenant Farming Commissioner to give views on the operation of the Commissioner's functions and, in particular, on whether the Commissioner's powers are sufficient in relation to the Commissioner's duties,
  - (b) invite such other persons appearing to Ministers to have an interest in the Commissioner's functions to give views on the operation of those functions, and
  - (c) have regard to any such views.
- (5) Following review under subsection (3), the Scottish Ministers may by regulations modify subsection (1) to—
  - (a) amend the functions of the Tenant Farming Commissioner,
  - (b) remove functions from the Tenant Farming Commissioner,
  - (c) confer new functions on the Tenant Farming Commissioner.

## **25 Tenant Farming Commissioner: delegation of functions**

- (1) The Tenant Farming Commissioner may authorise the following to exercise such of the Commissioner's functions, and to such extent, as the Commissioner may determine—
  - (a) any Land Commissioner,
  - (b) any committee,
  - (c) any employee of the Commission,
  - (d) any other person.
- (2) But the Tenant Farming Commissioner may not authorise the function under section 24(1)(f) to be exercised by any other person.
- (3) Nothing in subsection (1) affects the responsibility of the Tenant Farming Commissioner for the exercise of the Commissioner's functions.

## **26 Acting Tenant Farming Commissioner**

- (1) The Scottish Ministers may appoint a person to carry out the functions of the Tenant Farming Commissioner during a period in which the office is vacant (an “acting Tenant Farming Commissioner”).
- (2) A person who is disqualified for appointment as Tenant Farming Commissioner is also disqualified for appointment as acting Tenant Farming Commissioner.
- (3) A person appointed as acting Tenant Farming Commissioner—

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- (a) may, by giving notice in writing to the Scottish Ministers, resign at any time,
  - (b) may be dismissed by the Scottish Ministers at any time,
  - (c) in other respects, holds appointment on such terms and conditions as the Scottish Ministers may determine.
- (4) While holding appointment as acting Tenant Farming Commissioner, a person is to be treated as the Commissioner for all purposes other than those of sections 13 and 14.

*Tenant Farming Commissioner: codes of practice*

**27 Tenant Farming Commissioner: codes of practice**

- (1) The Tenant Farming Commissioner must prepare codes of practice for the purpose of providing practical guidance to landlords and tenants of agricultural holdings and their agents.
- (2) The codes of practice may include, among other things, provision about—
- (a) negotiating and conducting rent reviews,
  - (b) agreeing and recording improvements by tenants,
  - (c) negotiating the fulfilment of the obligations of landlords and tenants,
  - (d) the conduct of agents of landlords and tenants,
  - (e) the process of succession and assignation,
  - (f) determining compensation at waygo,
  - (g) negotiating the terms of a modern limited duration tenancy and a repairing tenancy,
  - (h) the management of sporting leases, and
  - (i) game management.
- (3) The Tenant Farming Commissioner must from time to time—
- (a) review the codes of practice,
  - (b) revise the codes if the Commissioner considers it appropriate.
- (4) Before the Tenant Farming Commissioner publishes a code of practice under this section, the Commissioner must consult any persons appearing to the Commissioner to have an interest in the draft code.
- (5) After complying with subsection (4), the Tenant Farming Commissioner must—
- (a) publish the code in such form as the Commissioner considers appropriate, and
  - (b) lay a copy of the code before the Scottish Parliament.
- (6) Subsections (4) and (5) apply to a revised code of practice as they apply to a code of practice.
- (7) A code of practice published under this section is admissible in evidence in any proceedings before the Land Court.
- (8) If any provision of a code of practice published under this section appears to the Land Court conducting any proceedings to be relevant to any question arising in the proceedings the Land Court must take that provision of the code into account in determining that question.



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- (9) Subsections (7) and (8) apply to arbitration proceedings under section 61 of the 1991 Act or section 78 of the 2003 Act as they apply to Land Court proceedings.

#### Commencement Information

**I19** S. 27(1)(2)(a)-(f)(h)(i)(3)-(9) in force at 1.4.2017 by [S.S.I. 2016/250, reg. 2\(3\)](#), [sch. 2](#)

### **28 Tenant Farming Commissioner: promotion of codes of practice**

The Tenant Farming Commissioner is to promote the observance of the codes of practice issued under section 27, including by—

- (a) educating and advising about the codes,
- (b) supporting best practice in accordance with the codes among landlords and tenants of agricultural holdings and their agents,
- (c) encouraging good relations among landlords and tenants of agricultural holdings and their agents,
- (d) working in collaboration with other persons (whether in partnership or in other ways),
- (e) contributing to the development and delivery of policies and strategies in relation to agricultural holdings.

#### *Tenant Farming Commissioner: inquiry function*

### **29 Application to inquire into breach of code of practice**

- (1) A person may apply to the Tenant Farming Commissioner to inquire into an alleged breach of a code of practice (an “alleged breach”) if the person—
  - (a) has an interest in a relevant tenancy, or
  - (b) would have an interest in a relevant tenancy but for the alleged breach.
- (2) An application under subsection (1) must contain—
  - (a) the applicant's details,
  - (b) details of each other person having an interest in the relevant tenancy, so far as the applicant is aware of them,
  - (c) details of the alleged breach,
  - (d) the provision of the code of practice that the alleged breach relates to.
- (3) Subject to subsection (5), an application must be accompanied by the appropriate fee set by the Tenant Farming Commissioner.
- (4) When setting the appropriate fee, the Tenant Farming Commissioner must have regard to the likely impact of the fee on the number of applications under subsection (1).
- (5) The Tenant Farming Commissioner may waive payment of the appropriate fee if the Commissioner considers that payment is likely to result in undue hardship to the applicant.
- (6) An application under subsection (1) is without prejudice to any time limit for proceedings in the Land Court under any enactment.

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### **30 Procedure for inquiry**

- (1) The Tenant Farming Commissioner may inquire into an alleged breach only if satisfied that—
  - (a) the applicant has an interest in a relevant tenancy, or would do so but for the alleged breach,
  - (b) the application contains sufficient information to proceed to an inquiry, and
  - (c) the application is not based on substantially the same facts as a previous application from the same applicant.
- (2) Where the Tenant Farming Commissioner is not satisfied that the application contains sufficient information to proceed to an inquiry, the Commissioner may require the applicant to provide such additional information as the Commissioner considers appropriate, by the end of such period as the Commissioner may specify.
- (3) The Tenant Farming Commissioner may dismiss the application by giving notice in writing to the applicant where—
  - (a) the application does not meet the conditions in subsection (1),
  - (b) a request by the Commissioner under subsection (2) for additional information has been made and the period specified for providing such information has expired, or
  - (c) the Commissioner considers that a request under subsection (2) for additional information would not provide sufficient information to proceed to an inquiry.
- (4) Where the Tenant Farming Commissioner is satisfied that the application meets the conditions in subsection (1) the Commissioner must—
  - (a) give notice in writing to the applicant and each other person with an interest in the relevant tenancy,
  - (b) send a copy of the application to each of those persons, and
  - (c) require a response to the application from each of them by the end of such period as the Commissioner may specify.

### **31 Enforcement powers**

- (1) The Tenant Farming Commissioner may at any time during an inquiry into a breach of a code of practice require any person to provide such information as the Commissioner considers appropriate for the purposes of the inquiry.
- (2) The Tenant Farming Commissioner may by serving notice in writing impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a requirement under—
  - (a) section 30(4)(c),
  - (b) subsection (1).
- (3) The amount of a non-compliance penalty is to be determined by the Tenant Farming Commissioner, but must not exceed £1000.
- (4) A non-compliance penalty must be paid to the Commission.
- (5) The Commission may recover any non-compliance penalty as a civil debt.

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### **32 Notice of non-compliance penalty**

- (1) A notice under section 31(2) must include information as to—
  - (a) the grounds for imposing the non-compliance penalty,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the period within which payment must be made, which must be not less than 28 days beginning with the day on which the notice imposing the penalty is received,
  - (e) rights of appeal, and
  - (f) the consequences of failure to make payment within the period specified.
- (2) A person served with a notice imposing a non-compliance penalty may appeal to the Land Court against the notice on the ground that the decision to serve the notice—
  - (a) was based on an error of fact,
  - (b) was wrong in law, or
  - (c) was unfair or unreasonable for any reason (for example because the amount is unreasonable).
- (3) An appeal under subsection (2) must be made within the period of 28 days beginning with the day on which the notice under section 31(2) is received.
- (4) Where an appeal under subsection (2) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.
- (5) On an appeal under subsection (2) the Land Court may overturn, confirm or vary the non-compliance penalty.

### **33 Report on inquiry**

- (1) As soon as practicable after an inquiry into an alleged breach is complete the Tenant Farming Commissioner must publish a report setting out—
  - (a) where there is sufficient information for the Commissioner to reach a decision on breach of the code of practice —
    - (i) the Commissioner's decision as to whether or not the code has been breached,
    - (ii) the reasons for the Commissioner's decision,
    - (iii) the relevant facts on which the Commissioner's decision is based,
    - (iv) such recommendations as the Commissioner considers appropriate,
  - (b) where there is not sufficient information for the Commissioner to reach a decision on breach of the code of practice, that finding.
- (2) A report published under this section is admissible as evidence in any proceedings before the Land Court.
- (3) If a report published under this section appears to the Land Court conducting any proceedings to be relevant to any question arising in the proceedings the Land Court must take that report into account in determining that question.
- (4) Subsections (2) and (3) apply to arbitration proceedings under section 61 of the 1991 Act or section 78 of the 2003 Act as they apply to Land Court proceedings.

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### **34 Tenant Farming Commissioner: confidentiality of information**

- (1) A relevant person must not disclose any information which has been obtained by or on behalf of the Tenant Farming Commissioner for the purposes of an inquiry into a breach of a code of practice unless authorised to do so by subsection (2).
- (2) Disclosure is authorised for the purposes of subsection (1) only so far as—
  - (a) it is necessary for the purpose of enabling or assisting the exercise by the Tenant Farming Commissioner of the Commissioner's functions under this Act,
  - (b) it is made with the consent of each person to whom the information relates,
  - (c) it is made for the purposes of civil proceedings,
  - (d) it is made for the purposes of a criminal investigation or criminal proceedings or for the purposes of the prevention or detection of crime,
  - (e) it is made in pursuance of an order of a court or tribunal,
  - (f) it is made in accordance with any other enactment requiring or permitting the disclosure.
- (3) A person who knowingly contravenes subsection (1) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.
- (5) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed—
  - (a) that the disclosure was authorised under subsection (2), or
  - (b) that the information had already lawfully been made available to the public.
- (6) In subsection (1) a “relevant person” means any individual who is or was—
  - (a) the Tenant Farming Commissioner (or acting Tenant Farming Commissioner),
  - (b) a Land Commissioner,
  - (c) a member of the Commission's staff,
  - (d) a person exercising functions on behalf of the Commission or its members.

### **35 Protection from actions for defamation**

- (1) For the purposes of the law of defamation, any statement made by the Tenant Farming Commissioner in pursuance of the Commissioner's inquiry function under section 24(1)(c) has qualified privilege.
- (2) In subsection (1) “statement” has the meaning given by section 17 of the Defamation Act 1996.

*Tenant Farming Commissioner: review of operation of agents*

### **36 Report on operation of agents of landlords and tenants**

- (1) The Tenant Farming Commissioner must—
  - (a) prepare a report on the operation of agents of landlords and tenants in relation to agricultural holdings,

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- (b) submit the report to the Scottish Ministers before the end of the period of 12 months beginning with the day on which this section comes into force.
- (2) The report submitted to the Scottish Ministers under this section—
- (a) must include such recommendations as the Commissioner considers necessary to improve the operation of agents of landlords and tenants in relation to agricultural holdings,
  - (b) may include such other recommendations as the Commissioner considers appropriate.
- (3) In preparing the report to the Scottish Ministers under this section, the Commissioner must consult any persons appearing to the Commissioner to have an interest in the operation of agents of landlords and tenants.

*Tenant Farming Commissioner: modern list of improvements*

**37 Recommendations by Tenant Farming Commissioner for modern list of improvements**

- (1) The Tenant Farming Commissioner must—
- (a) prepare a report setting out recommendations for a modern list of improvements to agricultural holdings,
  - (b) submit the report to the Scottish Ministers.
- (2) Before submitting the report to the Scottish Ministers under this section, the Commissioner must consult any persons appearing to the Commissioner to have an interest in the draft recommendations.

*Tenant Farming Commissioner: power to refer questions of law to Land Court*

**38 Referral of questions of law by Tenant Farming Commissioner to Land Court**

The Tenant Farming Commissioner may refer to the Land Court for determination any question of law which may competently be determined by the Land Court by virtue of any enactment.

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VALID FROM 17/05/2018

## PART 3

### INFORMATION ABOUT CONTROL OF LAND ETC.

#### *Information about persons with controlling interests in relation to land*

#### **39 Information about persons with controlling interests in owners and tenants of land**

- (1) The Scottish Ministers must by regulations make provision—
  - (a) requiring information to be provided about persons who have controlling interests in owners and tenants of land, and
  - (b) about the publication of that information in a public register kept by the Keeper of the Registers of Scotland.
- (2) Regulations under subsection (1) may, in particular, include provision about—
  - (a) which owners and tenants of land the regulations apply to,
  - (b) what constitutes a controlling interest in an owner or tenant,
  - (c) which persons are to be treated as having a controlling interest in an owner or tenant,
  - (d) what information must be provided under the regulations (and the manner in which it is to be provided),
  - (e) the circumstances in which information must be provided under the regulations,
  - (f) publication of information required under the regulations (including the form of the register and the entry of the information in it),
  - (g) the circumstances in which the information entered in the register may be corrected or updated,
  - (h) the circumstances in which a person who has a controlling interest in an owner or tenant can request that information about that person not be published (including, in particular, where the publication of that information might result in the person being at a serious risk of violence or abuse, threat of violence or abuse or intimidation),
  - (i) the effect of providing (or failing to provide) information required under the regulations,
  - (j) sanctions for failure to comply with requirements imposed under the regulations,
  - (k) delegation of functions under the regulations,
  - (l) fees payable in relation to the provision, publication or accessing of information under the regulations,
  - (m) appeals against decisions made under the regulations.
- (3) Regulations under subsection (1) may include provision for offences and civil penalties (including fixed penalties) for failure to comply with requirements imposed under the regulations.
- (4) Where regulations under subsection (1) include provision creating offences—

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- (a) they must provide for those offences to be triable summarily only, and
  - (b) they must provide for the maximum penalty for those offences to be a fine, which must not exceed level 5 on the standard scale.
- (5) Where regulations under subsection (1) include provision for the imposition of civil penalties, they must include provision about appeals against decisions to impose those penalties.
- (6) Regulations under subsection (1) may modify any enactment (including this Act).
- (7) The Scottish Ministers must, before laying a draft of any regulations under subsection (1) before the Scottish Parliament, consult—
- (a) the Keeper, and
  - (b) such other persons as they consider appropriate.
- (8) Subsection (7) does not apply if section 40 applies.

*Procedure for first regulations under section 39*

**40 Procedure for first regulations under section 39**

The Scottish Ministers may not lay a draft of the first regulations under section 39(1) before the Scottish Parliament unless—

- (a) they have consulted in accordance with section 41, and
- (b) following that consultation, they have laid before the Scottish Parliament—
  - (i) proposed draft regulations, and
  - (ii) an explanatory document prepared in accordance with section 42.

**41 Procedure for first regulations under section 39: consultation**

- (1) Before laying a draft of the first regulations under section 39(1) before the Scottish Parliament, the Scottish Ministers must consult—
- (a) the Keeper, and
  - (b) such other persons as they consider appropriate.
- (2) For the purposes of any consultation required by subsection (1), the Scottish Ministers must—
- (a) lay before the Scottish Parliament—
    - (i) a copy of the proposed draft regulations, and
    - (ii) a copy of the proposed explanatory document referred to in section 40(b)(ii) (except the details required by section 42(1)(b)),
  - (b) send a copy of the proposed draft regulations and proposed explanatory document to any person to be consulted under subsection (1), and
  - (c) have regard to any representations about the proposed draft regulations that are made to them within the period of 60 days beginning with the date on which the copy of the proposed draft regulations is laid before the Parliament under paragraph (a).
- (3) In calculating any period of 60 days for the purposes of subsection (2)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

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## **42 Procedure for first regulations under section 39: explanatory document**

- (1) The explanatory document referred to in section 40(b)(ii) must—
  - (a) give reasons for the provisions contained in the proposed draft regulations,
  - (b) give details of—
    - (i) any consultation undertaken under section 41,
    - (ii) any representations received as a result of the consultation, and
    - (iii) the changes (if any) made to the proposed draft regulations as a result of those representations.
- (2) Where a person making representations in response to consultation under section 41 has not consented to the disclosure of the representations, the Scottish Ministers must not disclose them under subsection (1)(b)(ii).
- (3) If information in representations made by a person in response to consultation under section 41 relates to another person, the Scottish Ministers must not disclose that information under subsection (1)(b)(ii) if or to the extent that—
  - (a) it appears to the Scottish Ministers that the disclosure of that information could adversely affect the interests of that other person, and
  - (b) the Scottish Ministers have been unable to obtain the consent of that other person to the disclosure.
- (4) Subsections (2) and (3) do not affect any disclosure that is requested by, and made to, a committee of the Parliament charged with reporting on the proposed draft regulations.

PROSPECTIVE

*Information relating to proprietors of land etc.*

## **43 Power of Keeper to request or require information relating to proprietors of land etc.**

- (1) The Land Registration etc. (Scotland) Act 2012 is amended as follows.
- (2) After section 48 insert—

*“Entry of information relating to categories of owners and tenants in the register*

### **48A Power to request or require information relating to categories of owners and tenants**

- (1) The Scottish Ministers may, by regulations, make provision enabling the Keeper to request or, as the case may be, require information relating to the category of person or body into which a person mentioned in subsection (2) falls.
- (2) The persons referred to in subsection (1) (“relevant persons”) are—
  - (a) owners of plots of land,
  - (b) proprietors of registered plots of land and registered leases, and
  - (c) tenants of leases which are registered or registrable.



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- (3) Regulations under subsection (1) may, in particular, make provision—
  - (a) about the persons who are owners, proprietors and tenants for the purposes of subsection (2),
  - (b) about the information, relating to the category of person or body into which a relevant person falls, provision of which may be requested or required,
  - (c) about the form in which the information is to be provided, which may consist of (or include) declarations by, or on behalf of, relevant persons about the category of person or body into which a relevant person falls,
  - (d) about the circumstances in which information may be requested,
  - (e) about the circumstances in which information requires, and does not require, to be provided,
  - (f) about the effect (if any) of providing (or not providing) information,
  - (g) about the entry of the information in the register,
  - (h) about whether the Keeper's warranty under Part 7 is to apply in relation to information obtained under the regulations,
  - (i) about the circumstances in which information obtained under the regulations may be corrected or updated,
  - (j) about the circumstances in which information obtained under the regulations may be provided to other persons,
  - (k) about the circumstances in which information obtained under the regulations may be published,
  - (l) for fees relating to the provision, correction or updating of information under the regulations.
- (4) Regulations under subsection (1) which make provision enabling the Keeper to require information may include provision relating to offences for failure to comply with requirements imposed by the regulations.
- (5) Where regulations under subsection (1) include provision creating offences—
  - (a) they must provide for those offences to be triable summarily only, and
  - (b) they must provide for the maximum penalty for those offences to be a fine, which must not exceed level 3 on the standard scale.
- (6) The Scottish Ministers must consult the Keeper before laying a draft of regulations under subsection (1) before the Scottish Parliament.
- (7) Regulations under subsection (1) may include such incidental, supplementary or consequential provision as the Scottish Ministers consider appropriate for the purposes of, or in connection with, the regulations.
- (8) Regulations under subsection (1) may modify any enactment (including this Act).

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### **48B Power to enter information relating to categories of owners and tenants in the register**

- (1) The Scottish Ministers may, by regulations, make provision enabling the Keeper to enter, in the register, information relating to the category of person or body into which a person mentioned in subsection (2) falls.
  - (2) The persons referred to in subsection (1) (“relevant persons”) are—
    - (a) owners of plots of land,
    - (b) proprietors of registered plots of land and registered leases, and
    - (c) tenants of leases which are registered or registrable.
  - (3) Regulations under subsection (1) may, in particular, make provision—
    - (a) about the persons who are owners, proprietors and tenants for the purposes of subsection (2),
    - (b) about notification by the Keeper of the intention to enter the information,
    - (c) about the circumstances in which the Keeper may enter the information,
    - (d) for the information that may be entered and the form in which it is to be entered,
    - (e) about the effect (if any) of entering the information,
    - (f) about whether the Keeper's warranty under Part 7 is to apply in relation to information entered under the regulations,
    - (g) about the circumstances in which information entered under the regulations may be corrected or updated,
    - (h) about the circumstances in which information entered under the regulations may be provided to other persons,
    - (i) about the circumstances in which information entered under the regulations may be published,
    - (j) for fees relating to the correction or updating of information under the regulations.
  - (4) The Scottish Ministers must consult the Keeper before laying a draft of regulations under subsection (1) before the Scottish Parliament.
  - (5) Regulations under subsection (1) may include such incidental, supplementary or consequential provision as the Scottish Ministers consider appropriate for the purposes of, or in connection with, the regulations.
  - (6) Regulations under subsection (1) may modify any enactment (including this Act).”.
- (3) In section 116 (subordinate legislation), in subsection (3), after paragraph (b) insert—
    - “(ba) section 48A(1),
    - (bb) section 48B(1).”.
  - (4) In section 121 (Crown application)—
    - (a) in subsection (1), after first “Crown” insert “ of a requirement imposed by regulations under section 48A or ”,
    - (b) in subsection (3)—

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- (i) for “section 112 applies” substitute “ regulations under section 48A and section 112 apply ”,
- (ii) for “it applies” substitute “ they apply ”.

## PART 4

### ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND

#### 44 Guidance on engaging communities in decisions relating to land

- (1) The Scottish Ministers must issue guidance about engaging communities in decisions relating to land which may affect communities.
- (2) In preparing guidance under subsection (1), the Scottish Ministers must have regard to the desirability of—
  - (a) promoting respect for, and observance of, relevant human rights,
  - (b) promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant,
  - (c) encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998),
  - (d) furthering the reduction of inequalities of outcome which result from socio-economic disadvantage, and
  - (e) furthering the achievement of sustainable development in relation to land.
- (3) For the purposes of subsection (2)(a)—
  - (a) “relevant human rights” means such human rights as the Scottish Ministers consider to be relevant to the preparation of the guidance, and
  - (b) in considering what human rights are relevant human rights, Ministers may consult the Scottish Commission for Human Rights and such other persons or bodies as they consider appropriate.
- (4) For the purposes of subsection (2)(b), “internationally accepted principles and standards for responsible practices in relation to land” include the principles and standards contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security issued by the Food and Agriculture Organization of the United Nations and endorsed by the Committee on World Food Security on 11 May 2012.
- (5) Guidance under subsection (1) must, in particular, include information about—
  - (a) the types of land and types of decision in relation to which community engagement should be carried out,
  - (b) the circumstances in which persons with control over land (for example, owners and occupiers) should carry out community engagement,
  - (c) the ways in which community engagement should be carried out (for example, by consulting or involving the community).
- (6) Before issuing guidance under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

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- (7) The Scottish Ministers must lay the first guidance issued under subsection (1) before the Scottish Parliament.
- (8) The Scottish Ministers must prepare and lay before the Scottish Parliament reports—
  - (a) assessing the effectiveness of guidance under subsection (1), and
  - (b) setting out the Scottish Ministers' views on any further steps which should be taken to improve the effectiveness of the guidance.
- (9) The first report under subsection (8) is to be laid before the Scottish Parliament no later than 3 years after the date on which guidance under subsection (1) is first issued.
- (10) Subsequent reports under subsection (8) are to be laid before the Scottish Parliament no later than 5 years after the date on which the last such report was so laid.
- (11) In this section “human rights” means—
  - (a) the Convention rights (within the meaning of section 1 of the Human Rights Act 1998), and
  - (b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom, including the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 subject to—
    - (i) any amendments in force in relation to the United Kingdom for the time being, and
    - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

#### Commencement Information

**I20** S. 44 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

VALID FROM 23/04/2018

## PART 5

### RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

VALID FROM 26/04/2020

#### *Key terms*

#### **45**      **Meaning of “land”**

- (1) In this Part “land”—
  - (a) includes—
    - (i) bridges and other structures built on or over land,
    - (ii) inland waters,

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- (iii) canals,
  - (iv) the foreshore, being the land between the high and low water marks of ordinary spring tides, and
  - (v) salmon fishings in inland waters or mineral rights which are owned separately from the land in respect of which they are exigible,
- (b) does not include land consisting of any other separate tenement which is owned separately from the land in respect of which it is exigible.
- (2) In paragraph (a)(v) of subsection (1) “mineral rights” does not include rights to oil, coal, gas, gold or silver.
- (3) In this Part “inland waters” has the meaning given by section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.

#### **46 Eligible land**

- (1) The land which may be bought under this Part (“eligible land”) is any land other than excluded land.
- (2) In subsection (1) “excluded land” means—
- (a) land on which there is a building or other structure which is an individual's home, unless the building or structure is occupied by an individual under a tenancy,
  - (b) such land pertaining to land of the type mentioned in paragraph (a) as the Scottish Ministers may by regulations specify,
  - (c) croft land within the meaning of section 68(2) of the Land Reform (Scotland) Act 2003,
  - (d) land which is owned or occupied by the Crown by virtue of its having vested as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*,
  - (e) land of such other descriptions or classes as the Scottish Ministers may by regulations specify.
- (3) The Scottish Ministers may by regulations make provision about—
- (a) the buildings and structures which are, or are to be treated as, a home for the purposes of subsection (2)(a),
  - (b) the types of occupation and possession of land that are, or are to be treated as, a tenancy for the purposes of subsection (2)(a).

#### **47 Eligible land: salmon fishings and mineral rights**

- (1) A Part 5 community body (as defined in section 49) may apply, under section 54, to buy eligible land which consists of salmon fishings or mineral rights only—
- (a) where—
    - (i) it is simultaneously applying, or
    - (ii) it has made an application in respect of which the Scottish Ministers have not made a decision,to buy the land to which such fishings or rights relate, or
  - (b) during the relevant period.

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- (2) Such an application may be made during the relevant period only where the Part 5 community body or, as the case may be, the third party purchaser (as defined in section 54(1)(b))—
- (a) has provided confirmation under section 62(1) or, as the case may be, (2) of its intention to proceed to buy the land to which the fishings or rights relate, or
  - (b) has bought and retained that related land in accordance with the provisions of this Part.
- (3) In this section “relevant period” means the period beginning with the date on which the Scottish Ministers consented to the application under section 54 to buy the land to which the fishings or rights relate and ending—
- (a) where the Part 5 community body or, as the case may be, the third party purchaser does not proceed to exercise its right to buy that related land, on the date—
    - (i) on which it withdraws, under section 62(3)(b) or, as the case may be, (4)(b), its confirmation so to proceed, or
    - (ii) of its failure otherwise to complete the purchase, or
  - (b) where the Part 5 community body or, as the case may be, the third party purchaser has bought and retained that related land—
    - (i) in relation to salmon fishings, 1 year, or
    - (ii) in relation to mineral rights, 5 years,
 after the date on which the Part 5 community body or the third party purchaser bought that land.

#### **48 Eligible land: tenant's interests**

- (1) This section applies where a tenancy which is not—
- (a) a croft tenancy,
  - (b) the tenancy of a dwelling-house, or
  - (c) such other kind of tenancy as the Scottish Ministers may by regulations specify,
- has been created over land at least part of which is eligible land.
- (2) In this section—
- “principal subjects” means eligible land any part of which is the tenanted land,  
 “tenanted land” means the land over which the tenancy has been created.
- (3) Where this section applies, a Part 5 community body may apply, under section 54, to buy the interest mentioned in subsection (4)—
- (a) where—
    - (i) it is simultaneously applying, or
    - (ii) it has made an application in respect of which the Scottish Ministers have not made a decision,
 to buy the principal subjects, or
  - (b) if the conditions set out in subsection (5) are met, during the relevant period.
- (4) The interest is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.

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- (5) The conditions are that the Part 5 community body or, as the case may be, the third party purchaser—
- (a) has provided confirmation under section 62(1) or, as the case may be, (2) of its intention to proceed to buy the principal subjects, or
  - (b) has bought and retained those subjects in accordance with the provisions of this Part.
- (6) In this section “relevant period” means the period beginning with the date on which the Scottish Ministers consented to the application under section 54 to buy the principal subjects and ending—
- (a) where the Part 5 community body or, as the case may be, the third party purchaser does not proceed to exercise its right to buy those subjects, on the date—
    - (i) on which it withdraws, under section 62(3)(b) or, as the case may be, (4)(b), its confirmation so to proceed, or
    - (ii) of its failure otherwise to complete the purchase, or
  - (b) where the Part 5 community body or, as the case may be, the third party purchaser has bought and retained those subjects, 5 years after the date on which the Part 5 community body or the third party purchaser bought those subjects.
- (7) In this Part “tenant” includes sub-tenant.

#### **49 Part 5 community bodies**

- (1) A Part 5 community body is, subject to subsection (7)—
- (a) where a body applies under section 54(1)(a) to exercise the right to buy itself, a body falling within subsection (2), (3) or (4),
  - (b) where a body nominates a third party purchaser to exercise the right to buy under section 54(1)(b), a body falling within subsection (5),
  - (c) a body of such other description as the Scottish Ministers may by regulations specify.
- (2) A body falls within this subsection if it is a company limited by guarantee the articles of association of which include the following—
- (a) a definition of the community to which the company relates,
  - (b) provision enabling the company to exercise the right to buy land under this Part,
  - (c) provision that the company must have not fewer than 10 members,
  - (d) provision that at least three quarters of the members of the company are members of the community,
  - (e) provision whereby the members of the company who consist of members of the community have control of the company,
  - (f) provision ensuring proper arrangements for the financial management of the company,
  - (g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community, and
  - (h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part) passes—

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- (i) to such other community body as may be approved by the Scottish Ministers, or
  - (ii) if no other community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.
- (3) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—
- (a) a definition of the community to which the SCIO relates,
  - (b) provision enabling the SCIO to exercise the right to buy land under this Part,
  - (c) provision that the SCIO must have not fewer than 10 members,
  - (d) provision that at least three quarters of the members of the SCIO are members of the community,
  - (e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,
  - (f) provision ensuring proper arrangements for the financial management of the SCIO,
  - (g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
  - (h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—
    - (i) may withhold information contained in the minutes, and
    - (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
  - (i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.
- (4) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—
- (a) a definition of the community to which the society relates,
  - (b) provision enabling the society to exercise the right to buy land under this Part,
  - (c) provision that the society must have not fewer than 10 members,
  - (d) provision that at least three quarters of the members of the society are members of the community,
  - (e) provision under which the members of the society who consist of members of the community have control of the society,
  - (f) provision ensuring proper arrangements for the financial management of the society,
  - (g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
  - (h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—
    - (i) may withhold information contained in the minutes, and
    - (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and



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- (i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.
- (5) A body falls within this subsection if it is a body corporate having a written constitution that includes the following—
- (a) a definition of the community to which the body relates,
  - (b) provision that the majority of the members of the body are to be members of that community,
  - (c) provision that the members of the body who consist of members of that community have control of the body,
  - (d) provision that membership of the body is open to any member of that community,
  - (e) a statement of the body's aims and purposes, including the promotion of a benefit for that community, and
  - (f) provision that any surplus funds are to be applied for the benefit of that community.
- (6) The Scottish Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (2)(c), (3)(c) or (4)(c) in relation to any body they may specify.
- (7) A body is not a Part 5 community body unless the Scottish Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.
- (8) The Scottish Ministers may by regulations modify subsections (2), (3), (4), (5) and (6).
- (9) A community—
- (a) is defined for the purposes of subsection (2), (3), (4) and (5) by reference to a postcode unit or postcode units or a type of area as the Scottish Ministers may by regulations specify (or both such unit and type of area), and
  - (b) comprises the persons from time to time—
    - (i) resident in that postcode unit or in one of those postcode units or in that specified type of area, and
    - (ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units or that specified type of area (or part of it or them).
- (10) The articles of association of a company which is a Part 5 community body may, despite the generality of paragraph (h) of subsection (2), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.
- (11) In this section—
- “charity” means a body entered in the Scottish Charity Register,
  - “community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,
  - “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006,
  - “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area,

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“registered rules” has the meaning given by section 149 of the Co-operative and Community Benefit Societies Act 2014 (as that meaning applies in relation to community benefit societies),

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

## **50 Provisions supplementary to section 49**

- (1) A Part 5 community body—
  - (a) which has bought land under this Part, any part of which remains in its ownership, and
  - (b) which modifies its memorandum, articles of association, constitution or registered rules (as defined in section 49(11)),
 must, as soon as possible after such modification, notify the Scottish Ministers in writing of the modification.
- (2) If the Scottish Ministers are satisfied that a Part 5 community body which has, under this Part, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.
- (3) Subsection (2) does not apply if the Part 5 community body would no longer be entitled to buy the land because the land is not eligible for the purposes of this Part.
- (4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, the Scottish Ministers may by regulations make provision relating to, or to matters connected with, the acquisition of the land.
- (5) Regulations under subsection (4) may—
  - (a) apply, modify or exclude any enactment which relates to any matter as to which regulations could be made under that subsection,
  - (b) make such modifications of enactments as appear to the Scottish Ministers to be necessary or expedient in consequence of any provision of the regulations or otherwise in connection with the regulations.

## **51 Interpretation of Part**

- (1) In this Part “Lands Tribunal” means the Lands Tribunal for Scotland.
- (2) Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—
  - (a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
  - (b) a warrant granted under section 24(1) of that Act.
- (3) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.
- (4) Subsection (3) does not apply to a period of time specified in section 64(2), 69(7) or 70(3).

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### *Register of Applications by Community Bodies to Buy Land*

#### **52 Register of Applications by Community Bodies to Buy Land**

- (1) The Keeper must set up and keep a register, to be known as the Register of Applications by Community Bodies to Buy Land (the “New Register”).
- (2) The New Register must be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each application to exercise the right to buy under this Part registered in it—
  - (a) where the Part 5 community body which applied under section 54 is constituted by a company limited by guarantee, the name and address of the registered office of the company,
  - (b) where the Part 5 community body which applied under section 54 is constituted by a Scottish charitable incorporated organisation (within the meaning given by section 49(11)), the name and address of the principal office of the Scottish charitable incorporated organisation,
  - (c) where the Part 5 community body which applied under section 54 is constituted by a community benefit society (within the meaning given by section 49(11))—
    - (i) the name of the society, and
    - (ii) the address of the registered office of the society,
  - (d) where the Part 5 community body which applied under section 54 is constituted by a body corporate having a written constitution, the name and address of the body corporate,
  - (e) a copy of the application to exercise the right to buy under this Part,
  - (f) a copy of any notification given under section 58(4)(b),
  - (g) a copy of any notice given under section 60(1),
  - (h) a copy of any notice given under section 61(2)(b),
  - (i) a copy of any notice under section 62(1) or (2),
  - (j) a copy of any notice under section 62(3)(a) or (b),
  - (k) a copy of any notice under section 62(4)(a) or (b),
  - (l) such other information as the Scottish Ministers consider appropriate.
- (3) Subject to subsection (4), any person who, under this Part, provides a document or other information, or makes a decision, which or a copy of which is to be registered in the New Register must, as soon as reasonably practicable after providing the document or other information or, as the case may be, making the decision, give it or a copy of it to the Keeper for the purpose of allowing it to be so registered.
- (4) If the Part 5 community body registering an application requires that any such information or document relating to that application and falling within subsection (5) as is specified in the requirement be withheld from public inspection, that information or document is to be kept by or on behalf of the Scottish Ministers separately from and not entered in the New Register.
- (5) Information or a document falls within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land to which the application relates to be put to a particular use.
- (6) Nothing in subsection (4) or (5) requires an applicant Part 5 community body or a third party purchaser, or empowers the Scottish Ministers to require an applicant Part

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5 community body or a third party purchaser, to submit to the Scottish Ministers any information or document within subsection (5).

- (7) The Scottish Ministers may by regulations modify—
- (a) paragraphs (a) to (k) of subsection (2),
  - (b) subsection (4),
  - (c) subsection (5).
- (8) Subsection (9) applies where—
- (a) a Part 5 community body changes its name,
  - (b) a Part 5 community body which is constituted by a company limited by guarantee or by a community benefit society changes the address of its registered office,
  - (c) a Part 5 community body which is constituted by a Scottish charitable incorporated organisation changes the address of its principal office, or
  - (d) a Part 5 community body which is constituted by a body corporate having a written constitution changes its address.
- (9) The Part 5 community body must, as soon as reasonably practicable after the change is made, notify the Keeper of the change.
- (10) The Keeper must ensure—
- (a) that the New Register is, at all reasonable times, available for public inspection free of charge,
  - (b) that members of the public are given facilities for getting copies of entries in the New Register on payment of such charges as the Scottish Ministers may by regulations specify, and
  - (c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.
- (11) An extract so certified is sufficient evidence of the original.
- (12) In this Part “the Keeper” means—
- (a) the Keeper of the Registers of Scotland, or
  - (b) such other person as the Scottish Ministers may appoint to carry out the Keeper's functions under this Part.
- (13) Different persons may be so appointed for different purposes.

VALID FROM 27/06/2018

**53 Inclusion in New Register of applications for right to buy abandoned, neglected or detrimental land**

- (1) Section 97F of the Land Reform (Scotland) Act 2003 (as inserted by section 74 of the Community Empowerment (Scotland) Act 2015) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Keeper must keep the Register of Applications by Community Bodies to Buy Land (the “New Register”), established under section 52 of the Land Reform (Scotland) Act 2016, so that there is contained in it a part

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for registering information and documents relating to applications for the right to buy in accordance with section 97G.”.

- (3) In subsection (2), for “Part 3A Register” substitute “ New Register ”.
- (4) In subsection (3), for “Part 3A” substitute “ New ”.
- (5) In subsection (4), before “Register” insert “ New ”.
- (6) Subsections (10) and (11) are repealed.
- (7) The title of the section becomes “ **Inclusion of applications for right to buy in Register of Applications by Community Bodies to Buy Land** ”.

VALID FROM 26/04/2020

### *Applications for consent*

#### **54 Right to buy: application for consent**

- (1) The right to buy under this Part may be exercised only by—
  - (a) a Part 5 community body, or
  - (b) where a Part 5 community body nominates in its application another person to exercise the right to buy, that person (a “third party purchaser”).
- (2) That right may be so exercised only with the consent of the Scottish Ministers given on the written application of the Part 5 community body.
- (3) That right may be exercised in relation to more than one holding of land or more than one tenancy but in order so to exercise the right an application must be made in respect of each such holding or tenancy and applications so made may be differently disposed of.
- (4) In subsection (3)—
  - (a) a “holding” of land is land in the ownership of one person or in common or joint ownership, and
  - (b) a “tenancy” is one where one person is entitled to the tenant's interest or there is a common or joint entitlement to that interest.
- (5) Such an application—
  - (a) must be made in such form as the Scottish Ministers may by regulations require,
  - (b) must specify—
    - (i) the owner of the land,
    - (ii) where the application is to buy a tenant's interest, the tenant, and
    - (iii) any creditor in a standard security over the land or any part of it, and
  - (c) must include or be accompanied by such information as the Scottish Ministers may by regulations specify including information (provided, where appropriate, by or by reference to maps or drawings) about the matters mentioned in subsection (6).

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- (6) The matters are—
- (a) the reasons the Part 5 community body considers that its proposals for the land satisfy the sustainable development conditions set out in section 56(2) (or, where the application is to buy a tenant's interest, those conditions as modified by section 56(6)(a)),
  - (b) the location and boundaries of the land in respect of which the right to buy is sought to be exercised (including, as the case may be, the land to which any tenant's interest relates),
  - (c) all rights and interests in the land known to the Part 5 community body,
  - (d) the proposed use, development and management of the land (including, as the case may be, the land to which any tenant's interest relates).
- (7) A Part 5 community body applying under this section must, at the same time as it applies—
- (a) send a copy of its application and the accompanying information to the owner of the land to which the application relates,
  - (b) where its application is to buy a tenant's interest, send a copy of the application and the accompanying information to the tenant,
  - (c) where the Part 5 community body nominates a third party purchaser, send a copy of the application and the accompanying information to the third party purchaser,
  - (d) where there is a standard security in relation to the land or any part of it, send a copy of the application and the accompanying information to the creditor who holds the standard security and invite the creditor—
    - (i) to notify the Part 5 community body and the Scottish Ministers, within 60 days of the sending of the invitation, if any of the circumstances set out in subsection (8) has arisen (or arises within 60 days of the sending of the invitation), and
    - (ii) if such notice is given, to provide the Scottish Ministers, within that time, with the creditor's views in writing on the application.
- (8) Those circumstances are that—
- (a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 in relation to the land which the Part 5 community body is seeking to exercise its right to buy or any part of the land and that notice has not been complied with,
  - (b) a notice of default served by the creditor under section 21 of that Act in relation to the land or any part of the land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court,
  - (c) where that person has so objected, the court has upheld or varied the notice of default,
  - (d) the court has granted the creditor a warrant under section 24 of that Act in relation to the land or any part of the land.

## **55 Right to buy: application procedure**

- (1) On receipt of an application under section 54, the Scottish Ministers must—
- (a) invite—

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- (i) the owner of the land,
    - (ii) where the application is to buy a tenant's interest, the tenant,
    - (iii) any creditor in a standard security over the land or any part of it,
    - (iv) where the application nominates a third party purchaser, the third party purchaser, and
    - (v) any other person whom the Scottish Ministers consider to have an interest in the application,
  - to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application,
  - (b) take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application, and
  - (c) send copies of invitations given under paragraphs (a) and (b) to the Part 5 community body.
- (2) An invitation given under subsection (1)(a)(i) or (ii) must also invite the owner or, as the case may be, the tenant to give the Scottish Ministers information about—
- (a) the owner's or tenant's views on the likely impact on the owner or tenant of the proposals for the land or tenant's interest, including on the current use of the land or tenant's interest (and any intended use),
  - (b) whether the owner or tenant considers that the proposals for the land or tenant's interest satisfy the sustainable development conditions set out in section 56(2) and, if not, the owner or tenant's reasons,
  - (c) any rights or interests in the land of which the owner or tenant is aware that are not mentioned in the application, and
  - (d) any other matter that the owner or tenant considers is relevant to the application.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving an application, give public notice of it and of the date by which, under subsection (1)(a), views are to be received by them and, in that notice, invite persons to send to the Scottish Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.
- (4) That public notice is to be given by advertisement in such manner as the Scottish Ministers may by regulations specify.
- (5) The Scottish Ministers must—
- (a) send copies of any views they receive under this section to the Part 5 community body, and
  - (b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.
- (6) The Scottish Ministers must, when considering whether to consent to an application under section 54, have regard to all views on it and responses to the views which they have received in answer to invitations under this section.
- (7) The Scottish Ministers must decline to consider an application which—
- (a) does not comply with the requirements of or imposed under section 54,
  - (b) is otherwise incomplete, or

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(c) otherwise indicates that it is one which the Scottish Ministers would be bound to reject,  
 and the Scottish Ministers are not required to comply with subsections (1) to (6) in relation to such an application.

- (8) The Scottish Ministers must not reach a decision on an application before—
- (a) the date which is 60 days after the last date on which the Part 5 community body may provide the Scottish Ministers with a response to the invitation given under subsection (5), or
  - (b) if by that date the Lands Tribunal has not advised the Scottish Ministers of its finding on any question referred to it under section 71 in relation to the application, the date on which the Lands Tribunal provides the Scottish Ministers with that finding.
- (9) A Part 5 community body or, as the case may be, a third party purchaser may require the Scottish Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to the Scottish Ministers for the purposes of this section and section 54.

## **56 Right to buy: Ministers' decision on application**

- (1) The Scottish Ministers must not consent to an application to buy land under section 54 unless they are satisfied that—
- (a) the sustainable development conditions mentioned in subsection (2) are met, and
  - (b) the procedural requirements mentioned in subsection (3) have been complied with.
- (2) The sustainable development conditions are met if—
- (a) the transfer of land is likely to further the achievement of sustainable development in relation to the land,
  - (b) the transfer of land is in the public interest,
  - (c) the transfer of land—
    - (i) is likely to result in significant benefit to the relevant community (see subsection (11)) to which the application relates, and
    - (ii) is the only practicable, or the most practicable, way of achieving that significant benefit, and
  - (d) not granting consent to the transfer of land is likely to result in harm to that community.
- (3) The procedural requirements for an application to buy land have been complied with if—
- (a) before the period of 6 months ending with the day on which the application was made, the Part 5 community body has submitted a written request to the owner of the land to transfer the land to the community body or, as the case may be, to the third party purchaser named in the application and the owner has not responded or has not agreed to the request,
  - (b) the land to which the application relates is eligible land,
  - (c) the owner of the land is accurately identified in the application,



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- (d) any creditor in a standard security over the land or any part of it is accurately identified in the application,
  - (e) where the application nominates a third party purchaser, the third party purchaser—
    - (i) is accurately identified in the application, and
    - (ii) is shown to consent to the application,
  - (f) the owner is not—
    - (i) prevented from selling the land, or
    - (ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 61(3)) to sell the land otherwise than to the Part 5 community body or, as the case may be, the third party purchaser,
  - (g) either—
    - (i) a significant number of the members of the relevant community to which the application relates have a connection with the land,
    - (ii) the land is sufficiently near to land with which those members of that community have a connection, or
    - (iii) the land is in or sufficiently near to the area comprising that community,
  - (h) the relevant community have approved the proposal to exercise the right to buy, and
  - (i) the Part 5 community body complies with the provisions of section 49.
- (4) In determining whether an application to buy land meets the sustainable development conditions mentioned in subsection (2), the Scottish Ministers may take into account the extent to which, in relation to the relevant community, regard has been had to guidance issued under section 44.
- (5) Where an application relates to land which consists of salmon fishings or mineral rights only, the Scottish Ministers must not consent to the application unless they are also satisfied that the application complies with the requirements of section 47.
- (6) Where an application is to buy a tenant's interest, the Scottish Ministers must not consent to the application unless they are satisfied that—
- (a) the sustainable development conditions mentioned in subsection (2) are met in relation to the transfer of the tenant's interest (reading references in that subsection to “the transfer of land” as “the transfer of the tenant's interest”), and
  - (b) the procedural requirements mentioned in subsection (7) have been complied with.
- (7) The procedural requirements for an application to buy a tenant's interest have been complied with if—
- (a) before the period of 6 months ending with the day on which the application was made, the Part 5 community body has submitted a written request to the tenant to assign the tenant's interest to the community body or, as the case may be, to the third party purchaser named in the application,
  - (b) the application complies with the requirements of section 48,
  - (c) the tenant whose interest the application relates to is accurately identified in the application,
  - (d) the owner of the land is accurately identified in the application,

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- (e) any creditor in a standard security over the land or any part of it is accurately identified in the application,
  - (f) where the application nominates a third party purchaser, the third party purchaser—
    - (i) is accurately identified in the application, and
    - (ii) is shown to consent to the application,
  - (g) either—
    - (i) a significant number of the members of the relevant community to which the application relates have a connection with the land to which the tenancy relates,
    - (ii) the land is sufficiently near to land with which those members of that community have a connection, or
    - (iii) the land is in or sufficiently near to the area comprising that community,
  - (h) the relevant community have approved the proposal to exercise the right to buy, and
  - (i) the Part 5 community body complies with the provisions of section 49.
- (8) In determining whether an application to buy a tenant's interest meets the sustainable development conditions mentioned in subsection (2), the Scottish Ministers—
- (a) must take into account any related application under section 54 to buy the land to which the tenancy relates, and
  - (b) may take into account the extent to which, in relation to the relevant community, regard has been had to guidance issued under section 44.
- (9) The Scottish Ministers may by regulations make provision about—
- (a) the form and content of requests referred to in subsections (3)(a) and (7)(a),
  - (b) the form and content of responses to requests referred to in subsection (3)(a),
  - (c) the circumstances in which owners of land are to be taken not to have responded or not to have agreed to requests referred to in subsection (3)(a).
- (10) In determining for the purposes of subsection (2)(b) whether a transfer of land or tenant's interest is in the public interest, the Scottish Ministers must—
- (a) take into account, in particular, any information given under section 55(2)(a),
  - (b) consider the likely effect of granting (or not granting) consent to the transfer of land or tenant's interest on land use in Scotland.
- (11) For the purposes of subsections (2)(c)(i), (3)(g)(i), (4), (7)(g)(i) and (8)(b) “relevant community” means the community as defined in subsection (9) of section 49 (reading that subsection as if paragraph (b)(ii) were omitted).
- (12) In determining what constitutes significant benefit to the community for the purposes of subsection (2)(c) or harm to the community for the purposes of subsection (2)(d), the Scottish Ministers must consider the likely effect of granting (or not granting) consent to the transfer of land or tenant's interest on the lives of the persons comprising that community with reference to the following considerations—
- (a) economic development,

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- (b) regeneration,
  - (c) public health,
  - (d) social wellbeing, and
  - (e) environmental wellbeing.
- (13) In considering a decision under this section on an application under section 54, the Scottish Ministers must have regard to—
- (a) relevant non-Convention human rights, and
  - (b) the desirability of encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).
- (14) In subsection (13)(a), “relevant non-Convention human rights” means such human rights other than the Convention rights (within the meaning of section 1 of the Human Rights Act 1998)—
- (a) as the Scottish Ministers consider to be relevant, and
  - (b) which are contained in any international convention, treaty or other international instrument ratified by the United Kingdom, including the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 subject to—
    - (i) any amendment in force in relation to the United Kingdom for the time being, and
    - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

## **57 Ballot to indicate approval for purposes of section 56**

- (1) The community, as defined in section 49 in relation to a Part 5 community body, are to be taken for the purposes of section 56(3)(h) and (7)(h) as having approved a proposal to exercise the right to buy if—
- (a) a ballot of the members of the community so defined has, during the period of 6 months which immediately preceded the date on which the application was made, been conducted by the Part 5 community body on the question whether the Part 5 community body or, as the case may be, the third party purchaser should buy the land or, as the case may be, the tenant's interest,
  - (b) in the ballot—
    - (i) at least half of the members of the community so defined have voted, or
    - (ii) fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 5 community body's proceeding to buy the land or tenant's interest, and
  - (c) the majority of those voting have voted in favour of the proposition that the Part 5 community body buy the land or tenant's interest.
- (2) The ballot is to be conducted as the Scottish Ministers may by regulations specify.
- (3) Regulations under subsection (2) must in particular include provision for—
- (a) the ascertainment and publication of—
    - (i) the number of persons eligible to vote in the ballot,
    - (ii) the number who did vote,

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- (iii) the numbers of valid votes respectively cast for and against the proposition mentioned in subsection (1)(c), and
- (b) the form and manner in which the result of the ballot is to be published.
- (4) If the ballot is not conducted as specified by regulations under subsection (2), the right to buy is, so far as proceeding on that application, extinguished.
- (5) The Part 5 community body which conducts a ballot must, within 21 days of the ballot (or, if its application under section 54 is given before the expiry of that period, together with the application), and in the form of return specified by the regulations, notify the Scottish Ministers of—
  - (a) the result,
  - (b) the number of persons eligible to vote,
  - (c) the number of persons who voted, and
  - (d) the number of persons who voted in favour of the proposition mentioned in subsection (1)(c).
- (6) The Scottish Ministers may require the Part 5 community body—
  - (a) to provide such information relating to the ballot as they think fit, and
  - (b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.
- (7) Subject to subsection (8), the expense of conducting a ballot under this section is to be met by the Part 5 community body.
- (8) The Scottish Ministers may by regulations make provision enabling a Part 5 community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.
- (9) Regulations under subsection (8) may in particular make provision in relation to—
  - (a) the circumstances in which a Part 5 community body may make an application by virtue of that subsection,
  - (b) the method to be applied by the Scottish Ministers in calculating the expense of conducting the ballot,
  - (c) the criteria to be applied by the Scottish Ministers in deciding whether to make a reimbursement to the applicant,
  - (d) the procedure to be followed in connection with the making of—
    - (i) an application to Ministers,
    - (ii) an appeal against a decision made by Ministers in respect of an application,
  - (e) persons who may consider such an appeal,
  - (f) the powers of such persons.

## **58 Right to buy same land exercisable by only one Part 5 community body**

- (1) Only one Part 5 community body may apply under this Part in relation to the same land or tenant's interest.

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- (2) Where two or more Part 5 community bodies apply under this Part in relation to the same land or tenant's interest, it is for the Scottish Ministers to decide which application is to proceed.
- (3) The Scottish Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses to the views, which they have received in answer to invitations under section 55.
- (4) On the Scottish Ministers so deciding—
  - (a) any right to buy the land or tenant's interest which is the subject of the other body's application is, so far as proceeding on that application, extinguished, and
  - (b) the Scottish Ministers must give notice in writing to—
    - (i) the owner of the land,
    - (ii) where the application is to buy a tenant's interest, the tenant,
    - (iii) the Part 5 community bodies,
    - (iv) where any application nominates a third party purchaser, the third party purchaser, and
    - (v) every person who was invited, under section 55(1)(a), to send the Scottish Ministers views on the application.

## **59 Consent conditions**

The Scottish Ministers may make their consent to an application made under section 54 subject to conditions.

## **60 Notification of Ministers' decision on application**

- (1) The Scottish Ministers must give notice in writing of their decision on an application, and their reasons for it, to—
  - (a) the applicant Part 5 community body,
  - (b) the owner of the land to which the application relates,
  - (c) where the application is to buy a tenant's interest, the tenant,
  - (d) where the application nominates a third party purchaser, the third party purchaser,
  - (e) every other person who was invited, under section 55(1)(a), to send them views on the application, and
  - (f) the Keeper.
- (2) The notice must set out—
  - (a) the land or, as the case may be, the tenant's interest to which the decision relates,
  - (b) to whom the land is to be transferred or, as the case may be, to whom the tenant's interest is to be assigned,
  - (c) where the Scottish Ministers' decision is to consent to the application, any conditions imposed under section 59,
  - (d) information about the consequences of the decision notified and of the rights of appeal against it given by this Part, and
  - (e) the date on which consent is given or refused.

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### *Procedure following consent*

#### **61 Effect of Ministers' decision on right to buy**

- (1) The Scottish Ministers may by regulations make provision for or in connection with prohibiting, during such period as may be specified in the regulations, persons so specified from transferring or otherwise dealing with land or, as the case may be, a tenant's interest in respect of which a Part 5 community body has made an application under section 54.
- (2) Regulations under subsection (1) may in particular include provision—
  - (a) specifying transfers or dealings which are not prohibited by the regulations,
  - (b) requiring or enabling specified persons in specified circumstances to register specified notices in the New Register,
  - (c) requiring, in such circumstances as may be specified in the regulations, such information as may be so specified to be incorporated into deeds relating to the land as may be so specified.
- (3) The Scottish Ministers may by regulations make provision for or in connection with suspending, during such period as may be specified in the regulations, such rights in or over land in respect of which a Part 5 community body has made an application under section 54 as may be so specified.
- (4) Regulations under subsection (3) may in particular include provision specifying—
  - (a) rights to which the regulations do not apply,
  - (b) rights to which the regulations do not apply in such circumstances as may be specified in the regulations.
- (5) Nothing in this Part—
  - (a) affects the operation of an inhibition on the sale of the land,
  - (b) prevents an action of adjudication from proceeding, or
  - (c) affects the commencement, execution or operation of any other diligence.

#### **62 Confirmation of intention to proceed with purchase and withdrawal**

- (1) Where an application made under section 54 does not nominate a third party purchaser, the right to buy of a Part 5 community body is exercisable only if, within 21 days of the date of receiving notice of assessed value under section 65(13), the Part 5 community body sends notice confirming intention to proceed to buy the land or, as the case may be, tenant's interest to—
  - (a) the Scottish Ministers,
  - (b) the owner of the land, and
  - (c) where the application is to buy a tenant's interest, the tenant.
- (2) Where an application made under section 54 nominates a third party purchaser, the right to buy is exercisable only if, within 21 days of the date of receiving notice under section 65(13), both the third party purchaser and the Part 5 community body which nominated the third party purchaser send notice confirming intention to proceed to buy the land or, as the case may be, tenant's interest to—

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- (a) the Scottish Ministers,
  - (b) the owner of the land, and
  - (c) where the application is to buy a tenant's interest, the tenant.
- (3) Where an application made under section 54 does not nominate a third party purchaser—
- (a) at any time until receiving notice under section 65(13) a Part 5 community body may withdraw an application under section 54 by giving the Scottish Ministers notice in writing to that effect,
  - (b) at any time after receiving notice under section 65(13), the Part 5 community body may withdraw a confirmation of intention to proceed made under this section by giving the Scottish Ministers notice in writing to that effect.
- (4) Where an application nominates a third party purchaser—
- (a) at any time until receiving notice under section 65(13), only the Part 5 community body which nominated the third party purchaser may withdraw an application under section 54 by giving the Scottish Ministers notice in writing to that effect,
  - (b) at any time after receiving notice under section 65(13), either the third party purchaser or the Part 5 community body which nominated the third party purchaser may withdraw a confirmation of intention to proceed made under this section by giving the Scottish Ministers notice in writing to that effect.
- (5) The Scottish Ministers must, within 7 days of receipt of notice under subsection (1), (2), (3)(a) or (b) or (4)(a) or (b), acknowledge receipt and send a copy of that acknowledgement to—
- (a) the Keeper,
  - (b) the owner of the land, and
  - (c) where the application is to buy a tenant's interest, the tenant.

### **63 Completion of purchase**

- (1) It is for the Part 5 community body or, as the case may be, the third party purchaser to secure the expeditious exercise of its right to buy and, in particular—
- (a) to prepare the documents necessary to—
    - (i) effect the transfer to it of the land or, as the case may be, the assignation to it of the tenant's interest, and
    - (ii) impose any conditions (including any real burdens or servitudes) which the Scottish Ministers, under section 59, require to be imposed upon the title to land, and
  - (b) in so doing, to ensure—
    - (i) that the land in the application to which the Scottish Ministers have consented is that to be transferred or assigned, and
    - (ii) that the transfer or assignation is to be effected in accordance with any other conditions imposed by the Scottish Ministers under section 59.
- (2) Where the Part 5 community body or, as the case may be, the third party purchaser is unable to fulfil the duty imposed by subsection (1)(b) because the land or part of the land in respect of which the Scottish Ministers' consent was given is—

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- (a) not owned by the person named as its owner in the application made under section 54, or
  - (b) not tenanted by the person named as its tenant in the application made by virtue of section 48(3),
- it must refer that matter to the Scottish Ministers.
- (3) On a reference under subsection (2), the Scottish Ministers must direct that the right to buy of the Part 5 community body or, as the case may be, of the third party purchaser is, so far as proceeding on that application, extinguished.
- (4) The owner of the land being bought is obliged—
- (a) to make available to the Part 5 community body or, as the case may be, the third party purchaser such deeds and other documents as are sufficient to enable completion of its title to the land, and
  - (b) to transfer title accordingly.
- (5) If the owner of the land refuses or fails to make those deeds and other documents available (or they cannot be found) within 6 weeks of the date on which the Scottish Ministers consent to an application to buy land, the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, order the owner or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.
- (6) If the owner of the land refuses or fails to effect such sufficient transfer as is mentioned in subsection (4), the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the same force and effect as if done by the owner or person entitled.
- (7) Where an application is to buy a tenant's interest, the tenant is obliged to make available to the Part 5 community body or, as the case may be, the third party purchaser such deeds and other documents as are sufficient to enable completion of its acquisition of the tenant's interest and the tenant is obliged to effect the assignation of the tenant's interest accordingly.
- (8) If the tenant refuses or fails to make those deeds and other documents available (or they cannot be found) within 6 weeks of the date on which the Scottish Ministers consent to an application to buy a tenant's interest, the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, order the tenant or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.
- (9) If the tenant refuses or fails to effect the assignation of the tenant's interest in accordance with subsection (7), the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete the assignation to the same force and effect as if done by the tenant.

## **64 Completion of transfer**

- (1) The consideration for the transfer of the land or for the assignation of the tenant's interest is its value as assessed under section 65.



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- (2) Subject to subsections (3) to (5), that consideration must be paid not later than the date (the “final settlement date”) falling 6 months after the date (the “consent date”) when the Scottish Ministers consented to the application made under section 54.
- (3) Where—
- (a) the Part 5 community body or, as the case may be, the third party purchaser and the owner or, as the case may be, the tenant so agree, the consideration may be paid on a date later than the final settlement date,
  - (b) the assessment of the valuation of the land or the tenant's interest under section 65 or, as the case may be, a determination under section 66 has not been completed by a date 4 months after the consent date, the consideration must be paid not later than 2 months after the date when that assessment is completed or the date when that determination is made, whichever occurs later,
  - (c) that valuation or, as the case may be, determination under section 66 is the subject of an appeal which has not been decided within 4 months of the consent date, the consideration must be paid not later than 2 months after the date of the decision on the appeal against the valuation or, as the case may be, the determination, whichever occurs later.
- (4) The Scottish Ministers may, on the application of any of the parties, extend the final settlement date—
- (a) in relation to an application to buy land, where an appeal is made—
    - (i) under section 69 in respect of the Scottish Ministers' decision on a related application to buy a tenant's interest,
    - (ii) under section 70(1) in respect of a valuation of that tenant's interest, or
    - (iii) under section 70(2) in respect of a determination carried out under section 66 concerning that related application,
  - (b) in relation to an application to buy a tenant's interest, where an appeal is made—
    - (i) under section 69 in respect of the Scottish Ministers' decision on a related application to buy land, or
    - (ii) under section 70(1) in respect of a valuation of that land.
- (5) If, on the date the consideration is to be paid, the owner is not able to effect the grant of a good and marketable title or, as the case may be, the tenant is not able to assign the tenant's interest—
- (a) the consideration, or
  - (b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 65 as a fair estimate of what the consideration might be,
- must be consigned into the Lands Tribunal until that title is granted or assignation is effected or the Part 5 community body or, as the case may be, the third party purchaser gives notice to the Tribunal and to the Scottish Ministers of its decision not to proceed to complete the transaction.
- (6) The Scottish Ministers must, within 7 days of receipt of notice of a decision not to proceed under subsection (5), acknowledge receipt and send a copy of that acknowledgement to—
- (a) the Keeper,

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- (b) the owner of the land,
  - (c) where the application is to buy a tenant's interest, the tenant, and
  - (d) the Part 5 community body or, as the case may be, the third party purchaser.
- (7) Except where subsection (5) applies, if the consideration remains unpaid after the date not later than which it is to be paid, the Part 5 community body's or, as the case may be, the third party purchaser's confirmation of intention to proceed made under section 62 in relation to the land or the tenant's interest is to be treated as withdrawn.
- (8) Any heritable security which burdened the land or tenant's interest immediately before—
- (a) title is granted to the Part 5 community body or, as the case may be, to the third party purchaser, or
  - (b) the tenant's interest is assigned to the Part 5 community body or, as the case may be, to the third party purchaser,
- ceases to do so on the registration in the Land Register of Scotland of the Part 5 community body's or third party purchaser's interest in the land.
- (9) Where such a security also burdens—
- (a) land other than the land in respect of which title is granted to the Part 5 community body or, as the case may be, to the third party purchaser, or
  - (b) a tenant's interest other than the tenant's interest assigned to the Part 5 community body or, as the case may be, to the third party purchaser,
- the security does not, by virtue of subsection (8), cease to burden that other land.
- (10) Unless the creditors in right of any such security otherwise agree, the Part 5 community body or, as the case may be, the third party purchaser must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the Part 5 community body or the third party purchaser as consideration for the land or the tenant's interest.
- (11) Any sum paid by a Part 5 community body or a third party purchaser under subsection (10) must be deducted from the sum which the Part 5 community body or third party purchaser is to pay to the owner as consideration for the land or, as the case may be, to the tenant as consideration for the tenant's interest.

## **65 Assessment of value of land etc.**

- (1) Where the Scottish Ministers consent to an application made under section 54 they must within 7 days of doing so appoint a valuer, being a person who appears to the Scottish Ministers—
- (a) to be suitably qualified to consider the matters arising under this section and, as the case may be, under section 66,
  - (b) to be independent, and
  - (c) to have knowledge and experience of valuing land or interests of a kind similar to the land or tenant's interest being bought,
- to assess the value of the land or tenant's interest to which the application relates.
- (2) The validity of anything done under this section is not affected by any failure by the Scottish Ministers to comply with the time limit specified in subsection (1).
- (3) In assessing the value of land or a tenant's interest in pursuance of an appointment under subsection (1), a valuer—

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- (a) does not act on behalf of the owner of the land, the tenant, the Part 5 community body or, as the case may be, the third party purchaser, and
  - (b) is to act as an expert and not as an arbiter.
- (4) The value to be assessed is the market value of the land or the tenant's interest as at the date when the Scottish Ministers consented to the application made under section 54 relating to the land or the tenant's interest.
- (5) The “market value” of land or a tenant's interest is the aggregate of—
- (a) the value the land or the tenant's interest would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing,
  - (b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of the land or the tenant's interest, including depreciation caused by division of the land or interests by the transfer of land to the Part 5 community body or third party purchaser, and
  - (c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land or the tenant's interest to the Part 5 community body or third party purchaser.
- (6) In determining the value which land or a tenant's interest would have on the open market in the circumstances mentioned in subsection (5)(a)—
- (a) the valuer may take account, in so far as a seller and buyer such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the Part 5 community body or third party purchaser which is exercising its right to buy) would be willing to buy the land or the tenant's interest at a price higher than others would, because of a characteristic of the land or the tenant's interest which relates peculiarly to that person's interest in buying it,
  - (b) the valuer may not take account of—
    - (i) any depreciation of the type mentioned in subsection (5)(b),
    - (ii) any disturbance of the type mentioned in subsection (5)(c),
    - (iii) the absence of the period of time during which the land or the tenant's interest would, on the open market, be likely to be advertised and exposed for sale.
- (7) The expense of a valuation under this section is to be met by the Scottish Ministers.
- (8) In carrying out a valuation under this section, the valuer must—
- (a) invite—
    - (i) the owner of the land,
    - (ii) where the application is to buy a tenant's interest, the tenant,
    - (iii) the Part 5 community body,
    - (iv) where the application nominates a third party purchaser, the third party purchaser,to make representations in writing about the value of the land or tenant's interest, and
  - (b) consider any representations made accordingly.
- (9) Where written representations under subsection (8) are received—

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- (a) from the owner of the land or, as the case may be, the tenant, the valuer must invite the Part 5 community body and, as the case may be, the third party purchaser to send views on the representations in writing,
  - (b) from the Part 5 community body or, as the case may be, the third party purchaser, the valuer must invite the owner of the land and, as the case may be, the tenant to send views on the representations in writing.
- (10) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (9).
- (11) Where the Part 5 community body or, as the case may be, the third party purchaser and the owner of the land have agreed the valuation of the land they must notify the valuer in writing of that valuation.
- (12) Where the Part 5 community body or, as the case may be, the third party purchaser and the tenant have agreed the valuation of the tenant's interest, they must notify the valuer in writing of the valuation.
- (13) The valuer must, within the period set out in subsection (14), give notice of the assessed value of the land or tenant's interest to—
- (a) the Scottish Ministers,
  - (b) the Part 5 community body,
  - (c) where the application nominates a third party purchaser, the third party purchaser,
  - (d) the owner of the land, and
  - (e) where the application is to buy a tenant's interest, the tenant.
- (14) The period referred to in subsection (13) is the period of 8 weeks beginning with the date of appointment of the valuer or such longer period as the Scottish Ministers may, on an application by the valuer, determine.
- (15) The validity of anything done under this Part is not affected by any failure by a valuer to comply with the time limit specified in subsection (14).

## **66 Acquisition of interest of tenant over land: allocation of rents etc.**

- (1) Where an application to buy a tenant's interest does not relate to the entire tenanted land, any resultant question as to the allocation—
- (a) as between the tenant and the Part 5 community body or the third party purchaser of rents payable or receivable, or
  - (b) as between them of rights and obligations generally,
- is to be determined by the valuer when, in pursuance of an appointment under section 65(1), the valuer assesses the value of the interest of the tenant.
- (2) Any determination under subsection (1) is to be such as the valuer considers equitable in all the circumstances.
- (3) Where a determination is made under subsection (1) the valuer must, within the period specified in section 65(14), notify—
- (a) the Part 5 community body,
  - (b) where the application nominates a third party purchaser, the third party purchaser, and

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(c) the tenant.

VALID FROM 26/04/2020

### *Compensation*

#### **67 Compensation**

- (1) Where an application made under section 54 does not nominate a third party purchaser, any person (including an owner or former owner of land, and, where an application is to buy a tenant's interest, a tenant) who has incurred loss or expense—
- (a) in complying with the requirements of this Part following the making of the application by the Part 5 community body,
  - (b) as a result of the withdrawal by the Part 5 community body of the application under section 62(3)(a),
  - (c) as a result of the withdrawal by the Part 5 community body of its confirmation of intention to proceed under section 62(3)(b), or its failure otherwise to complete the purchase after having so confirmed its intention under that section, or
  - (d) as a result of the failure of the Part 5 community body to complete the purchase,
- is entitled to recover the amount of that loss or expense from the Part 5 community body.
- (2) Where an application made under section 54 nominates a third party purchaser—
- (a) any person (including an owner or former owner of land, and, where an application is to buy a tenant's interest, a tenant) who has incurred loss or expense—
    - (i) in complying with the requirements of this Part following the making of the application by the Part 5 community body,
    - (ii) as a result of the withdrawal by the Part 5 community body or, as the case may be, third party purchaser of its confirmation of intention to proceed under section 62(4)(b) or its failure otherwise to complete the purchase after having so confirmed its intention under that section, or
    - (iii) as a result of the failure of the Part 5 community body or, as the case may be, third party purchaser to complete the purchase,is entitled to recover the amount of that loss or expense from the third party purchaser,
  - (b) any such person who has incurred loss or expense as a result of the withdrawal by the Part 5 community body of the application under section 62(4)(a) is entitled to recover the amount of that loss or expense from the Part 5 community body.
- (3) There is no such entitlement under subsections (1) and (2) where the application made under section 54 is refused.

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- (4) Where such an application has been refused, an owner of the land or a tenant who has incurred loss or expense as mentioned in subsection (1)(a) or (2)(a)(i) is entitled to recover the amount of that loss or expense from the Scottish Ministers.
- (5) The Scottish Ministers may by regulations make provision for or in connection with specifying—
  - (a) amounts payable in respect of loss or expense incurred as mentioned in subsections (1) and (2),
  - (b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,
  - (c) the person who is liable to pay those amounts,
  - (d) the procedure under which claims for compensation under this section are to be made.
- (6) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by regulations under subsection (5)(d), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal.
- (7) Where either of the parties refers a question to the Lands Tribunal as mentioned in subsection (6), the party so referring the question must (unless that party is the Scottish Ministers), within 7 days of the date of referring it, notify the Scottish Ministers in writing of—
  - (a) the reference, and
  - (b) the date of reference.
- (8) The Lands Tribunal must send a copy of its findings on a question referred to it under subsection (6) to the Scottish Ministers.
- (9) Failure to comply with subsection (7) or (8) has no effect on—
  - (a) the right to buy of the Part 5 community body or, as the case may be, of the third party purchaser, or
  - (b) the validity of the reference of the question under subsection (6).

## **68 Grants towards liabilities to pay compensation**

- (1) The Scottish Ministers may, in the circumstances set out in subsection (2), pay a grant to a Part 5 community body or a third party purchaser.
- (2) Those circumstances are—
  - (a) that after settlement of its other liabilities connected with the exercise of its right to buy land or, as the case may be, a tenant's interest under this Part, the Part 5 community body or, as the case may be, the third party purchaser has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 67,
  - (b) that the Part 5 community body or, as the case may be, the third party purchaser has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money, and
  - (c) that it is in the public interest that the Scottish Ministers pay the grant.

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- (3) The fact that all the circumstances set out in subsection (2) are applicable in a particular case does not prevent the Scottish Ministers from refusing to pay a grant in that case.
- (4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.
- (5) The Scottish Ministers may pay a grant under this section only on the application of a Part 5 community body or third party purchaser.
- (6) An application for such a grant must be made in such form and in accordance with such procedure as the Scottish Ministers may by regulations specify.
- (7) The Scottish Ministers must issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.
- (8) The Scottish Ministers' decision on an application under this section is final.

VALID FROM 26/04/2020

### *Appeals and references*

#### **69 Appeals to sheriff**

- (1) An owner of land may appeal to the sheriff against a decision by the Scottish Ministers to give consent to an application made under section 54.
- (2) Where such an application is to buy a tenant's interest, the tenant may appeal to the sheriff against a decision by the Scottish Ministers to give consent to the application.
- (3) A Part 5 community body may appeal to the sheriff against a decision by the Scottish Ministers not to give consent to an application made under section 54.
- (4) Subsection (3) does not extend to the Scottish Ministers' decision under section 58 on which of two or more applications made under section 54 to buy the same land or tenant's interest is to proceed.
- (5) A person who is a member of a community (defined under section 49(9)) to which an application relates may appeal to the sheriff against a decision by the Scottish Ministers to give consent to an application made under section 54.
- (6) A creditor in a standard security with a right to sell land may appeal to the sheriff against a decision by the Scottish Ministers to give consent to an application made under section 54.
- (7) An appeal under this section must be lodged within 28 days of the date of the Scottish Ministers' decision on an application made under section 54.
- (8) The sheriff in whose sheriffdom the land which is the subject of the application (or, as the case may be, over which the tenancy has been created) or any part of it is situated has jurisdiction to hear an appeal under this section.
- (9) Where an appeal is made—

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- (a) under subsection (1) the owner must intimate that fact to—
    - (i) the Part 5 community body,
    - (ii) where the application nominates a third party purchaser, the third party purchaser,
    - (iii) where the application is to buy a tenant's interest, the tenant,
    - (iv) the Scottish Ministers, and
    - (v) any creditor in a standard security with a right to sell the land to which the appeal relates,
  - (b) under subsection (2) the tenant must intimate that fact to—
    - (i) the Part 5 community body,
    - (ii) where the application nominates a third party purchaser, the third party purchaser,
    - (iii) the owner,
    - (iv) the Scottish Ministers, and
    - (v) any creditor in a standard security with a right to sell the land to which the appeal relates,
  - (c) under subsection (3) the Part 5 community body must intimate that fact to—
    - (i) where the application nominates a third party purchaser, the third party purchaser,
    - (ii) the owner,
    - (iii) where the application is to buy a tenant's interest, the tenant,
    - (iv) the Scottish Ministers, and
    - (v) any creditor in a standard security with a right to sell the land to which the appeal relates,
  - (d) under subsection (5) the member of the community must intimate that fact to—
    - (i) the Part 5 community body,
    - (ii) where the application nominates a third party purchaser, the third party purchaser,
    - (iii) the owner,
    - (iv) where the application is to buy a tenant's interest, the tenant,
    - (v) the Scottish Ministers, and
    - (vi) any creditor in a standard security with a right to sell the land to which the appeal relates,
  - (e) under subsection (6) the creditor must intimate that fact to—
    - (i) the Part 5 community body,
    - (ii) where the application nominates a third party purchaser, the third party purchaser,
    - (iii) the owner,
    - (iv) where the application is to buy a tenant's interest, the tenant, and
    - (v) the Scottish Ministers.
- (10) The decision of the sheriff in an appeal under this section—
- (a) may require rectification of the New Register,
  - (b) may impose conditions upon the appellant,
  - (c) is final.



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## **70 Appeals to Lands Tribunal: valuation**

- (1) The following persons may appeal to the Lands Tribunal against a valuation carried out under section 65—
  - (a) the owner of the land,
  - (b) where the application is to buy a tenant's interest, the tenant,
  - (c) the Part 5 community body,
  - (d) where the application nominates a third party purchaser, the third party purchaser.
- (2) The following persons may appeal to the Lands Tribunal against a determination carried out under section 66—
  - (a) the tenant,
  - (b) the Part 5 community body,
  - (c) where the application nominates a third party purchaser, the third party purchaser.
- (3) An appeal under this section must state the grounds on which it is being made and must be lodged within 21 days of the date of receiving notice of assessed value under section 65(13).
- (4) In an appeal under this section, the Lands Tribunal may—
  - (a) reassess the value of the land or, as the case may be, the tenant's interest,
  - (b) substitute its own determination for any determination under section 66.
- (5) The valuer whose valuation or determination is appealed against may be a witness in the appeal proceedings.
- (6) The Lands Tribunal must give reasons for its decision on an appeal under this section and must issue a written statement of those reasons—
  - (a) within 8 weeks of the hearing of the appeal, or
  - (b) where subsection (7) applies, by such later date referred to in paragraph (b) (ii) of that subsection.
- (7) This subsection applies where—
  - (a) the Lands Tribunal considers that it is not reasonable to issue a written statement by the time limit specified in subsection (6)(a), and
  - (b) before the expiry of that time limit, the Lands Tribunal has notified the parties to the appeal—
    - (i) that the Lands Tribunal is unable to issue a written statement by that time limit, and
    - (ii) of the date by which the Lands Tribunal will issue such a written statement.
- (8) The validity of anything done under this Part is not affected by any failure of the Lands Tribunal to issue a written statement by the date referred to in subsection (6) (a) or (7)(b)(ii).
- (9) Where a person appeals under subsection (1) or (2), the person must, within 7 days of the date on which the appeal is made, notify the Scottish Ministers in writing of—
  - (a) the making of the appeal, and
  - (b) the date of the making of the appeal.

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- (10) The Lands Tribunal must send a copy of the written statement of reasons issued under subsection (6) to the Scottish Ministers.
- (11) Failure to comply with subsection (9) or (10) has no effect on—
  - (a) the right to buy of the Part 5 community body or, as the case may be, of the third party purchaser, or
  - (b) the validity of the appeal under this section.
- (12) The Scottish Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation or determination is the subject of the appeal.
- (13) The Scottish Ministers' powers under the Lands Tribunal Act 1949 to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

## **71 Reference to Lands Tribunal of questions on applications**

- (1) At any time before the Scottish Ministers reach a decision on an application which has been made under section 54 the following persons may refer to the Lands Tribunal any question relating to the application—
  - (a) the Scottish Ministers,
  - (b) any person who is a member of the community as defined in section 49 in relation to the applicant Part 5 community body,
  - (c) the owner of the land,
  - (d) where the application is to buy a tenant's interest, the tenant,
  - (e) any person who has any interest in the land giving rise to a right which is legally enforceable by that person, or
  - (f) any person who is invited, under section 55(1)(a)(v), to send views to the Scottish Ministers on the application.
- (2) In considering any question referred to it under subsection (1), the Lands Tribunal may have regard to any representations made to it by—
  - (a) the applicant Part 5 community body,
  - (b) the owner of the land,
  - (c) where the application is to buy a tenant's interest, the tenant, or
  - (d) any other person who, in the opinion of the Lands Tribunal, appears to have an interest.
- (3) The Lands Tribunal—
  - (a) must advise the Scottish Ministers of its finding on any question so referred, and
  - (b) may, by order, provide that the Scottish Ministers may consent to the application only if they impose, under section 59, such conditions as the Lands Tribunal may specify.
- (4) If the Lands Tribunal considers any question referred to it under this section to be irrelevant to the Scottish Ministers' decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.

**Status:** Point in time view as at 01/11/2016. This version of this Act contains provisions that are not valid for this point in time.  
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- (5) Where a person refers a question to the Lands Tribunal under subsection (1), the person must, within 7 days of the date of referring it, notify the Scottish Ministers of—
- (a) the reference, and
  - (b) the date of reference.
- (6) Failure to comply with subsection (3)(a) or (5) has no effect on—
- (a) the validity of the application under section 54 by the Part 5 community body,
  - (b) the right to buy of the Part 5 community body or, as the case may be, of the third party purchaser, or
  - (c) the validity of the reference under subsection (1).

## 72 Agreement as to matters appealed

An appeal under section 69 or 70 does not prevent the parties from settling or otherwise agreeing the matter in respect of which the appeal was made between or among them.

VALID FROM 26/04/2020

## Mediation

### 73 Mediation

- (1) The Scottish Ministers may, on being requested to do so by a person mentioned in subsection (2), take such steps as they consider appropriate for the purpose of arranging, or facilitating the arrangement of, mediation in relation to the proposed exercise of the right to buy land or a tenant's interest under this Part.
- (2) The persons are—
- (a) the owner of the land,
  - (b) where the application is a request to buy a tenant's interest, the tenant,
  - (c) any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it,
  - (d) the Part 5 community body,
  - (e) where the application nominates a third party purchaser, the third party purchaser.
- (3) The steps mentioned in subsection (1) include—
- (a) appointing a mediator,
  - (b) making payments to mediators in respect of services provided,
  - (c) reimbursing reasonable expenses of mediators.

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## PART 6

### ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS

#### 74      **Repeal of exclusion of shootings and deer forests from valuation roll**

- (1) The Local Government etc. (Scotland) Act 1994 is amended as follows.
- (2) In section 151(1) (exclusion from valuation roll of shootings, deer forests, fishings and fish counters), “shootings, deer forests,” is repealed.
- (3) The title of section 151 becomes “ **Exclusion from valuation roll of fishings and fish counters** ”.

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#### **Commencement Information**

**I21**    S. 74 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch. (with art. 3)

#### 75      **Valuation of shootings and deer forests**

- (1) The Local Government (Scotland) Act 1975 is amended as follows.
- (2) After section 1 insert—

##### “1A Valuation of shootings and deer forests

The assessor for each valuation area must, when making up or altering a valuation roll, enter separately any—

- (a) shootings relating to,
- (b) deer forests, in so far as situated in,  
that area.”.

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#### **Commencement Information**

**I22**    S. 75 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch. (with art. 3)

#### 76      **Net annual value of deer forests**

- (1) The Valuation and Rating (Scotland) Act 1956 is amended as follows.
- (2) In section 6 (ascertainment of gross annual value, net annual value and rateable value of lands and heritages)—
  - (a) in subsection (8), after “provisions” insert “ of subsection (8ZA) and ”,
  - (b) after subsection (8) insert—
 

“(8ZA) In arriving at the net annual value under subsection (8) of lands and heritages consisting of deer forests, regard may be had to such factors relating to deer management as the assessor considers appropriate.”,
  - (c) after subsection (10) insert—

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“(10A) In subsection (8ZA), “assessor” means the assessor appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994 for each valuation area.”.

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**Commencement Information**

**I23** S. 76 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch. (with art. 3)

## PART 7

### COMMON GOOD LAND

#### 77 Change of use of land forming part of the common good

- (1) Section 75 of the Local Government (Scotland) Act 1973 (disposal, etc., of land forming part of the common good) is amended as follows.
- (2) In subsection (2), before “dispose” in each place insert “ appropriate or ”.
- (3) In subsection (3), before “disposed” insert “ appropriated or ”.

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**Commencement Information**

**I24** S. 77 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch.

## PART 8

### DEER MANAGEMENT

#### 78 Functions of deer panels

In section 4 of the Deer (Scotland) Act 1996 (appointment of panels), after subsection (6) insert—

- “(7) The Scottish Ministers may by regulations make provision conferring further functions on panels.
- (8) Functions conferred under subsection (7) may include—
  - (a) encouraging and facilitating the engagement of the local community in deer management in the locality of a panel,
  - (b) looking into issues relating to deer management in the locality of a panel and communicating those issues to the local community,
  - (c) communicating the views of the local community to those engaged in deer management in the locality of a panel.
- (9) Regulations under subsection (7) may modify any enactment (including this Act).”.

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**Commencement Information**

**I25** S. 78 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch.

**79 Review of compliance with code of practice on deer management**

- (1) The Deer (Scotland) Act 1996 is amended as follows.
- (2) After section 5A (code of practice on deer management) insert—

**“5B Review of compliance with code of practice on deer management**

- (1) SNH must, before the expiry of the period mentioned in subsection (4), carry out a review into the extent to which the code of practice on deer management—
  - (a) is being complied with by owners and occupiers of land, and
  - (b) is effective in promoting sustainable deer management.
- (2) SNH must, following a review under subsection (1), submit a report to the Scottish Ministers—
  - (a) setting out SNH's views on the extent to which the code—
    - (i) has been complied with, and
    - (ii) has been effective in promoting sustainable deer management,
  - (b) including such recommendations as SNH consider appropriate.
- (3) The Scottish Ministers must lay before the Scottish Parliament a report submitted to them under subsection (2).
- (4) The period referred to in subsection (1) is—
  - (a) the period of 3 years beginning with the day on which section 79 of the Land Reform (Scotland) Act 2016 comes into force,
  - (b) each subsequent period of 3 years beginning with the day on which the Scottish Ministers lay, under subsection (3), the report submitted to them under subsection (2).”.

**Commencement Information**

**I26** S. 79 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch.

**80 Deer management plans**

- (1) The Deer (Scotland) Act 1996 is amended as follows.
- (2) In section 5A (code of practice on deer management), in subsection (2)(c), after “may” insert “ require a deer management plan to be prepared, ”.
- (3) The italic heading before section 6 becomes “ *Deer management plans, control agreements and control schemes* ”.
- (4) After section 6 insert—

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### “6A Deer management plans

- (1) If SNH, having had regard to the code of practice on deer management, is satisfied that both Conditions A and B are met, it may give notice to such owners and occupiers of land as it considers to be substantially interested requiring them—
    - (a) to prepare a plan (a “deer management plan”) setting out—
      - (i) the measures that those owners and occupiers consider should be taken,
      - (ii) the time limit for taking those measures,
      - (iii) who is to take those measures, and
      - (iv) any other matters which appear to SNH to be necessary, and
    - (b) to submit the deer management plan to SNH for its approval.
  - (2) Condition A is met if on any land—
    - (a) deer or steps taken or not taken for the purposes of deer management have caused, are causing, or are likely to cause—
      - (i) damage to woodland, to agricultural production, including any crops or foodstuffs, to the welfare of deer or, whether directly or indirectly, to the natural heritage generally,
      - (ii) damage to public interests of a social, economic or environmental nature, or
      - (iii) injury to livestock, whether by serious overgrazing of pastures, competing with any such livestock for supplementary feeding, or otherwise, or
    - (b) deer have become a danger or a potential danger to public safety.
  - (3) Condition B is met if measures require to be taken in relation to the management of deer—
    - (a) for the prevention of further such damage or injury,
    - (b) for the remedying of such damage, or
    - (c) for the prevention of such danger or potential danger.
  - (4) In subsection (2)(a)(i), “the natural heritage” has the same meaning as in section 7(2).
  - (5) A deer management plan is to be submitted to SNH no later than—
    - (a) 12 months after the date on which SNH gives notice under subsection (1), or
    - (b) such later date as SNH may specify.
  - (6) SNH may approve a deer management plan (with or without modification) or reject it.
  - (7) Before approving a deer management plan with modifications, SNH must consult the owners and occupiers of land who submitted the plan on the proposed modifications.
  - (8) A deer management plan may be amended until SNH decides to approve or reject it.”.
- (5) In section 7 (control agreements), after subsection (4) insert—

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“(4A) Subsection (4) also applies where subsection (4B) applies.

(4B) This subsection applies where—

- (a) SNH has given notice under section 6A(1) and either—
  - (i) the date specified under section 6A(5) has passed and a deer management plan has not been submitted to SNH,
  - (ii) a deer management plan has been submitted to SNH but SNH has rejected it, or
  - (iii) a deer management plan has been approved by SNH but the measures set out in the plan have not been taken, and
- (b) SNH is satisfied that the conditions referred to in section 6A(1) continue to be met.”.

#### Commencement Information

I27 S. 80 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch.

## 81 Power to require return on number of deer planned to be killed

- (1) The Deer (Scotland) Act 1996 is amended as follows.
- (2) In section 16 (service of notices), in subsection (1A), for “and 40(1)” substitute “, 40(1) and 40A(1) ”.
- (3) In section 17A (register of persons competent to shoot deer)—
  - (a) in subsection (2)(a)(xiii), for “section 40” substitute “ sections 40 and 40A ”,
  - (b) in subsection (6)—
    - (i) in paragraph (a), after “return” insert “ within the meaning given by subsection (7)(a) or (b)(i) ”,
    - (ii) “or” immediately after paragraph (a) is repealed,
    - (iii) after paragraph (a) insert—
      - “(aa) fails without reasonable cause to submit a cull return within the meaning given by subsection (7) (b)(ii) in accordance with regulations made under subsection (1)(d) above, or”,
    - (iv) in paragraph (b), for “so submitted” substitute “ referred to in paragraph (a) ”,
  - (c) in subsection (7), for paragraph (b) substitute—
    - “(b) when required to be submitted by an owner or occupier of land, means—
      - (i) a written statement showing the number of deer of each species and of each sex which to his knowledge has been taken or killed on the land, or
      - (ii) a written statement showing the number of deer of each species and of each sex which are planned to be killed on the land in the following year.”.
- (4) After section 40 insert—



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### **“40A Power of SNH to require return of number of deer planned to be killed**

- (1) SNH may, for the purposes of any of its deer functions, by notice served on the owner or occupier of any land require the owner or occupier to make a return, in such form as SNH may require, showing how many deer of each species and of each sex are planned to be killed on the land in the following year.
- (2) A notice served under subsection (1) must specify a period, of not more than 1 year immediately following the date of service of the notice, for which the return must be completed.
- (3) Any person on whom a notice under subsection (1) has been served who fails without reasonable cause to make the required return within 36 days after the service of the notice commits an offence.”.
- (5) In schedule 3 (penalties)—
  - (a) in the entry relating to section 17A(6), in column 1, for “17A(6)” substitute “ 17A(6)(a) or (b) ”,
  - (b) after that entry, insert—

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“17A(6)(aa)	Failure to submit cull return	a fine of level 3 on the standard scale”,
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- (c) after the entry relating to section 40(4), insert—

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““40A(3)	Failure to make return of number of deer planned to be killed.	a fine of level 3 on the standard scale.”.
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#### **Commencement Information**

**I28** S. 81 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch.

## **82 Increase in penalty for failure to comply with control scheme**

In schedule 3 of the Deer (Scotland) Act 1996, in the entry relating to section 13(1) (failure to comply with control scheme), in column 3, for “level 4 on the standard scale” substitute “ £40,000 ”.

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#### **Commencement Information**

**I29** S. 82 in force at 28.6.2016 by S.S.I. 2016/193, reg. 2(1), Sch.

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VALID FROM 31/12/2016

## PART 9

### ACCESS RIGHTS

#### *Core paths*

#### **83 Core paths plans**

- (1) The Land Reform (Scotland) Act 2003 is amended as follows.
- (2) In section 18 (core paths plan: further procedure)—
  - (a) in subsection (9), “(3) or” is repealed,
  - (b) in subsection (10), for “confirm” substitute “adopt”.
- (3) In section 20 (review and amendment of core paths plan)—
  - (a) for subsection (1) substitute—
    - “(1) A local authority—
      - (a) must review the plan adopted under section 18 (or that plan as amended under this section or section 20C) if Ministers require them to do so,
      - (b) may review such a plan if they consider it appropriate to do so for the purpose of ensuring that the core paths plan continues to give the public reasonable access throughout their area.”,
    - (b) for subsection (5) substitute—
      - “(5) On adopting the amended plan under subsection (4), the local authority must—
        - (a) amend the list of core paths compiled under section 18(8) to show the effect of the stopping up or diversion,
        - (b) keep the amended plan, any maps it refers to and the list available for public inspection and for sale at a reasonable price, and
        - (c) send a copy of each of those documents to Ministers.”,
      - (c) in subsection (7), for “Sections 17(3) and (4) and 18 above” substitute “Subsections (3) and (4) of section 17”.
  - (4) After section 20 insert—

#### **“20A Review and amendment of core paths plan: further procedure**

- (1) Where, following a review of a plan under section 20(1), the local authority consider that a plan should be amended, the local authority must—
  - (a) give public notice of the amended plan and any maps it refers to,
  - (b) make the original plan and the amended plan and any such maps available for public inspection for a period of not less than 12 weeks, and

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- (c) consult—
- (i) the local access forum for their area,
  - (ii) persons representative of those who live, work, carry on business or engage (or would be likely to engage) in recreational activities on the land affected by the amendment to the plan,
  - (iii) Scottish Natural Heritage, and
  - (iv) such other persons as the local authority think fit,
- in each case inviting objections and representations in relation to the amendment to the plan to be made to them within such period as they specify.
- (2) If no objections are made or any made are withdrawn, the local authority must adopt the amended plan.
  - (3) If an objection is made and not withdrawn, the local authority must not adopt the amended plan unless Ministers direct them to do so.
  - (4) If, after complying with subsection (1), the local authority modify the amended plan, they must notify and consult such persons as they consider appropriate on the modified amended plan.
  - (5) Where an objection remains unwithdrawn, Ministers must not make a direction without first causing a local inquiry to be held into whether the amended plan (or, as the case may be, the modified amended plan) will, if adopted, fulfil the purpose mentioned in section 17(1).
  - (6) Ministers may, in any other case, cause such an inquiry to be held.
  - (7) Subsections (2) to (13) of section 265 (local inquiries) of the Town and Country Planning (Scotland) Act 1997 apply to an inquiry held under subsection (5) or (6) as they apply to one held under that section.
  - (8) Following the publication of the report by the person appointed to hold the inquiry, Ministers may (but need not) direct the local authority to adopt the amended plan (or, as the case may be, the modified amended plan) either as drawn up under section 20 or with such modification as Ministers specify in the direction.
  - (9) On adopting the amended plan, the local authority must—
    - (a) give public notice of the adoption of the amended plan,
    - (b) amend the list of core paths compiled under section 18(8),
    - (c) keep the amended plan, any maps it refers to and the list available for public inspection and for sale at a reasonable price, and
    - (d) send a copy of each of those documents to Ministers.
  - (10) Where Ministers decline to make a direction under subsection (8), the local authority must draw up a revised amended plan and must do so in accordance with such procedure and within such time limits as Ministers specify.
  - (11) Such specification must include provision under which Ministers may (but need not) direct the local authority to adopt the revised amended plan.

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### **20B Review and amendment of core paths plan: notice to owners and occupiers of land**

- (1) Where, following a review of a plan under section 20(1), the local authority consider that a plan should be amended, the local authority must, at the same time as complying with section 20A(1), serve a written notice on the owner and occupier of any land which is, as a result of the amendment of the plan, being included in a plan for the first time (the “affected land”).
- (2) Notice under subsection (1) must—
  - (a) explain the potential effect of the amended plan on the affected land,
  - (b) set out where the original plan and the amended plan may be inspected, and
  - (c) specify the period within which any objections and representations in relation to the amendment to the plan may be made.
- (3) Where it is not possible, after reasonable enquiry, to identify the owner or occupier of the affected land, notice under subsection (1) may be given instead by leaving a copy of the notice in a prominent place on the affected land.

### **20C Single amendment of core paths plan: procedure**

If the local authority consider that it would be appropriate to make a single amendment of a core paths plan, the local authority must—

- (a) consult such persons as the local authority think fit on the amendment, inviting objections and representations in relation to the amendment to be made to them within such period as they specify, and
- (b) give such notice of the amendment as the local authority think fit.

### **20D Single amendment of core paths plan: further procedure**

- (1) Section 17(3) applies to an amendment under section 20C which includes a further path, waterway or other means of crossing land such as is mentioned in section 17(2) as it applies to a plan drawn up under section 17(1).
- (2) Section 20(3) applies to an amendment under section 20C which removes a core path from the plan or diverts the line of a core path on the plan as it applies to an amendment of a plan under section 20(2).
- (3) The following provisions apply to an amendment under section 20C as they apply to an amendment of a plan under section 20(1)—
  - (a) subsections (2) to (9) of section 20A,
  - (b) section 20B, subject to the modification that the reference in section 20B(1) to section 20A(1) is to be read as a reference to section 20C.”

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### *Court applications*

#### **84 Access rights: service of court applications**

- (1) Section 28 of the Land Reform (Scotland) Act 2003 (judicial determination of existence and extent of access rights and rights of way) is amended as follows.
- (2) In subsection (6), at the end insert “ unless subsection (7A) applies ”.
- (3) After subsection (7), insert—  
“(7A) Where a declaration is being sought under subsection (1)(b)(i), the person seeking the declaration must also serve the application on the person whose exercise or purported exercise of access rights is in question.”

VALID FROM 23/12/2016

## **PART 10**

### AGRICULTURAL HOLDINGS

#### **CHAPTER 1**

##### MODERN LIMITED DURATION TENANCIES

#### *Modern limited duration tenancies*

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

- (1) The 2003 Act is amended as follows.
- (2) Section 5 (limited duration tenancies) is repealed.
- (3) After section 5 insert—

##### **“5A Modern limited duration tenancies**

- (1) Where—
  - (a) agricultural land is let under a lease entered into on or after the coming into force of this section for a term of not less than 10 years,
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord, and
  - (c) the lease does not constitute a 1991 Act tenancy or a repairing tenancy,the tenancy under the lease is, by virtue of this subsection, a modern limited duration tenancy.
- (2) Where—

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- (a) at any time before the expiry of the term of a short limited duration tenancy, the landlord and the tenant agree in writing to convert the tenancy to a modern limited duration tenancy, or
- (b) the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of 5 years (including such a term fixed by virtue of section 4(2) or (3)) with the consent of the landlord,

the tenancy has effect as if it were for a term of 10 years commencing at the start of the term of the short limited duration tenancy, and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.

- (3) Where subsection (5) of section 4 results in a short limited duration tenancy purporting to be for a term of more than 5 years, the tenancy has effect as if it were for a term of 10 years; and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.
- (4) Without prejudice to subsections (2) and (3), where a lease constituting a tenancy of agricultural land, as described in paragraphs (b) and (c) of subsection (1), purports to be for a term of more than 5 years and less than 10 years, the tenancy has effect as if it were for a term of 10 years; and the tenancy is, by virtue of this subsection, a modern limited duration tenancy.
- (5) Section 5B does not apply to a modern limited duration tenancy created under subsection (2), (3) or (4).

#### **5B Modern limited duration tenancies: break clauses**

- (1) This section applies where the tenant under a lease constituting a modern limited duration tenancy is a new entrant to farming.
- (2) The lease may contain a provision that the tenancy may be terminated after 5 years in accordance with section 8D (a “break clause”).
- (3) The Scottish Ministers may by regulations make further provision about the tenants who are new entrants for the purposes of this section.”.

VALID FROM 30/11/2017

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

- (1) The 2003 Act is amended as follows.
- (2) After section 7 insert—

##### **“7A Subletting of modern limited duration tenancies**

A tenant may sublet the land comprised in a lease constituting a modern limited duration tenancy only on such basis as the lease expressly permits.”.

**Status:** Point in time view as at 01/11/2016. This version of this Act contains provisions that are not valid for this point in time.  
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VALID FROM 30/11/2017

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

- (1) The 2003 Act is amended as follows.
- (2) After section 8 insert—

### **“8A Termination of modern limited duration tenancies by agreement**

A modern limited duration tenancy may be terminated by agreement between the landlord and tenant if the agreement is in writing and—

- (a) is entered into after the commencement of the tenancy, and
- (b) makes provision as to compensation payable by the landlord or the tenant to the other.

### **8B Termination of modern limited duration tenancies by landlord**

- (1) At the expiry of the term of a modern limited duration tenancy, the landlord may terminate the tenancy by giving a notice under this subsection to the tenant.
- (2) A notice under subsection (1) must—
  - (a) be in writing and state that the tenant must quit the land on the expiry of the term of the tenancy, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of the term of the tenancy, provided that not less than 90 days have elapsed from the date on which the intimation mentioned in subsection (3) is given.
- (3) A notice under subsection (1) is of no effect unless the landlord has given written intimation of the landlord's intention to terminate the tenancy to the tenant not less than 2 years nor more than 3 years before the expiry of the term of the tenancy.

### **8C Termination of modern limited duration tenancies by tenant**

- (1) At the expiry of the term of a modern limited duration tenancy, the tenant may terminate the tenancy by giving a notice under this subsection to the landlord.
- (2) A notice under subsection (1) must—
  - (a) be in writing and state that the tenant intends to quit the land on the expiry of the term of the tenancy, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of the term of the tenancy.

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### **8D Termination of modern limited duration tenancies subject to break clause**

- (1) This section applies where the lease constituting a modern limited duration tenancy contains a break clause by virtue of section 5B.
- (2) The tenant may terminate the tenancy after 5 years by giving a notice under this subsection to the landlord.
- (3) A notice under subsection (2) must—
  - (a) be in writing and state that the tenant intends to quit the land on the expiry of the period of 5 years beginning with the day the tenancy commenced, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of that period.
- (4) The landlord may terminate the tenancy after 5 years by giving a notice under this subsection to the tenant.
- (5) A notice under subsection (4) must—
  - (a) be in writing and state—
    - (i) that the tenant must quit the land on the expiry of the period of 5 years beginning with the day the tenancy commenced, and
    - (ii) the landlord's reasons for terminating the tenancy, and
  - (b) be given not less than 1 year nor more than 2 years before the expiry of that period.
- (6) The landlord may give notice under subsection (4) only if the tenant—
  - (a) is not using the land in accordance with the rules of good husbandry, or
  - (b) is otherwise failing to comply with any other provision of the lease.
- (7) For the purposes of subsection (6)(a), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

### **8E Continuation and extension of modern limited duration tenancies**

- (1) At and after the expiry of the term of a modern limited duration tenancy, the tenancy continues to have effect for a further term of 7 years unless it is terminated in accordance with section 8A, 8B or 8C.
- (2) During the term of a modern limited duration tenancy, the term of the tenancy may be extended by the landlord and tenant by agreement in writing.”.



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VALID FROM 30/11/2017

## 88 Modern limited duration tenancies: fixed equipment

- (1) The 2003 Act is amended as follows.
- (2) After section 16 insert—

### “16A Modern limited duration tenancies: fixed equipment etc.

- (1) There is incorporated in every lease constituting a modern limited duration tenancy an undertaking by the landlord that the landlord will, within 6 months of the commencement of the tenancy or, where that is not reasonably practicable by virtue of any obligation on the landlord under any other enactment, as soon as reasonably practicable thereafter—
  - (a) provide such fixed equipment as will enable the tenant to maintain efficient production as respects the use of the land as specified in the lease, and
  - (b) put the fixed equipment so provided into the condition specified in the schedule of fixed equipment that is required by virtue of subsection (2).
- (2) Where a lease constituting a modern limited duration tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—
  - (a) the fixed equipment which the landlord will provide in terms of subsection (1)(a), and
  - (b) the condition of the fixed equipment,and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78) the schedule of fixed equipment is deemed to form part of the lease.
- (3) The schedule of fixed equipment must be agreed before the expiry of the period of 90 days beginning with the commencement of the tenancy.
- (4) If at any time after the commencement of the tenancy the fixed equipment or its condition is varied, the landlord and tenant may agree to amend the schedule of fixed equipment accordingly or to substitute for it a new schedule.
- (5) Unless the lease makes provision to the contrary, there is also incorporated in every such lease—
  - (a) an undertaking by the landlord that the landlord will, during the tenancy, effect such renewal or replacement of the fixed equipment provided as required by virtue of subsection (1) as may be rendered necessary by natural decay or by fair wear and tear, and
  - (b) a provision that the liability of the tenant in relation to the maintenance of fixed equipment extends only to a liability to maintain the fixed equipment specified in the schedule of fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—

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- (i) immediately after it was put into the condition specified in the schedule of fixed equipment, or
  - (ii) in the case of equipment improved, provided, renewed or replaced, during the tenancy, immediately after it was so improved, provided, renewed or replaced.
- (6) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.
- (7) Any agreement between the landlord and tenant which purports to provide for the tenant to bear any expense of any work which the landlord is required to execute in order to fulfil the landlord's obligations under the lease is of no effect.
- (8) Any term of a lease constituting a modern limited duration tenancy that requires the tenant to pay the whole or any part of the premium due under a fire insurance policy over any fixed equipment on the land is of no effect.”.

## 89 Modern limited duration tenancies: irritancy

- (1) The 2003 Act is amended as follows.
- (2) After section 18 insert—

### **“18A Irritancy of lease and good husbandry: modern limited duration tenancies**

- (1) Without prejudice to any rule of law, it is for the landlord and tenant to provide in the lease constituting a modern limited duration tenancy what grounds there are for irritancy of the lease.
- (2) Any term of such a lease or of an agreement in connection with the lease that provides for the lease to be irritated solely on the grounds that the tenant is not or has not been resident on the land is of no effect.
- (3) Where such a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, what is good husbandry is to be construed, subject to subsections (4) and (5), by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (4) Conservation activities are to be treated as being in accordance with the rules of good husbandry if they are carried out in accordance with—
  - (a) an agreement entered into under any enactment by the tenant, or
  - (b) the conditions of—
    - (i) any grant for the purpose of such activities paid out of the Scottish Consolidated Fund, or
    - (ii) such other grant of a public nature as the Scottish Ministers may by regulations specify.
- (5) Such use of any of the land, or such change to the land, for a non-agricultural purpose as has been permitted under section 40 or 41 is to be treated as being in accordance with the rules of good husbandry.

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- (6) Where the landlord intends to irritate the lease, the landlord must give the tenant notice in writing specifying—
  - (a) the breach of the tenant's obligations under the lease which form the grounds on which the landlord intends to irritate the lease, and
  - (b) the period before the expiry of which the tenant must remedy that breach, which period must be not less than 12 months beginning with the date of the notice.
- (7) The period mentioned in subsection (6)(b) may be extended—
  - (a) by the landlord and the tenant by agreement, or
  - (b) by the Land Court on the application of the tenant.
- (8) The landlord may not enforce any right to remove the tenant on grounds of irritancy unless—
  - (a) the period specified in the notice under subsection (6)(b), or such extended period as mentioned in subsection (7), has expired without the tenant having remedied the breach specified in the notice, and
  - (b) the landlord has given notice in writing of the intention so to enforce the right to remove the tenant not less than 2 months before the date on which the tenant is to be removed.”.

VALID FROM 30/11/2017

### *Conversion of 1991 Act tenancies*

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

- (1) The 2003 Act is amended as follows.
- (2) Section 2 is repealed.
- (3) After that section insert—

#### **“2A Conversion from 1991 Act tenancy to modern limited duration tenancy**

- (1) The landlord and tenant under a 1991 Act tenancy may terminate the tenancy by agreement in writing provided that—
  - (a) the agreement—
    - (i) specifies the date on which the termination is to have effect, and
    - (ii) is made not less than 30 days before that date, and
  - (b) subsection (2) is complied with.
- (2) This subsection is complied with if the landlord and tenant enter into a lease constituting a modern limited duration tenancy for a term of not less than 25 years which—
  - (a) comprises or includes the same land as that comprised in the tenancy being terminated under subsection (1), and

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- (b) has effect from the date on which the termination under that subsection has effect.
- (3) The landlord or tenant is entitled, at any time before the date on which the termination under subsection (1) has effect, to revoke (without penalty)—
  - (a) the agreement made under that subsection, and
  - (b) the lease mentioned in subsection (2),
 by giving notice in writing to the other of the revocation.
- (4) On termination of a 1991 Act tenancy under subsection (1), the tenant is entitled to—
  - (a) such compensation for improvements as the tenant would have been entitled to under Part 4 (compensation for improvements) of the 1991 Act (or, as the case may be, under the lease), and
  - (b) such compensation as the tenant would have been entitled to under section 45A (compensation arising as a result of diversification and cropping of trees) of that Act,
 were the tenant quitting the holding as a result of the termination of the tenancy.
- (5) Where a 1991 Act tenancy is terminated under subsection (1), section 21 (notice to quit and notice of intention to quit) of the 1991 Act does not apply in respect of the tenancy.
- (6) Section 5B does not apply to a modern limited duration tenancy created under this section.”.

VALID FROM 30/11/2017

*Conversion of limited duration tenancies*

**91 Conversion of limited duration tenancies into modern limited duration tenancies**

- (1) The 2003 Act is amended as follows.
- (2) After section 2A (as inserted by section 90) insert—

**“2B Conversion from limited duration tenancy to modern limited duration tenancy**

- (1) The landlord and tenant under a limited duration tenancy may terminate the tenancy by agreement in writing provided that—
  - (a) the agreement—
    - (i) specifies the date on which the termination is to have effect, and
    - (ii) is made not less than 30 days before that date, and
  - (b) subsection (2) is complied with.

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- (2) This subsection is complied with if the landlord and tenant enter into a lease constituting a modern limited duration tenancy for a term of not less than the term remaining under the limited duration tenancy which—
  - (a) comprises or includes the same land as that comprised in the tenancy being terminated under subsection (1), and
  - (b) has effect from the date on which the termination under that subsection has effect.
- (3) The landlord or tenant is entitled, at any time before the date on which the termination under subsection (1) has effect, to revoke (without penalty)—
  - (a) the agreement made under that subsection, and
  - (b) the lease mentioned in subsection (2),by giving notice in writing to the other of the revocation.
- (4) On termination of a limited duration tenancy under subsection (1), the tenant is not entitled to compensation for improvements under Part 4 (or, as the case may be, under the lease).
- (5) But any improvements for which the tenant would have been entitled to compensation under that Part but for subsection (4) are, for the purposes of that Part, to be regarded as improvements carried out during the modern limited duration tenancy.
- (6) Where a limited duration tenancy is terminated under subsection (1), section 8 does not apply in respect of the tenancy.
- (7) Section 5B does not apply to a modern limited duration tenancy created under this section.”.

## CHAPTER 2

### REPAIRING TENANCIES

#### 92 Repairing tenancies: creation

- (1) The 2003 Act is amended as follows.
- (2) After section 5B (as inserted by section 85) insert—

#### “5C Repairing tenancies: creation

- (1) Where—
  - (a) agricultural land is let under a lease entered into on or after the coming into force of this section for a term of not less than 35 years,
  - (b) the land comprised in the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord,
  - (c) the lease does not constitute a 1991 Act tenancy,
  - (d) the lease requires the tenant, during the repairing period, to improve the land comprised in the lease in order to bring it into a state

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- capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry, and
- (e) the lease expressly states that this section is to apply to the tenancy, the tenancy is, by virtue of this subsection, a repairing tenancy.
- (2) In this Part, the “repairing period” is the period, beginning with the commencement of the tenancy, of—
- (a) 5 years, or
- (b) such longer period—
- (i) as the landlord and tenant may agree under this paragraph or, as the case may be, under subsection (3)(a), or
- (ii) as the Land Court may determine under subsection (3)(b).
- (3) The repairing period may be extended at any time before its expiry—
- (a) by the landlord and tenant by agreement, or
- (b) by the Land Court on the application of either the landlord or the tenant.
- (4) On an application under subsection (3)(b), the Land Court may extend the repairing period—
- (a) if it considers it appropriate in all the circumstances to do so, and
- (b) by such period as it determines necessary in all the circumstances.
- (5) A lease constituting a repairing tenancy may contain a provision that the tenancy may be terminated in accordance with section 8G (a “break clause”).
- (6) In this section and section 5D, what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

#### **5D Repairing tenancies: exemption from rules of good husbandry during repairing period**

- (1) Where a lease constituting a repairing tenancy does not include provision mentioned in subsection (2), such provision is incorporated.
- (2) The provision is that during the repairing period the tenant cannot be held liable for not farming the land comprised in the lease in accordance with the rules of good husbandry.”.

PROSPECTIVE

### **93 Repairing tenancies: subletting**

- (1) The 2003 Act is amended as follows.
- (2) After section 7B (as inserted by section 105) insert—

#### **“7C Subletting of repairing tenancies**

- (1) During the repairing period, a tenant may not sublet the land comprised in a lease constituting a repairing tenancy without the consent of the landlord.

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- (2) After the expiry of the repairing period, a tenant may sublet the land comprised in a lease constituting a repairing tenancy only on such basis as the lease expressly permits.”.

PROSPECTIVE

#### 94 Repairing tenancies: termination, continuation and extension

- (1) The 2003 Act is amended as follows.  
(2) After section 8E (as inserted by section 87) insert—

##### “8F Termination, continuation and extension of repairing tenancies

- (1) Subject to section 8G, sections 8A to 8C apply to the termination of a repairing tenancy as to the termination of a modern limited duration tenancy.  
(2) Section 8E applies to the continuation and extension of a repairing tenancy as to the continuation and extension of a modern limited duration tenancy.

##### 8G Termination of repairing tenancies subject to break clause

- (1) This section applies where the lease constituting a repairing tenancy contains a break clause by virtue of section 5C(5).  
(2) At any time until the expiry of the repairing period, the tenant may terminate the tenancy by giving a notice under this subsection to the landlord.  
(3) A notice under subsection (2) must—  
(a) be in writing and state that the tenant intends to quit the land on a date specified in the notice, which is to be no later than the expiry of the repairing period, and  
(b) be given not less than 1 year nor more than 2 years before the date specified in the notice.  
(4) The landlord may terminate the tenancy on the expiry of the repairing period by giving a notice under this subsection to the tenant.  
(5) A notice under subsection (4) must—  
(a) be in writing and state—  
(i) that the tenant must quit the land on the expiry of the repairing period, and  
(ii) the landlord's reasons for terminating the tenancy, and  
(b) be given not less than 1 year nor more than 2 years before the expiry of the repairing period.  
(6) The landlord—  
(a) may not give notice under subsection (4) on the grounds that the tenant is not farming the land in accordance with the rules of good husbandry,

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(b) may give notice under subsection (4) if the tenant is otherwise failing to comply with any other provision of the lease.

(7) For the purposes of subsection (6), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.”.

PROSPECTIVE

## 95 Repairing tenancies: fixed equipment

- (1) The 2003 Act is amended as follows.
- (2) After section 16A (as inserted by section 88) insert—

### “16B Repairing tenancies: fixed equipment

- (1) Where a lease constituting a repairing tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—
  - (a) the fixed equipment which the landlord will provide during the repairing period as will enable the tenant to maintain efficient production, after the expiry of the repairing period, as respects the use of the land as specified in the lease,
  - (b) the condition of such fixed equipment, and
  - (c) any fixed equipment on the land which may be disregarded for the purposes of subsections (5) and (6),
 and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78) the schedule of fixed equipment is deemed to form part of the lease.
- (2) The schedule of fixed equipment must be agreed before the expiry of the period of 90 days beginning with the commencement of the tenancy.
- (3) If at any time after the commencement of the tenancy the fixed equipment or its condition is varied, the landlord and tenant may agree to amend the schedule of fixed equipment accordingly or to substitute for it a new schedule.
- (4) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.
- (5) Unless the lease makes provision to the contrary, there is incorporated in every such lease an undertaking by the tenant that the tenant will, during the repairing period—
  - (a) provide such fixed equipment, and
  - (b) effect such maintenance, renewal or replacement of the fixed equipment provided by the tenant by virtue of paragraph (a) and by the landlord by virtue of subsection (1)(a),



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as may be necessary to enable the tenant to maintain efficient production, after the expiry of the repairing period, as respects the use of the land as specified in the lease.

- (6) Unless the lease makes provision to the contrary, there is also incorporated in every such lease—
- (a) an undertaking by the landlord that the landlord will, after the expiry of the repairing period, effect such renewal or replacement of the fixed equipment specified in the schedule of fixed equipment as may be rendered necessary by natural decay or by fair wear and tear, and
  - (b) a provision that the liability of the tenant in relation to the maintenance of fixed equipment, after the expiry of the repairing period, extends only to a liability to maintain the fixed equipment specified in the schedule of fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—
    - (i) at the expiry of the repairing period, or
    - (ii) in the case of equipment improved, provided, renewed or replaced, after the expiry of the repairing period, immediately after it was so improved, provided, renewed or replaced.
- (7) Subsections (5) and (6) do not apply to any fixed equipment specified in the schedule of fixed equipment by virtue of subsection (1)(c).
- (8) Any agreement between the landlord and tenant which purports to provide for the tenant, whether during the repairing period or after its expiry, to bear any expense of any work which the landlord is required to execute in order to fulfil the landlord's obligations under the lease is of no effect.
- (9) Any term of a lease constituting a repairing tenancy that requires the tenant, whether during the repairing period or after its expiry, to pay the whole or any part of the premium due under a fire insurance policy over any fixed equipment on the land is of no effect.”.

PROSPECTIVE

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

- (1) The 2003 Act is amended as follows.
- (2) After section 17 insert—

### “17A Resumption of land by landlord: repairing tenancies

- (1) Until 5 years have elapsed from the date of expiry of the repairing period, the landlord may not resume the land or any part of the land comprised in the lease constituting the repairing tenancy.
- (2) After 5 years have elapsed from the date of expiry of the repairing period, section 17 applies to the resumption of the land or any part of the land comprised in a lease constituting a repairing tenancy as it applies to the resumption of the land or any part of the land comprised in a

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lease constituting a limited duration tenancy or a modern limited duration tenancy.”.

PROSPECTIVE

### 97 Repairing tenancies: irritancy

- (1) The 2003 Act is amended as follows.
- (2) After section 18A (as inserted by section 89)—

#### “18B Irritancy of lease and good husbandry: repairing tenancies

- (1) Subject to subsection (2), section 18A applies to the irritancy of a lease constituting a repairing tenancy as it applies to the irritancy of a lease constituting a modern limited duration tenancy.
  - (2) During the repairing period, section 18A has effect as if, after subsection (2), there were inserted—
- “(2A) Any term of such a lease or of an agreement in connection with the lease that provides for the lease to be irritated solely on the grounds that the tenant is not using the land in accordance with the rules of good husbandry is of no effect.”.

### 98 Repairing tenancies: compensation

- (1) The 2003 Act is amended as follows.
- (2) After section 59 insert—

#### “59A Compensation under repairing tenancies

The Scottish Ministers may by regulations provide that Part 4, in its application to repairing tenancies, has effect with such modifications as the regulations may specify.”.

PROSPECTIVE

## CHAPTER 3

### TENANT'S RIGHT TO BUY

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

- (1) The 2003 Act is amended as follows.
- (2) Sections 24 (register of tenants' interests in acquiring land) and 25 (registration of such interests) are repealed.

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- (3) Before section 26 insert as an italic heading “ The right to buy ”.
- (4) In section 26 (notice of proposal to transfer land)—
- (a) for subsection (1) substitute—
- “(1) This section applies where—
- (a) the owner of land comprised in a lease constituting a 1991 Act tenancy, or
- (b) a creditor in a standard security with a right to sell the land, proposes to transfer the land or any part of it to another person.
- (1A) The owner or, as the case may be, the creditor must, subject to section 27, give notice in writing of the proposed transfer to the tenant.”,
- (b) in subsection (2), for “subsection (1)” substitute “ subsection (1A) ”,
- (c) after that subsection insert—
- “(3) For the purposes of this Part, “tenant”—
- (a) where there are two or more tenants under the lease, means those tenants, and
- (b) does not include a sub-tenant.”.
- (5) In section 27 (transfers not requiring notice), subsection (1)(g)(v) is repealed.
- (6) In section 28 (right to buy)—
- (a) in subsection (1)—
- (i) “a tenant's interest in acquiring land is for the time being registered under section 25 and” is repealed,
- (ii) in paragraph (a), for first “the land” substitute “ land comprised in a lease constituting a 1991 Act tenancy, ”,
- (b) in subsection (3)—
- (i) after paragraph (a) insert “ or ”,
- (ii) paragraph (c) is repealed (together with the “or” immediately before it).
- (7) In section 29 (exercise of right to buy), subsection (7) is repealed.

## CHAPTER 4

### SALE WHERE LANDLORD IN BREACH

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

- (1) The 2003 Act is amended as follows.
- (2) After section 38 insert—

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## “PART 2A

### SALE WHERE LANDLORD IN BREACH

#### *Application to Land Court for order for sale*

#### **38A Application to Land Court for order for sale**

- (1) This section applies where—
  - (a) the Land Court has made an order (but not an interim order) under section 84(1)(b) requiring the landlord of a 1991 Act tenancy to remedy a material breach of the landlord's obligations in relation to the tenant, or
  - (b) an arbiter appointed under section 61A(3) of the 1991 Act has by virtue of section 61A(5) made an award having the same effect as such an order.
- (2) Subject to subsection (5), the tenant may apply to the Land Court for an order for sale if the landlord fails to comply with the order or award mentioned in subsection (1)—
  - (a) in a material regard, and
  - (b) by the date specified in the order or award by virtue of section 84(2) or, as the case may be, section 61A(5) of the 1991 Act.
- (3) An “order for sale” is an order that the tenant has the right to buy the land comprised in the lease.
- (4) The tenant must give notice of the application—
  - (a) to the landlord,
  - (b) where there is a heritable security over an interest in the land comprised in the lease, to the creditor who holds the security,
  - (c) to such other persons as the Scottish Ministers may prescribe by regulations.
- (5) Where—
  - (a) the tenant acquired a right to buy the land comprised in the lease under section 28, and
  - (b) the right to buy was extinguished under section 29(6) or 32(8),
 the tenant may apply for an order for sale only if the period of 12 months, beginning with the date on which the right to buy was extinguished, has expired.

#### **38B Order for sale**

- (1) The Land Court may make an order for sale if satisfied that—
  - (a) the landlord has failed to comply with the order or award mentioned in section 38A(1)—
    - (i) in a material regard, and

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- (ii) by the date specified in the order or, as the case may be, the award,
  - (b) the failure substantially and adversely affects the tenant's ability to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry,
  - (c) greater hardship would be caused by not making the order than by making it, and
  - (d) in all the circumstances it is appropriate.
- (2) The Land Court may make an order for sale despite the fact that the owner is subject to a legal incapacity or disability which would affect the owner's ability to transfer or otherwise deal with the land in respect of which the order is made.
- (3) Where the owner is subject to an enforceable personal obligation to transfer the land to a person other than the tenant, the Land Court may not make an order for sale unless—
  - (a) the transfer is a transfer mentioned in subsection (4), and
  - (b) the transfer—
    - (i) is or forms part of a scheme or arrangement or is one of a series of transfers, and
    - (ii) the main purpose or effect, or one of the main purposes or effects, of the scheme, arrangement or, as the case may be, series is the avoidance of the making of an order for sale.
- (4) The transfer referred to in subsection (3) is a transfer—
  - (a) otherwise than for value,
  - (b) between spouses in pursuance of an arrangement between them entered into at any time after they have ceased living together,
  - (c) between companies in the same group, or
  - (d) in consequence of—
    - (i) the assumption, resignation or death of one or more of the partners in a partnership, or
    - (ii) the assumption, resignation or death of one or more of the trustees of a trust.
- (5) For the purposes of subsection (4)(c), companies are in the same group if they are, or are included in a number of, companies which, by virtue of section 170 of the Taxation of Chargeable Gains Act 1992, together form a group for the purposes of sections 171 to 181 of that Act.
- (6) The Land Court must give notice of the making of the order to—
  - (a) the landlord,
  - (b) the owner (where the owner is not the landlord),
  - (c) where there is a heritable security over an interest in the land comprised in the lease, the creditor who holds the security,
  - (d) the Keeper of the Registers of Scotland,
  - (e) such other persons as the Scottish Ministers may prescribe by regulations.
- (7) In subsection (1)(b), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

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- (8) In this Part, “owner” includes a person in whom the land is vested for the purposes of any enactment relating to—
- (a) sequestration, bankruptcy, winding-up or incapacity, or
  - (b) the purposes for which judicial factors may be appointed.

### **38C Effect of order for sale: prohibition of transfer etc.**

- (1) The Scottish Ministers may by regulations make provision prohibiting persons from transferring or otherwise dealing with land in respect of which an order for sale has been made under section 38B.
- (2) Regulations under subsection (1) may in particular include provision—
  - (a) specifying the persons to whom the prohibition is to apply,
  - (b) specifying the period during which the prohibition is to apply,
  - (c) specifying transfers or dealings which are and are not prohibited by the regulations,
  - (d) requiring information to be incorporated in deeds relating to the land (including specifying the information that is to be incorporated, the circumstances in which it is to be incorporated and the deeds in which it is to be incorporated),
  - (e) requiring such information to be removed and the circumstances in which it is to be so removed.

### **38D Effect of order for sale: suspension of rights**

- (1) Where an order for sale is made under section 38B, the rights mentioned in subsection (3) are—
  - (a) suspended as from the date when the Land Court makes the order, and
  - (b) revived—
    - (i) when a transfer by virtue of the order is completed, or
    - (ii) if such a transfer is not completed before the end of the period mentioned 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.
- (2) The period referred to in subsection (1)(b)(ii) is whichever of the following periods ends later—
  - (a) the period of 12 months beginning with the day on which notice under section 38E(3) is given, or
  - (b) such longer period fixed by or agreed under section 38F(4) or, as the case may be, specified in an order under section 38I(4)(b)(ii).
- (3) The rights referred to in subsection (1) are any rights—
  - (a) of pre-emption, redemption or reversion, or
  - (b) deriving from any other option to purchase, exercisable over the land in respect of which the order for sale has been made.

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- (4) The Scottish Ministers may by regulations make provision about the suspension and revival of other rights in or over land in respect of which an order for sale has been made.
- (5) Regulations under subsection (4) may in particular include provision specifying—
  - (a) the rights to which the regulations do and do not apply,
  - (b) the period during which such rights are suspended,
  - (c) the circumstances in which the rights are revived (which may include the ending of a period as specified in the regulations).
- (6) Nothing in this section—
  - (a) affects the operation of an inhibition on the sale of the land,
  - (b) prevents an action of adjudication from proceeding, or
  - (c) affects the commencement, execution or operation of any other diligence.

### **38E Tenant's right to buy**

- (1) Where—
  - (a) an order for sale is made under section 38B, and
  - (b) the period within which an appeal against the making of the order may be brought has expired without an appeal being brought or, where such an appeal has been brought, it has been abandoned or dismissed,the tenant has the right to buy the land in respect of which the order has been made from the owner.
- (2) Where a tenant has a right to buy under subsection (1), the tenant may proceed in accordance with section 38F to buy the land from the owner provided that notice is given under subsection (3).
- (3) Notice is given under this subsection if, before the period mentioned in subsection (4) has expired, the tenant gives notice that the tenant intends to buy the land to—
  - (a) the owner,
  - (b) the Keeper of the Registers of Scotland, and
  - (c) the Land Court.
- (4) That period is the period of 28 days beginning with—
  - (a) the day after the last day on which an appeal may be brought (no appeal having been brought), or
  - (b) an appeal having been brought, the day after the day on which the appeal was abandoned or dismissed.
- (5) If at any time the tenant does not intend to proceed in accordance with section 38F to buy the land, the tenant must give notice of that fact to—
  - (a) the owner,
  - (b) the Keeper of the Registers of Scotland, and
  - (c) the Land Court.

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- (6) Where the tenant—
- (a) does not give notice under subsection (3), or
  - (b) gives notice under subsection (5),
- the tenant's right to buy is extinguished.

*Procedure for buying and valuation*

**38F Procedure for buying**

- (1) It is for the tenant to make the offer to buy in exercise of the tenant's right to buy under section 38E.
- (2) The offer is to be at a price—
  - (a) agreed between the tenant and the person from whom the land is to be bought (“the seller”), or
  - (b) where there is no such agreement—
    - (i) payable by the tenant in accordance with section 34(8), or
    - (ii) if the price is determined in an appeal under section 37, as is so determined.
- (3) The offer must specify the date of entry and of payment of the price in accordance with subsection (4).
- (4) The date of entry and of payment of the price are to be—
  - (a) a date not later than 6 months from the date when the tenant gave notice under section 38E(3) of the tenant's intention to buy,
  - (b) where the price payable by the tenant is the subject of an appeal under section 37 which has not, before the expiry of the period of 4 months beginning with the date when the tenant gave such notice, been—
    - (i) determined, or
    - (ii) abandoned following agreement between the tenant and the seller,
 a date not later than 2 months after the appeal is so determined or, as the case may be, abandoned, or
  - (c) such later date as may be agreed between the tenant and the seller.
- (5) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.
- (6) The seller must—
  - (a) make available to the tenant such deeds and other documents as are sufficient to enable the tenant to proceed to complete title to the land,
  - (b) transfer title accordingly.

**38G Appointment of valuer and valuation of the land**

- (1) The provisions mentioned in subsection (2) apply to a sale implementing a tenant's right to buy by virtue of an order for sale as they apply to a



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sale implementing a tenant's right to buy under section 28, subject to the modifications mentioned in that subsection.

- (2) Those provisions are—
- (a) section 33 (appointment of valuer), subject to the modifications that—
    - (i) in subsection (2), the reference to section 29(2) or (4) is to be read as a reference to section 38E(3),
    - (ii) subsection (5) does not apply,
  - (b) section 34 (valuation of land), subject to the modifications that—
    - (i) in subsection (1), the reference to the date of notice under section 26 of the seller's proposal to transfer the land is to be read as a reference to the date of notice under section 38E(3),
    - (ii) in subsection (8), the reference to section 32(2)(b)(i) is to be read as a reference to section 38F(2)(b)(i),
  - (c) section 35 (special provision where buyer is general partner in limited partnership), subject to the modification that the reference to section 28 is to be read as a reference to section 38E,
  - (d) section 36 (further provision on valuation), subject to the modifications that—
    - (i) in subsection (6)(a), the reference to section 32(7) is to be read as a reference to section 38I(3),
    - (ii) the following subsection is to be inserted after subsection (6)—

“(6A) Where—

      - (a) the Land Court has made an order under section 38H(3),
      - (b) the seller to whom the order applies has complied with the order, and
      - (c) the tenant does not proceed with the purchase of the land from the seller,

the tenant is liable to the seller for any expenses met by the seller by virtue of subsection (5).”
  - (e) section 37 (appeal to the Lands Tribunal against valuation), subject to the modification that, in subsection (3)(b), the reference to section 32(2)(b)(ii) is to be read as a reference to section 38F(2)(b)(ii), and
  - (f) section 38 (referral of certain matters by the Lands Tribunal to the Land Court).

### **38H Failure of seller to complete transaction**

- (1) If the seller has not, within the period fixed by or agreed under section 38F(4)—
- (a) complied with section 38F(6)(a), or
  - (b) done any of the things mentioned in subsection (2),
- the tenant may apply to the Land Court for an order under subsection (3).

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- (2) The things are—
- (a) concluding missives for the sale of the land, or
  - (b) taking all steps which the seller could reasonably have taken in the time available towards so concluding missives.
- (3) An order under this subsection may—
- (a) direct the seller to comply with section 38F(6)(a) within such period as the order may specify,
  - (b) direct the seller—
    - (i) to conclude missives, and
    - (ii) to take such remedial action for the purpose of so concluding missives,
 within such period as the order may specify, and
  - (c) direct the tenant and seller to incorporate into the missives any term or condition in respect of the sale of the land as the order may specify.
- (4) If the seller fails to comply—
- (a) with an order under subsection (3), or
  - (b) with section 38F(6)(b),
- the Land Court may, on the application of the tenant, authorise its principal clerk to adjust, execute and deliver such deeds or other documents as will complete the transfer of ownership of the land to the tenant to the same force and effect as if done by the seller.

### **38I Failure of tenant to complete transaction**

- (1) If the tenant has not, within the period fixed by or agreed under section 38F(4), done any of the things mentioned in subsection (2), the seller may apply to the Land Court for an order under subsection (3).
- (2) The things are—
- (a) concluding missives for the sale of the land, or
  - (b) taking all steps which the tenant could reasonably have taken in the time available towards so concluding missives.
- (3) An order under this subsection may—
- (a) direct the tenant—
    - (i) to conclude missives, and
    - (ii) to take such remedial action for the purpose of so concluding missives,
 within such period as the order may specify, and
  - (b) direct the tenant and seller to incorporate into the missives any term or condition in respect of the sale of the land as the order may specify.
- (4) The right to buy is extinguished if—
- (a) the tenant fails to comply with an order under subsection (3), or

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- (b) no order having been applied for under section 38H(3) or under subsection (3), missives have not been concluded before the end of—
  - (i) the period of 12 months beginning with the date when the tenant gave notice under section 38E(3) of the tenant's intention to buy, or
  - (ii) such longer period as the Land Court may, on the application of the tenant, order.

### **38J Completion of sale to tenant**

- (1) The price paid for the transfer of ownership of the land to the tenant is to be paid not later than the final settlement date.
- (2) The “final settlement date” is the date on which the period, fixed or agreed under section 38F(4) or, as the case may be, specified in an order under section 38I(4)(b)(ii), expires.
- (3) Where, on the final settlement date, the seller is not able to effect the grant of a good and marketable title to the tenant—
  - (a) the price, or
  - (b) if, for any reason, the price has not been ascertained, such sum as may be fixed by the valuer appointed under section 33,is to be consigned into the Land Court until that title is granted, the tenant gives notice under section 38E(5) to the court of the tenant's decision not to proceed to complete the transaction or, as the case may be, the Land Court orders its release.
- (4) Except where subsection (3) applies, where the price remains unpaid after the date not later than which it is to be paid, the tenant's right to buy is extinguished.
- (5) Any heritable security which burdened the land immediately before title is granted to the tenant in pursuance of this section ceases to do so on the registration of that title in the Land Register of Scotland.
- (6) Where such a security also burdens land other than the land in respect of which title is granted to the tenant, the security does not, by virtue of subsection (5), cease to burden that other land.
- (7) Unless the creditors holding any such security otherwise agree, the tenant must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the seller by the tenant as the price for the land.
- (8) Any sum paid by a tenant under subsection (7) is to be deducted from the sum which the tenant is to pay to the seller as the price for the land.
- (9) Any legal incapacity or disability of an owner has no effect on the title passed to a tenant to which land has been sold in accordance with this Part.

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### **38K Effect of extinguishing of right to buy**

- (1) Where a right to buy is extinguished under section 38E(6), 38I(4) or 38J(4), the tenant may acquire a subsequent right to buy the same land or any part of it under section 28(1) but only if the conditions mentioned in subsection (2) are met.
- (2) Those conditions are that—
  - (a) the period of 12 months from the extinguishing of the right to buy under section 38E(6), 38I(4) or 38J(4) has expired, or
  - (b) before that period has expired—
    - (i) the land is transferred to another person whether under an order for sale or otherwise, and
    - (ii) that person requires to give notice under section 26 in relation to a subsequent transfer.

#### *Sale to third party*

### **38L Sale to third party**

- (1) This section applies where a tenant's right to buy land in respect of which an order for sale has been made is extinguished under section 38E(6), 38I(4) or 38J(4).
- (2) The tenant may, before the expiry of the period mentioned in subsection (3), apply to the Land Court for the order for sale to be varied to allow the land in respect of which the order has been made to be offered for sale on the open market.
- (3) That period is the period of 28 days beginning with the date on which the right to buy was extinguished.
- (4) The tenant must give notice of the application—
  - (a) to the owner,
  - (b) where there is a heritable security over an interest in the land to which the application relates, to the creditor who holds the security,
  - (c) to such other persons as the Scottish Ministers may prescribe by regulations.
- (5) The Land Court may, if it considers it appropriate in all the circumstances, grant the application and vary the order for sale to require the land to be offered for sale on the open market.
- (6) Where—
  - (a) no application is made under subsection (2), or
  - (b) the Land Court refuses such an application,
 the order for sale ceases to have effect.

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### **38M Procedure for sale to third party**

- (1) The Scottish Ministers may by regulations make further provision about the sale of land in relation to which the Land Court has, under section 38L, varied an order for sale to allow the land to be offered for sale on the open market.
- (2) Regulations under subsection (1) may in particular include provision about—
  - (a) the appointment of a person to sell the land,
  - (b) the valuation of the land (including the appointment of a valuer, who need not be a different person to the person appointed to sell the land),
  - (c) the procedure for the sale of the land (including sale by private bargain or by public roup),
  - (d) the period within which the land is to be sold (including provision for applications to the Land Court to extend such a period),
  - (e) the persons to whom the land cannot be sold,
  - (f) the powers of the person appointed to sell the land, including powers to adjust, execute or deliver any deeds or other documents necessary to complete the transfer of ownership of the land,
  - (g) the duties of the person appointed to sell the land, which must include—
    - (i) a duty to ensure that the price at which the land is sold is the best that can reasonably be obtained, and
    - (ii) a duty to compensate any person who incurs a loss caused as a result of the appointed person's negligence in the sale of the land,
  - (h) the distribution of the proceeds of sale,
  - (i) liability for any expenses incurred by the person appointed to sell or value the land,
  - (j) reports by the person appointed to sell the land to the Land Court,
  - (k) the effect on any rights such as are mentioned in section 38D(3),
  - (l) the effect on any heritable securities which burden the land in respect of which the order for sale has been made,
  - (m) what happens if the land is not sold within a period specified in the regulations.
- (3) Regulations under subsection (1) may apply the provisions of this Act, that apply to the sale of land comprised in a lease to a tenant by virtue of an order for sale, to the sale of such land on the open market, with or without modifications.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).

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### *Post-sale obligations*

#### **38N Restriction on notice to quit etc. where sale to third party**

- (1) This section applies where a third party buys the land comprised in the lease of a 1991 Act tenancy by virtue of an order for sale varied under section 38L.
- (2) During the period of 10 years beginning with the date the third party acquired title to the land, sections 22 to 24, 26 and 43 of the 1991 Act have effect in relation to the tenancy subject to the following modifications.
- (3) Section 22(2) has effect as if—
  - (a) paragraphs (a) and (b) were omitted,
  - (b) for paragraph (c) there were substituted—
    - “(c) the Land Court, on an application made—
      - (i) by a landlord who bought the land constituting the tenancy by virtue of an order for sale varied under section 38L of the Agricultural Holdings (Scotland) Act 2003 Act,
      - (ii) not more than 9 months before the giving of the notice to quit,
 granted a certificate under section 26(1) that the tenant was not fulfilling the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry,” and
    - (c) for “any of paragraphs (a) to (f)” there were substituted “ any of paragraphs (c) to (f) ”.
- (4) Section 24(1)(e) has effect as if, for “not falling within section 22(2)(b) of this Act”, there were substituted “ and, in a case where the use requires permission under the enactments relating to town and country planning, such permission has been obtained ”.
- (5) Section 26 has effect as if, after subsection (1), there were inserted—
 

“(1A) The Land Court must not grant a certificate under subsection (1) where subsection (1B) applies.
- (1B) This subsection applies where—
  - (a) the application under subsection (1) is made by a landlord who bought the land constituting the tenancy by virtue of an order for sale varied under section 38L of the Agricultural Holdings (Scotland) Act 2003 Act (the “2003 Act”), and
  - (b) 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 in relation to the tenant on the basis of which the Land Court made the order under section 84(1)(b) of the 2003 Act referred to in section 38A(1)(a) of that Act.”.
- (6) Section 43 has effect as if, for subsection (2), there were substituted—

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“(2) Compensation is not payable under this section where—

- (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in the landlord's own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on condition that the tenant must, along with the last or waygoing crop, sow permanent grass seeds, or
- (b) the application of section 22(1) to the notice to quit is excluded by any of paragraphs (c) to (f) of subsection (2) of that section.”.

### **380 Payment to former landlord where early resale**

- (1) This section applies where—
  - (a) a tenant or, as the case may be, a third party (the “original buyer”) buys land under an order for sale made in respect of the land, and
  - (b) the land is subsequently sold—
    - (i) before the end of the period of 10 years beginning with the date on which the original buyer acquired title to the land (the “original date”),
    - (ii) at a price higher than the price paid by the original buyer to the person from whom the land was bought (the “original seller”).
- (2) The original buyer must pay to the original seller a proportion of the difference between the price at which the land is subsequently sold and the price paid by the original buyer to the original seller.
- (3) The proportion of the difference which must be paid to the original seller is to be—
  - (a) 100 per cent where the subsequent sale occurs before the end of the period of 5 years beginning with the original date,
  - (b) 66 per cent where it occurs after the end of that period but before the end of the period of 8 years beginning with that date,
  - (c) 33 per cent where it occurs after the end of the period of 8 years beginning with that date.
- (4) The Scottish Ministers may by regulations make further provision about the payment that the original buyer must make to the original seller.
- (5) Regulations under subsection (4) may in particular include provision about—
  - (a) the exclusion, for the purposes of subsection (2), of so much of the price at which the land is subsequently sold as is attributable to an increase in the value of the land resulting from such causes as may be specified in the regulations (which may include improvements of the kind mentioned in schedule 5 of the 1991 Act),
  - (b) payment where part only of the land bought under the order for sale is subsequently sold within the period of 10 years mentioned in subsection (1)(b),

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- (c) the granting of standard securities over the land in relation to the liability to make a payment under this section (including the priority of such securities in relation to any other securities over the land),
- (d) circumstances in which no liability to make a payment under this section arises.

### **38P Compensation**

- (1) Any person, including an owner or former owner of land comprised in the lease of a 1991 Act tenancy, who has incurred loss or expense—
  - (a) in complying with the requirements of this Part following the making of an application by a tenant under section 38A(2) or 38L(2), or
  - (b) where the tenant gave notice under section 38E(3) of the tenant's intention to buy the land, as a result of the failure of the tenant or the seller to complete the purchase,
 is entitled to recover the amount of that loss or expense from the Scottish Ministers.
- (2) The Scottish Ministers may by regulations make provision about—
  - (a) the losses and expenses which may and may not be compensated,
  - (b) the procedure for claiming compensation (including who determines whether compensation is payable),
  - (c) the amount of compensation payable (including the manner in which such compensation is calculated).
- (3) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by regulations under subsection (2)(b), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal for Scotland.”.

## **CHAPTER 5**

### **RENT REVIEW**

#### *1991 Act tenancies: rent review*

#### **101 1991 Act tenancies: rent review**

- (1) The 1991 Act is amended as follows.
- (2) For section 13 (variation of rent) substitute—

*“Rent review*

#### **13 Rent review**

Schedule 1A makes provision for review of the rent payable in respect of an agricultural holding.”.



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(3) After schedule 1 insert—

“SCHEDULE 1A  
(introduced by section 13)

RENT REVIEW

*Rent review: service of rent review notice*

- 1 (1) The landlord of an agricultural holding to which this paragraph applies may initiate a review of the rent that is to be payable in respect of the holding by serving a notice in writing on the tenant of the holding.
- (2) The tenant of such an agricultural holding may initiate such a review by serving a notice in writing on the landlord of the holding.
- (3) A notice served under sub-paragraph (1) or (2) is a “rent review notice”.
- (4) This paragraph applies to an agricultural holding in respect of which—
  - (a) the lease was entered into before 27 November 2003, or
  - (b) the lease—
    - (i) was entered into in writing on or after that date but prior to the commencement of the tenancy, and
    - (ii) expressly states that this Act is to apply in relation to the tenancy.

*Form and content of rent review notice*

- 2 (1) A rent review notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant of the agricultural holding,
  - (b) the name (if any) and the address of the holding or such other description of the holding as will identify it,
  - (c) the rent currently payable in respect of the holding,
  - (d) the rent that the person serving the notice proposes should be payable,
  - (e) the date by which the landlord and the tenant must reach agreement as to what the rent payable should be (the “rent agreement date”).
- (2) The rent review notice must be accompanied by information in writing explaining the basis on which the rent proposed by the person serving the notice has been calculated.
- (3) For the purposes of sub-paragraph (1)(e), the rent agreement date stated in the rent review notice must not fall—
  - (a) earlier than 12 months from the date on which the notice is served, or
  - (b) later than 2 years from that date.
- (4) The Scottish Ministers may by regulations make further provision about—
  - (a) the form and content of rent review notices,

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(b) the information that must or may accompany them.

(5) Regulations under sub-paragraph (4) are subject to the negative procedure.

*Timing of rent review notice*

3 (1) A rent review notice may not be served under paragraph 1 if the rent agreement date stated in the notice would fall before the end of the period of 3 years beginning with the latest of—

- (a) the commencement of the tenancy,
- (b) the date as from which a previous variation of rent (under paragraph 7(2)(a) or otherwise) took effect,
- (c) the date as from which a previous determination under paragraph 7(2)(b) that the rent should continue unchanged took effect.

(2) For the purposes of sub-paragraph (1)(b), the following are to be disregarded—

- (a) a variation of rent under section 14,
- (b) an increase of rent under section 15(1),
- (c) a reduction of rent under section 31,
- (d) a variation of rent arising under—
  - (i) the exercise or revocation of an option to tax under schedule 10 of the Value Added Tax Act 1994, or
  - (ii) 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.

*Withdrawal of rent review notice*

4 (1) This paragraph applies where—

- (a) a rent review notice is served under paragraph 1,
- (b) no agreement has been reached between the landlord and the tenant as to the rent that is to be payable in respect of the holding, and
- (c) no determination has been made by the Land Court under paragraph 7(2) as to the rent that is to be payable in respect of the holding.

(2) The person who served the rent review notice may withdraw it but only with the consent of the recipient of the notice.

*Termination of rent review notice*

5 A rent review notice ceases to have effect on the earliest of the following—

- (a) the date it is withdrawn,
- (b) the date the landlord and the tenant reach agreement as to the rent that is to be payable in respect of the holding,
- (c) where no referral is made to the Land Court under paragraph 6(2), the day after the rent agreement date,
- (d) where a referral is made to the Land Court under paragraph 6(2), the date on which the Land Court determines under paragraph 7(2) the question of what the rent payable in respect of the holding is to be.

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#### *Referral of rent to the Land Court*

- 6 (1) This paragraph applies where—
- (a) a rent review notice is served under paragraph 1, and
  - (b) no agreement has been reached between the landlord and the tenant as to the rent that is to be payable in respect of the holding.
- (2) The landlord or the tenant of the holding may (whether the sender of the notice or not) refer the question of what the rent payable in respect of the holding should be to the Land Court.
- (3) The landlord or the tenant may not make such a referral after the rent agreement date.

#### *Powers of Land Court on referral under paragraph 6*

- 7 (1) This paragraph applies where a landlord or a tenant makes a referral to the Land Court under paragraph 6(2).
- (2) The Land Court must determine what the rent payable in respect of the holding is to be as from the rent agreement date and may—
- (a) vary the rent currently payable in respect of the holding, or
  - (b) determine that the rent should continue unchanged.
- (3) The rent that is to be payable in respect of the holding is the rent that the Land Court, taking account of all the circumstances, considers is the fair rent for the holding.
- (4) In determining the fair rent for the holding, the Land Court must have regard, in particular, to—
- (a) the productive capacity of the holding,
  - (b) the open market rent of any surplus residential accommodation on the holding provided by the landlord, and
  - (c) the open market rent of—
    - (i) any fixed equipment on the holding provided by the landlord, or
    - (ii) any land forming part of the holding, used for a purpose that is not an agricultural purpose.

#### *New rent to take effect from rent agreement date*

- 8 The rent agreed between the landlord and the tenant or, as the case may be, determined in accordance with paragraph 7 is to take effect from the rent agreement date.

#### *Productive capacity*

- 9 (1) The Scottish Ministers may by regulations make provision for the purposes of paragraph 7(4)(a) about the productive capacity of agricultural holdings, including—
- (a) how the productive capacity of an agricultural holding is to be determined,

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(b) the information to be provided by the landlord and the tenant of a holding to the Land Court to enable the court to have regard to the productive capacity of the holding.

(2) Regulations under sub-paragraph (1) are subject to the affirmative procedure.

*Surplus residential accommodation*

10 (1) Residential accommodation on an agricultural holding is surplus to the extent that it exceeds what is necessary to provide accommodation for the standard labour requirement of the holding.

(2) In determining, for the purposes of paragraph 7(4)(b), whether residential accommodation is surplus the Land Court—

(a) may take into account whether the standard labour requirement of the holding varies (seasonally or otherwise),

(b) must disregard—

(i) any accommodation all or part of which is occupied by the tenant of the holding,

(ii) any accommodation if the tenant is prohibited (by the lease or otherwise) from subletting it.

(3) But any such prohibition as is mentioned in sub-paragraph (2)(b)(ii) is to be ignored if the tenant has sublet the accommodation by virtue of section 39(3) of the Agricultural Holdings (Scotland) Act 2003.

(4) In having regard for the purposes of paragraph 7(4)(b) to the open market rent for any surplus residential accommodation, the Land Court—

(a) must take into account all the circumstances, including—

(i) the condition of the accommodation and its location, and

(ii) where accommodation is occupied by a retired agricultural worker, under an arrangement or agreement between the landlord and the tenant of the holding, at no rent or at a rent that is below what the open market rent for that accommodation would otherwise be, that fact,

(b) where the accommodation is not currently let, must disregard that fact.

(5) Where regard is had to the open market rent for surplus residential accommodation for the purposes of paragraph 7(4)(b), that accommodation is to be disregarded for the purposes of paragraph 7(4)(c).

(6) The Scottish Ministers may by regulations make provision about the standard labour requirement of agricultural holdings, including—

(a) how the standard labour requirement of an agricultural holding is to be determined,

(b) the information to be provided by the landlord and the tenant of a holding to the Land Court to enable the court to determine the standard labour requirement of the holding.

(7) Regulations under sub-paragraph (6) are subject to the affirmative procedure.

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#### *Open market rent*

- 11 For the purposes of paragraphs 7(4) and 10(4)(a)(ii), the “open market rent” means the rent at which—
- (a) any surplus residential accommodation, or
  - (b) any fixed equipment or land used for a purpose that is not an agricultural purpose,
- might reasonably be expected to be let on the open market by a willing landlord to a willing tenant.

#### *Power of Land Court to phase in new rent*

- 12 (1) This paragraph applies where the Land Court determines under paragraph 7(2) that the rent payable in respect of an agricultural holding (the “new rent”) is to be—
- (a) 30% or more higher, or
  - (b) 30% or more lower,
- than the rent currently payable in respect of the holding (the “original rent”).
- (2) The tenant or the landlord may apply to the Land Court to have the new rent phased in.
- (3) The Land Court may, if it considers that it would cause the tenant or, as the case may be, the landlord undue hardship were the new rent to be payable from the rent agreement date, order that the new rent be phased in over a 3 year period in accordance with sub-paragraphs (4) to (6).
- (4) The rent payable in the first year after the rent agreement date is—
- (a) where sub-paragraph (1)(a) applies, the sum of the original rent and one third of the difference between the new rent and the original rent, or
  - (b) where sub-paragraph (1)(b) applies, the original rent less one third of the difference between the original rent and the new rent.
- (5) The rent payable in the second year after the rent agreement date is—
- (a) where sub-paragraph (1)(a) applies, the sum of the original rent and two thirds of the difference between the new rent and the original rent, or
  - (b) where sub-paragraph (1)(b) applies, the original rent less two thirds of the difference between the original rent and the new rent.
- (6) The rent payable from the third year after the rent agreement date is the new rent.

#### *Interpretation*

- 13 In this schedule—
- “open market rent” has the meaning given by paragraph 11,
  - “rent agreement date” has the meaning given by paragraph 2(1)(e),
  - “rent review notice” has the meaning given by paragraph 1(3),

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“surplus residential accommodation” has the meaning given by paragraph 10.”.

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

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

- (1) The 2003 Act is amended as follows.
- (2) In section 9 (review of rent under limited duration tenancies)—
  - (a) in subsection (A1), after “tenancy” insert “, a modern limited duration tenancy or a repairing tenancy ”,
  - (b) in subsection (1), after “tenancy” insert “ or a modern limited duration tenancy ”,
  - (c) after subsection (1) insert—
    - “(1A) The rent due as payable under a lease constituting a repairing tenancy is to be reviewed and determined in accordance with this section.”,
  - (d) for subsections (2) to (8) substitute—
    - “(2) The landlord may initiate a review of the rent that is to be payable under the lease by serving a notice in writing on the tenant.
    - (3) The tenant may initiate such a review by serving a notice in writing on the landlord.
    - (4) A notice served under subsection (2) or (3) is a “rent review notice”.
  - (e) the title of the section becomes “ **Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies** ”.
- (3) After section 9 insert—

### **“9A Form and content of rent review notice**

- (1) A rent review notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the land comprised in the lease or such other description of the land as will identify it,
  - (c) the rent currently payable in respect of the land,
  - (d) the rent that the person serving the notice proposes should be payable,
  - (e) the date by which the landlord and the tenant must reach agreement as to what the rent payable should be (the “rent agreement date”).
- (2) The rent review notice must be accompanied by information in writing explaining the basis on which the rent proposed by the person serving the notice has been calculated.
- (3) The Scottish Ministers may by regulations make further provision about—

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- (a) the form and content of rent review notices,
- (b) the information that must or may accompany them.

### **9B Determination of rent**

- (1) On review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having regard, in particular, to—
  - (a) the productive capacity of the land comprised in the lease,
  - (b) the open market rent of any surplus residential accommodation on the land provided by the landlord, and
  - (c) the open market rent of—
    - (i) any fixed equipment on the land provided by the landlord, or
    - (ii) any land comprised in the lease,used for a purpose that is not an agricultural purpose.
- (2) In this section and section 9C(4)(a)(ii), the “open market rent” means the rent at which—
  - (a) any surplus residential accommodation, or
  - (b) any fixed equipment or land used for a purpose that is not an agricultural purpose,might reasonably be expected to be let on the open market by a willing landlord to a willing tenant.
- (3) The Scottish Ministers may by regulations make provision for the purposes of this section about the productive capacity of land comprised in leases of limited duration tenancies, modern limited duration tenancies and repairing tenancies, including how the productive capacity of such land is to be determined.
- (4) The rent determined in accordance with this section is to take effect from the rent agreement date.

### **9C Review of rent under limited duration tenancies, modern limited duration tenancies and repairing tenancies: surplus residential accommodation**

- (1) Residential accommodation on land comprised in the lease of a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy is surplus to the extent that it exceeds what is necessary to provide accommodation for the standard labour requirement of the land.
- (2) In determining whether residential accommodation is surplus—
  - (a) whether the standard labour requirement of the holding varies (seasonally or otherwise) may be taken into account,
  - (b) any accommodation—
    - (i) all or part of which is occupied by the tenant, or
    - (ii) which the tenant is prohibited (by the lease or otherwise) from subletting,is to be disregarded.

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- (3) But any such prohibition as is mentioned in subsection (2)(b)(ii) is to be ignored if the tenant has sublet the accommodation by virtue of section 39(3).
- (4) In having regard for the purposes of section 9B(1)(b) to the open market rent for any surplus residential accommodation—
  - (a) all the circumstances must be taken into account, including—
    - (i) the condition of the accommodation and its location, and
    - (ii) where accommodation is occupied by a retired agricultural worker, under an arrangement or agreement between the landlord and the tenant, at no rent or at a rent that is below what the open market rent for that accommodation would otherwise be, that fact,
  - (b) the fact that the accommodation is not currently let is to be disregarded.
- (5) Where regard is had to the open market rent for surplus residential accommodation for the purposes of section 9B(1)(b), that accommodation is to be disregarded for the purposes of section 9B(1)(c).
- (6) The Scottish Ministers may by regulations make provision about the standard labour requirement of land comprised in leases of limited duration tenancies, modern limited duration tenancies or repairing tenancies, including how the standard labour requirement of such land is to be determined.”.

## CHAPTER 6

### ASSIGNATION OF AND SUCCESSION TO AGRICULTURAL TENANCIES

#### *Assignment*

#### **103      Assignment of 1991 Act tenancies**

- (1) Section 10A of the 1991 Act (assignment and subletting of tenancy) is amended as follows.
- (2) In subsection (1), for “any of the persons who would be entitled to succeed to his estate on intestacy by virtue of the Succession (Scotland) Act 1964 (c.41)” substitute “ any one of the persons mentioned in subsection (1A) ”.
- (3) After that subsection insert—
 

“(1A) The persons referred to in subsection (1) are—

  - (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964,
  - (b) a spouse or civil partner of a child of the tenant,
  - (c) a spouse or civil partner of a grandchild of the tenant,
  - (d) a spouse or civil partner of a brother or sister of the tenant,
  - (e) a brother or sister of the tenant's spouse or civil partner,
  - (f) a spouse or civil partner of such a brother or sister,



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- (g) a child (including a step-child) of such a brother or sister,
- (h) a grandchild (including a step-grandchild) of such a brother or sister,
- (i) a step-child of the tenant,
- (j) a spouse or civil partner of such a step-child,
- (k) a descendant of such a step-child,
- (l) a step-brother or step-sister of the tenant,
- (m) a spouse or civil partner of such a step-brother or step-sister,
- (n) a descendant of such a step-brother or step-sister.”.

(4) In subsection (3), for “The” substitute “ Subject to subsection (3A), the ”.

(5) After that subsection insert—

“(3A) Where the tenant proposes to assign the lease to a person who is a near relative of the tenant, the only grounds on which the landlord can withhold consent to the proposed assignment are the following—

- (a) that the person is not of good character,
- (b) that the person does not have sufficient resources to enable the person to farm the holding with reasonable efficiency,
- (c) subject to subsection (3B), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the holding with reasonable efficiency.

(3B) The ground of objection in subsection (3A)(c) does not apply where the person—

- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
- (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.”.

(6) After subsection (5) insert—

“(6) In this section and in sections 12A and 12B, “near relative”, in relation to a tenant of an agricultural holding, means—

- (a) a parent of the tenant,
- (b) a spouse or civil partner of the tenant,
- (c) a child of the tenant,
- (d) a spouse or civil partner of such a child,
- (e) a grandchild of the tenant,
- (f) a brother or sister of the tenant,
- (g) a spouse or civil partner of such a brother or sister,
- (h) a child of a brother or sister of the tenant,
- (i) a grandchild of a brother or sister of the tenant,
- (j) a brother or sister of the tenant's spouse or civil partner,
- (k) a spouse or civil partner of such a brother or sister,
- (l) a child of such a brother or sister,
- (m) a grandchild of such a brother or sister.”.

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#### **104      Assignment of limited duration tenancies**

(1) The 2003 Act is amended as follows.

(2) In section 7 (assignment and subletting of limited duration tenancies)—

- (a) in subsection (3), for “The” substitute “ Subject to subsection (3A), the ”,
- (b) after that subsection insert—

“(3A) Where the tenant proposes to assign the lease to a person who is a near relative of the tenant, the only grounds on which the landlord can withhold consent to the proposed assignment are the following—

- (a) that the person is not of good character,
- (b) that the person does not have sufficient resources to enable the person to farm the land with reasonable efficiency,
- (c) subject to subsection (3B), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the land with reasonable efficiency.

(3B) The ground of objection in subsection (3A)(c) does not apply where the person—

- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
- (b) has made arrangements to secure that the land is farmed with reasonable efficiency until the person completes that course.”,

(c) after subsection (5) insert—

“(5A) For the purposes of subsection (3A), “near relative”, in relation to a tenant of an agricultural holding, means—

- (a) a parent of the tenant,
- (b) a spouse or civil partner of the tenant,
- (c) a child of the tenant,
- (d) a spouse or civil partner of such a child,
- (e) a grandchild of the tenant,
- (f) a brother or sister of the tenant,
- (g) a spouse or civil partner of such a brother or sister,
- (h) a child of a brother or sister of the tenant,
- (i) a grandchild of a brother or sister of the tenant,
- (j) a brother or sister of the tenant's spouse or civil partner,
- (k) a spouse or civil partner of such a brother or sister,
- (l) a child of such a brother or sister,
- (m) a grandchild of such a brother or sister.”.

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VALID FROM 30/11/2017

## 105 Assignment of modern limited duration tenancies

- (1) The 2003 Act is amended as follows.
- (2) After section 7A (as inserted by section 86) insert—

### “7B Assignment of modern limited duration tenancies

- (1) A lease constituting a modern limited duration tenancy may be assigned by the tenant if, following notice under subsection (2), the landlord consents to a proposed assignment.
- (2) The tenant must give the landlord a notice in writing of any intention of the tenant to assign the lease; and the notice must include the particulars of the proposed assignee, the terms upon which the assignment is to be made and the date on which it is to take effect.
- (3) Subject to subsection (4), the landlord may withhold consent to the proposed assignment if there are reasonable grounds for doing so; and, in particular, the landlord may withhold consent if not satisfied that the proposed assignee—
  - (a) would have the ability to pay—
    - (i) the rent due under the lease, or
    - (ii) for adequate maintenance of the land, or
  - (b) has the skills or experience that would be required properly to manage and maintain the land in accordance with the rules of good husbandry.
- (4) Where the tenant proposes to assign the lease to a person who is a near relative of the tenant, the only grounds on which the landlord can withhold consent to the proposed assignment are the following—
  - (a) that the person is not of good character,
  - (b) that the person does not have sufficient resources to enable the person to farm the land with reasonable efficiency,
  - (c) subject to subsection (5), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the land with reasonable efficiency.
- (5) The ground of objection in subsection (4)(c) does not apply where the person—
  - (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the land is farmed with reasonable efficiency until the person completes that course.

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- (6) Any such withholding of consent (and the grounds for withholding it) is to be intimated in writing to the tenant within 30 days of the giving of the notice under subsection (2); and, if no such intimation is made, the landlord is deemed to have consented to the proposed assignment.
- (7) For the purposes of subsection (3)(b), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (8) For the purposes of subsection (4), “near relative”, in relation to a tenant of an agricultural holding, means—
  - (a) a parent of the tenant,
  - (b) a spouse or civil partner of the tenant,
  - (c) a child of the tenant,
  - (d) a spouse or civil partner of such a child,
  - (e) a grandchild of the tenant,
  - (f) a brother or sister of the tenant,
  - (g) a spouse or civil partner of such a brother or sister,
  - (h) a child of a brother or sister of the tenant,
  - (i) a grandchild of a brother or sister of the tenant,
  - (j) a brother or sister of the tenant's spouse or civil partner,
  - (k) a spouse or civil partner of such a brother or sister,
  - (l) a child of such a brother or sister,
  - (m) a grandchild of such a brother or sister.”.

PROSPECTIVE

## 106 Assignment of repairing tenancies

- (1) The 2003 Act is amended as follows.
- (2) After section 7C (as inserted by section 93) insert—

### “7D Assignment of repairing tenancies

- (1) During the repairing period, a lease constituting a repairing tenancy may be assigned by the tenant if, following notice under subsection (2), the landlord consents to a proposed assignment.
- (2) The tenant must give the landlord a notice in writing of any intention of the tenant to assign the lease during the repairing period; and the notice must include the particulars of the proposed assignee, the terms upon which the assignment is to be made and the date on which it is to take effect.
- (3) The landlord may withhold consent to the proposed assignment during the repairing period if there are reasonable grounds for doing so; and, in particular, the landlord may withhold consent if not satisfied that the proposed assignee—
  - (a) would have the ability to pay—

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- (i) the rent due under the lease, or
  - (ii) for investment in the land in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry, or
- (b) has the skills or experience that would be required properly to manage and improve the land in order to bring it into a state capable of being farmed, after the expiry of the repairing period, in accordance with the rules of good husbandry.
- (4) The ground of objection in subsection (3)(b) does not apply where the person—
- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the land is farmed with reasonable efficiency until the person completes that course.
- (5) Any such withholding of consent during the repairing period (and the grounds for withholding it) is to be intimated in writing to the tenant within 30 days of the giving of notice under subsection (2); and, if no such intimation is made, the landlord is deemed to have consented to the proposed assignation.
- (6) For the purposes of subsection (3), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (7) After the expiry of the repairing period, section 7B applies to the assignation of a lease constituting a repairing tenancy as to the assignation of a lease constituting a modern limited duration tenancy.”.

### *Succession*

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

In section 11 of the 1991 Act (bequest of lease)—

- (a) in subsection (1), for “his son-in-law or daughter-in-law or to any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the Succession (Scotland) Act 1964” substitute “ any one of the persons mentioned in subsection (1A) ”,
- (b) after that subsection insert—

“(1A) The persons referred to in subsection (1) are—

- (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964,
- (b) a spouse or civil partner of a child of the tenant,
- (c) a spouse or civil partner of a grandchild of the tenant,
- (d) a spouse or civil partner of a brother or sister of the tenant,
- (e) a brother or sister of the tenant's spouse or civil partner,
- (f) a spouse or civil partner of such a brother or sister,

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- (g) a child (including a step-child) of such a brother or sister,
- (h) a grandchild (including a step-grandchild) of such a brother or sister,
- (i) a step-child of the tenant,
- (j) a spouse or civil partner of such a step-child,
- (k) a descendant of such a step-child,
- (l) a step-brother or step-sister of the tenant,
- (m) a spouse or civil partner of such a step-brother or step-sister,
- (n) a descendant of such a step-brother or step-sister.”.

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

(1) Section 16 of the Succession (Scotland) Act 1964 (provisions relating to leases) is amended as follows—

- (a) in subsection (4A), for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”,
- (b) in subsection (4C), for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”,
- (c) in subsection (9)—
  - (i) in the definition of “agricultural lease”, for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”,
  - (ii) for “and “limited duration tenancy”” substitute “, “limited duration tenancy”, “modern limited duration tenancy” and “repairing tenancy””.

(2) The 2003 Act is amended as follows.

(3) In section 21 (bequest of lease)—

- (a) in subsection (1)—
  - (i) for “or a limited duration tenancy” substitute “, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy”,
  - (ii) for “the tenant's son-in-law or daughter-in-law or to any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the 1964 Act” substitute “ any one of the persons mentioned in subsection (1A) ”,

(b) after that subsection insert—

“(1A) The persons referred to in subsection (1) are—

- (a) any person who would be, or would in any circumstances have been, entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964,
- (b) a spouse or civil partner of a child of the tenant,
- (c) a spouse or civil partner of a grandchild of the tenant,
- (d) a spouse or civil partner of a brother or sister of the tenant,
- (e) a brother or sister of the tenant's spouse or civil partner,
- (f) a spouse or civil partner of such a brother or sister,
- (g) a child (including a step-child) of such a brother or sister,

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- (h) a grandchild (including a step-grandchild) of such a brother or sister,
- (i) a step-child of the tenant,
- (j) a spouse or civil partner of such a step-child,
- (k) a descendant of such a step-child,
- (l) a step-brother or step-sister of the tenant,
- (m) a spouse or civil partner of such a step-brother or step-sister,
- (n) a descendant of such a step-brother or step-sister.”.

*Landlord's objection to tenant's successor*

**109 Objection by landlord to legatee or acquirer on intestacy**

- (1) The 1991 Act is amended as follows.
- (2) In section 11 (bequest of lease)—
  - (a) in subsection (1), for “subsections (2) to (8) below” substitute “ subsections (2) and (3) and to sections 12A to 12C ”,
  - (b) in subsection (2), after “this section” insert “ and in sections 12A to 12C ”,
  - (c) in subsection (3), for “subsection (4) below” substitute “ section 12A(2) or 12B(2) ”,
  - (d) subsections (4) to (7) are repealed,
  - (e) in subsection (8), “, or if the bequest is declared null and void under subsection (6) above,” is repealed.
- (3) In section 12 (right of landlord to object to acquirer of lease)—
  - (a) in subsection (1)—
    - (i) after “this section” insert “ and in sections 12A to 12C ”,
    - (ii) for “subsection (2) below” substitute “ section 12A(2) or 12B(2) ”,
  - (b) subsections (2) to (5) are repealed,
  - (c) the title of the section becomes “ **Transfer of lease on intestacy** ”.
- (4) After section 12 insert—

**“12A Landlord's objection to legatee or acquirer on intestacy: near relative**

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is a near relative of the deceased.
- (2) The landlord may, within 1 month after the notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease.
- (3) The only grounds on which the landlord can object to receiving the person as tenant under the lease are the following—
  - (a) that the person is not of good character,
  - (b) that the person does not have sufficient resources to enable the person to farm the holding with reasonable efficiency,

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- (c) subject to subsection (4), that the person has neither sufficient training in agriculture nor sufficient experience in the farming of land to enable the person to farm the holding with reasonable efficiency.
- (4) The ground of objection in subsection (3)(c) does not apply where the person—
  - (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under section 11(2) or 12(1), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
  - (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.
- (5) If the landlord gives a counter-notice under subsection (2), the landlord may, within 1 month after the counter-notice is given, apply to the Land Court for an order—
  - (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease.
- (6) If, on the hearing of such an application, any ground of objection stated by the landlord is established to the satisfaction of the Land Court, it must make an order—
  - (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the court specifies.
- (7) In any other case, the Land Court must make an order declaring the legatee or, as the case may be, the acquirer to be the tenant under the lease and the lease to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.
- (8) Where the landlord does not apply to the Land Court under subsection (5)—
  - (a) the counter-notice ceases to have effect on the expiry of the period of 1 month mentioned in that subsection, and
  - (b) the lease is to be binding on the landlord and on the legatee or acquirer, as landlord and tenant respectively, as from the date of the death of the deceased tenant.

### **12B Landlord's objection to legatee or acquirer on intestacy: other persons**

- (1) This section applies where the person who gives notice to the landlord under section 11(2) or 12(1) is not a near relative of the deceased.
- (2) The landlord may, within 1 month after notice is given under section 11(2) or 12(1), give to the person a counter-notice intimating that the landlord objects to receiving the person as tenant under the lease and—
  - (a) in the case of a legatee, declaring the bequest to be null and void,
  - (b) in the case of an acquirer, terminating the lease with effect as from such term of Whitsunday or Martinmas as the landlord specifies, being a term at least 1 year but no more than 2 years from the date of the counter-notice.



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- (3) If the landlord gives a counter-notice under subsection (2), the person may, within 1 month after the counter-notice is given, appeal to the Land Court.
- (4) If, on the hearing of such an appeal, any reasonable ground stated by the person—
  - (a) in the case of a legatee, for not declaring the bequest to be null and void,
  - (b) in the case of an acquirer, for not terminating the lease,is established to the satisfaction of the Land Court, it must make an order quashing the counter-notice.
- (5) In any other case, the Land Court must make an order confirming the counter-notice.

#### **12C Landlord's objection to legatee or acquirer on intestacy: supplementary provision**

- (1) Pending any proceedings under section 12A or 12B, the legatee or acquirer is to have possession of the holding provided the executor in whom the lease is vested under section 14 of the Succession (Scotland) Act 1964 consents.
- (2) Subsection (1) does not apply where the Land Court, on the application of the landlord and on cause shown, directs otherwise.
- (3) In the case of a legatee, if the bequest is declared null and void—
  - (a) under section 12A(6)(a),
  - (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or
  - (c) by virtue of the Land Court confirming such a counter-notice on such an appeal,the right to the lease is to be treated as intestate estate of the deceased tenant in accordance with Part 1 of the Succession (Scotland) Act 1964.
- (4) In the case of an acquirer, if the lease is terminated—
  - (a) under section 12A(6)(b),
  - (b) by virtue of a counter-notice under section 12B(2), no appeal to the Land Court having been made under section 12B(3), or
  - (c) by virtue of the Land Court confirming such a counter-notice on such an appeal,that termination is to be treated, for the purposes of Parts 4 and 5 of this Act (compensation), as termination of the acquirer's tenancy of the holding.
- (5) But nothing in this section is to entitle the acquirer to compensation for disturbance.”.

(5) Section 25 (termination of tenancies acquired by succession) is repealed.

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## CHAPTER 7

### RELINQUISHING AND ASSIGNATION OF 1991 ACT TENANCIES

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

- (1) The 1991 Act is amended as follows.
- (2) After section 32 insert—

#### “PART 3A

#### RELINQUISHING AND ASSIGNATION OF HOLDINGS

#### CHAPTER 1

#### TENANT'S OFFER TO RELINQUISH HOLDING

#### *Application of Part and key terms*

#### **32A Application of Part**

- (1) This Part applies where the tenant of an agricultural holding to which subsection (2) applies wishes to quit the tenancy before the date on which the tenancy could otherwise be brought to an end by notice of intention to quit or, failing which, assign the lease to an individual who is a new entrant to, or who is progressing in, farming.
- (2) This subsection applies to an agricultural holding in respect of which—
  - (a) the lease was entered into before 27 November 2003, or
  - (b) the lease—
    - (i) was entered into in writing on or after that date but prior to the commencement of the tenancy, and
    - (ii) expressly states that this Act is to apply to the tenancy.

#### **32B New entrants to farming and persons progressing in farming**

- (1) The Scottish Ministers may by regulations make further provision about the individuals who are new entrants to, or who are progressing in, farming for the purposes of this Part.
- (2) Regulations under subsection (1) are subject to the negative procedure. Notice of intention to relinquish

#### **32C Tenant's offer to relinquish tenancy**

- (1) The tenant may serve notice in writing on the landlord of the holding indicating that the tenant will quit the tenancy provided the landlord pays to the tenant an amount, calculated in accordance with section 32L, as compensation for so doing.

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- (2) A notice served under subsection (1) is a “notice of intention to relinquish”.
- (3) The tenant must, at the same time as serving a notice of intention to relinquish, send a copy of the notice to the Tenant Farming Commissioner.

### **32D Form and content of notice of intention to relinquish**

- (1) The Scottish Ministers may by regulations prescribe the form and content of notices of intention to relinquish.
- (2) Regulations under subsection (1) may, in particular, include provision for—
  - (a) such notices to be dated,
  - (b) such notices to state—
    - (i) the names and designations of the landlord and the tenant of the agricultural holding,
    - (ii) the name (if any) and the address of the holding or such other description of the holding as will identify it,
    - (iii) the rent currently payable in respect of the holding,
    - (iv) the date on which the rent for the holding was last varied or, as the case may be, continued unchanged (whether by agreement or by determination of the Land Court),
    - (v) the improvements (if any) carried out to the holding by the tenant,
  - (c) the information that must or may accompany such notices (which may include maps or plans of the holding).
- (3) Regulations under subsection (1) are subject to the negative procedure.

### **32E Restrictions on serving notice of intention to relinquish**

- (1) A tenant may not serve a notice of intention to relinquish if, at the date of service, any of subsections (2) to (7) apply.
- (2) This subsection applies where the tenant has served notice of intention to quit.
- (3) This subsection applies where the tenant has failed to comply with a written demand, served on the tenant by the landlord, requiring the tenant—
  - (a) to pay rent due in respect of the holding within 2 months from the date of service of the demand, or
  - (b) to remedy a relevant breach within a reasonable time.
- (4) In subsection (3)(b), a “relevant breach” is a breach by the tenant of a condition of the tenancy which—
  - (a) is capable of being remedied, and
  - (b) is not inconsistent with the fulfilment of the tenant's responsibilities to farm in accordance with the rules of good husbandry.
- (5) This subsection applies where the landlord has served notice to quit to which section 22(2) applies.

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- (6) This subsection applies where the landlord has served notice to quit to which section 22(2) does not apply and—
- (a) the period mentioned in section 23(1) within which the landlord may apply to the Land Court for consent to the operation of the notice has not expired,
  - (b) the landlord has applied in accordance with that section and the Land Court has yet to reach a decision, or
  - (c) the Land Court has, on such an application, consented to the notice and—
    - (i) any period within which an appeal may be made against that decision has not expired,
    - (ii) such a period has expired without an appeal having been made, or
    - (iii) an appeal having been made, the decision of the Land Court to consent to the notice has been upheld.
- (7) This subsection applies where, in relation to a notice to quit to which section 22(2) does not apply, the Land Court has, following an application under section 23(1), refused consent to its operation and—
- (a) any period within which an appeal may be made against that decision has not expired,
  - (b) an appeal has been made but not determined, or
  - (c) the decision of the Land Court to refuse consent to the notice has been quashed.

### **32F Restriction on notice to quit etc. where notice of intention to relinquish served**

- (1) This section applies where a tenant serves a notice of intention to relinquish.
- (2) During the relevant period, sections 22 to 24 and 43 have effect in relation to the tenancy subject to the following modifications.
- (3) The relevant period is the period beginning with the date of service of the notice of intention to relinquish and ending with—
  - (a) the date the tenancy is terminated under section 32T(2), or
  - (b) the date on which the period of 1 year mentioned in section 32U(2) expires.
- (4) Section 22(2) has effect as if—
  - (a) paragraphs (a) and (b) were omitted, and
  - (b) for “any of paragraphs (a) to (f)” there were substituted “ any of paragraphs (c) to (f) ”.
- (5) Section 24(1) has effect as if paragraph (e) were omitted.
- (6) Section 43 has effect as if, for subsection (2), there were substituted—
 

“(2) Compensation is not payable under this section where—

  - (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in the landlord's own occupation and which

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- has been let to the tenant for a definite and limited period for cultivation as arable land on condition that the tenant must, along with the last or waygoing crop, sow permanent grass seeds, or
- (b) the application of section 22(1) to the notice to quit is excluded by any of paragraphs (c) to (f) of subsection (2) of that section.”.

#### *Appointment of valuer*

### **32G Appointment of valuer by Tenant Farming Commissioner**

- (1) This section applies where the Tenant Farming Commissioner receives a copy of a notice of intention to relinquish.
- (2) The Commissioner must, before the expiry of the period mentioned in subsection (3), appoint a person, who meets the requirements mentioned in subsection (4), to—
- (a) carry out the assessment mentioned in section 32J(1), and
- (b) calculate the amount to be payable by the landlord to the tenant as compensation for the tenant quitting the tenancy were the landlord to accept the notice of intention to relinquish.
- (3) The period is—
- (a) the period of 14 days beginning with the date on which the notice is served, or
- (b) such other period specified by the Scottish Ministers by regulations.
- (4) The requirements referred to in subsection (2) are that the person appears to the Commissioner—
- (a) to be independent of the landlord and the tenant, and
- (b) to possess qualifications, knowledge and experience suitable for assessing the—
- (i) value of agricultural land, both with vacant possession and where subject to agricultural holdings, and
- (ii) compensation that may be payable to tenants and landlords of such holdings.
- (5) A person appointed under subsection (2) is the “valuer”.
- (6) The Tenant Farming Commissioner must give notice in writing to the tenant and the landlord of the name and address of the valuer appointed under subsection (2).
- (7) Regulations under subsection (3)(b) are subject to the negative procedure.

### **32H Objection to valuer appointed by Tenant Farming Commissioner**

- (1) This section applies where the tenant or the landlord objects to the person appointed under section 32G(2) by the Tenant Farming Commissioner on one or more of the grounds mentioned in subsection (2).
- (2) Those grounds are that the person—
- (a) is not independent of the landlord or, as the case may be, the tenant,  
or

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- (b) does not possess the qualifications, knowledge and experience mentioned in section 32G(4)(b).
- (3) The tenant or, as the case may be, the landlord may apply to the Land Court to appoint a person as the valuer in place of the person appointed by the Tenant Farming Commissioner.
- (4) An application under subsection (3)—
  - (a) must—
    - (i) be made before the expiry of the period of 14 days beginning with the date of the notice under section 32G(6), and
    - (ii) state the ground of objection to the person appointed by the Tenant Farming Commissioner, and
  - (b) may propose a person to be appointed as the valuer in place of that person.
- (5) The Land Court may, on an application under subsection (3)—
  - (a) reject the objection, or
  - (b) appoint a person as the valuer (whether a person proposed in the application or not).
- (6) The decision of the Land Court on an application under subsection (3) is final.

### **32I Valuer's expenses**

- (1) The tenant is responsible for meeting the expenses, incurred in carrying out functions under this Part, of a valuer appointed—
  - (a) by the Tenant Farming Commissioner under section 32G(2), or
  - (b) by the Land Court under section 32H(5)(b).
- (2) Where, in the case of a valuer appointed under section 32G(2), those expenses have been met by the Tenant Farming Commissioner, the Commissioner is entitled to recover them from the tenant.

### *Valuer's assessment*

### **32J Assessment of value of land etc.**

- (1) The valuer is to assess—
  - (a) the value of the land to which the holding relates—
    - (i) if sold with vacant possession,
    - (ii) if sold with the tenant still in occupation, and
  - (b) the amount of compensation—
    - (i) to which the tenant would be entitled, by virtue of Part 4, sections 40 and 41 or any agreement applying in place of that Part or those sections, in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44, and
    - (iii) to which the landlord would be entitled under sections 45 and 45A.

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- (2) In assessing the value of the land under subsection (1)(a)(i) or (ii), the valuer—
- (a) is to have regard to the value that would be likely to be agreed between a reasonable seller and buyer of such land assuming the seller and buyer are, as respects the transaction, willing,
  - (b) is to take account—
    - (i) of when the landlord would in the normal course of events have been likely to recover vacant possession of the land from the tenant,
    - (ii) of the terms and conditions of any lease, other than the lease of the holding, affecting the land,
  - (c) is to take no account of—
    - (i) the existence of any person to whom the tenant could assign the lease of the holding under section 10A or to whom the lease could be bequeathed under section 11,
    - (ii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale,
    - (iii) any factor attributable to any use of the land which is or would be unlawful,
    - (iv) any increase in the value of the land resulting from improvements in relation to which the tenant would be entitled to compensation as mentioned in subsection (1)(b)(i) and (ii),
    - (v) any increase in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding,
    - (vi) any reduction in the value of the land resulting from any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant in relation to which the landlord would be entitled to compensation as mentioned in subsection (1)(b)(iii),
    - (vii) any reduction in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding.
- (3) For the purposes of subsection (2)(c)(iv)—
- (a) subject to paragraph (b), “improvements” is to be construed by reference to schedule 5, and
  - (b) the continuous adoption by the tenant of a standard of farming more beneficial to the land than the standard or system required by the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant's expense.
- (4) The valuer is to calculate, in accordance with section 32L, the amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish.

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- (5) The Scottish Ministers may by regulations amend subsections (2) and (3) so as to—
- (a) add,
  - (b) remove,
  - (c) vary the description of,
- a matter which the valuer must have regard to, take account of or take no account of in assessing the value of the land under subsection (1)(a)(i) or (ii).
- (6) Regulations under subsection (5) are subject to the affirmative procedure.

### **32K Valuation: further provision**

- (1) The valuer is—
- (a) to invite the landlord and the tenant to make written representations about the assessment under section 32J(1), and
  - (b) to have regard to any such representations.
- (2) The valuer may—
- (a) enter onto land, and
  - (b) make any reasonable request of the landlord and tenant,
- for the purposes of any assessment under section 32J(1).

### *Calculation of compensation*

### **32L Compensation payable by landlord to tenant**

The amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish is to be calculated as follows:

*Step 1* Deduct from the value of the land to which the holding relates if sold with vacant possession the value of the land if sold with the tenant still in occupation (both as assessed under section 32J(1) or, as the case may be, 32N(3)(a)).

*Step 2* Divide the amount calculated under Step 1 by 2.

*Step 3* Add to the amount of compensation to which the tenant would be entitled in relation to improvements the amount of compensation to which the tenant would be entitled under section 44 (as so assessed).

*Step 4* Deduct from the amount calculated under Step 3 the amount of compensation to which the landlord would be entitled under sections 45 and 45A (as so assessed).

*Step 5* Add to the amount calculated under Step 2 the amount calculated under Step 4.



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### *Notice of assessment*

#### **32M Notice of assessment**

- (1) The valuer must, before the expiry of the period mentioned in subsection (2), serve a notice in writing, specifying the matters mentioned in subsection (3), on—
  - (a) the tenant, and
  - (b) the landlord.
- (2) The period is the period of 8 weeks beginning with—
  - (a) the date on which the period, within which an application under section 32H(3) may be made, expires, or
  - (b) where such an application is made, the date of the Land Court's decision on it.
- (3) The matters are—
  - (a) the value, assessed under section 32J(1)(a), of the land to which the holding relates—
    - (i) if sold with vacant possession, and
    - (ii) if sold with the tenant still in occupation,
  - (b) the amount, assessed under section 32J(1)(b), of compensation—
    - (i) to which the tenant would be entitled in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44,
    - (iii) to which the landlord would be entitled under section 45 and 45A, and
  - (c) the amount, calculated in accordance with section 32L, to be payable by the landlord to the tenant as compensation were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The notice must also—
  - (a) be dated,
  - (b) state the date of valuation of each of the values and amounts mentioned in subsection (3), and
  - (c) set out how the valuer arrived at each of those values and amounts.
- (5) The notice may also contain or be accompanied by any other information that the valuer considers appropriate.
- (6) A notice served under subsection (1) is a “notice of assessment”.
- (7) The valuer must, at the same time as serving a notice of assessment, send a copy of the notice to the Tenant Farming Commissioner.

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### *Appeal against valuer's assessment*

#### **32N Appeal to Lands Tribunal against valuer's assessment**

- (1) The tenant or the landlord may appeal to the Lands Tribunal against a notice of assessment.
- (2) An appeal under this section must—
  - (a) state the grounds on which it is being made, and
  - (b) be lodged before the expiry of the period of 21 days beginning with the date the notice of assessment was served.
- (3) The Lands Tribunal may—
  - (a) reassess any value or amount of compensation mentioned in section 32J(1) (and any factor affecting the value or amount),
  - (b) determine the amount to be payable by the landlord to the tenant as compensation, calculated in accordance with section 32L, were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The valuer whose assessment is appealed against may be a witness in the appeal proceedings.
- (5) In the appeal proceedings, in addition to the landlord and the tenant, the following persons are entitled to be heard—
  - (a) where the landlord is a creditor in a standard security, the owner of the land,
  - (b) where the landlord is the owner of the land, any creditor in a standard security over the land or any part of it.
- (6) The Lands Tribunal is to give written reasons for its decision on an appeal under this section.
- (7) The decision of the Lands Tribunal in an appeal under this section is final.

#### **32O Referral of certain matters by Lands Tribunal to Land Court**

Where, in an appeal before the Lands Tribunal under section 32N, an issue of law arises which may competently be determined by the Land Court by virtue of this Act or the 2003 Act, the Tribunal is to refer the issue to the Land Court for determination unless the Tribunal considers that it is not appropriate to do so.

### *Withdrawal of notice of intention to relinquish*

#### **32P Withdrawal of notice of intention to relinquish**

- (1) The tenant may, before the expiry of the period mentioned in subsection (2), withdraw a notice of intention to relinquish by serving notice on the landlord.
- (2) The period is—

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- (a) the period of 35 days beginning with the day the notice of assessment is served, or
  - (b) if an appeal is made to the Lands Tribunal under section 32N, the period of 14 days beginning with the date of the Tribunal's decision.
- (3) The tenant must, at the same time as serving notice under subsection (1), send a copy of the notice to—
- (a) the Tenant Farming Commissioner,
  - (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).
- (4) Where the tenant serves notice under subsection (1)—
- (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
  - (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

*Landlord's response to tenant's offer to quit tenancy*

**32Q Landlord's acceptance of notice of intention to relinquish**

- (1) The section applies where the landlord wishes to accept the tenant's notice of intention to relinquish.
- (2) The landlord must—
- (a) serve notice on the tenant which complies with subsection (3), and
  - (b) pay the amount of compensation calculated under section 32L before the expiry of the period mentioned in subsection (5).
- (3) A notice complies with this subsection if it—
- (a) is served before the expiry of the period mentioned in subsection (4), and
  - (b) states that the landlord will, in exchange for the tenant quitting the tenancy, pay to the tenant—
    - (i) the amount of compensation assessed by the valuer and specified in the notice of assessment, or
    - (ii) where the Lands Tribunal has determined under section 32N(3)(b) that the compensation should be a different amount, that amount.
- (4) The period referred to in subsection (3)(a) is the period of 28 days beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (5) The period referred to in subsection (2)(b) is the period of 6 months beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (6) A notice served under subsection (2)(a) is a “notice of acceptance”.
- (7) The landlord must, at the same time as serving a notice of acceptance, send a copy of the notice to the Tenant Farming Commissioner.

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(8) The Scottish Ministers may by regulations specify the form and content of notices of acceptance.

(9) Regulations under subsection (8) are subject to the negative procedure.

### **32R Notice of declinature**

(1) The landlord may, at any time before the expiry of the period of 28 days mentioned in section 32Q(4), serve notice on the tenant stating that the landlord does not wish to accept the notice of intention to relinquish.

(2) A notice served under subsection (1) is a “notice of declinature”.

(3) The landlord must, at the same time as serving a notice of declinature, send a copy of the notice to—

- (a) the Tenant Farming Commissioner,
- (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).

(4) Where the landlord serves notice of declinature—

- (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
- (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

### **32S Withdrawal of notice of acceptance**

(1) A landlord may, at any time before the expiry of the period of 6 months mentioned in section 32Q(5), withdraw a notice of acceptance by serving notice in writing on the tenant.

(2) A notice served under subsection (1) is a “notice of withdrawal”.

(3) The landlord must, at the same time as serving notice of withdrawal, send a copy of the notice to the Tenant Farming Commissioner.

(4) The tenant is entitled to recover from the landlord any loss or expense incurred in reliance on the landlord's notice of acceptance.

### *Payment of compensation ends tenancy*

### **32T Consequences of landlord paying compensation to tenant**

(1) This section applies where, on or before the expiry of the period mentioned in section 32Q(5), the landlord pays to the tenant the amount of compensation in accordance with section 32Q(2)(b).

(2) The tenancy comes to an end—

- (a) on the expiry of that period, or
- (b) on such earlier date as the tenant and landlord may agree.

(3) Where a tenancy is terminated under subsection (2), section 21 does not apply in respect of the tenancy.

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- (4) Any claim or entitlement to compensation or any other payment, other than to the compensation mentioned in section 32J(1)(b), is preserved despite the payment of compensation in accordance with section 32Q(2)(b).

## CHAPTER 2

### ASSIGNATION WHERE LANDLORD DOES NOT ACCEPT TENANT'S OFFER

#### **32U Assignation where landlord does not accept notice of intention to relinquish**

- (1) This section applies where the tenant serves notice of intention to relinquish and the landlord—
- (a) serves notice of declinature,
  - (b) fails to serve notice of acceptance before the expiry of the period of 28 days mentioned in section 32Q(4), or
  - (c) serves notice of acceptance but—
    - (i) serves notice of withdrawal before the expiry of the period of 6 months mentioned in section 32Q(5), or
    - (ii) fails to pay the amount of compensation required before the expiry of that period in accordance with section 32Q(2)(b).
- (2) The tenant may, before the expiry of the period of 1 year beginning with the date mentioned in subsection (3), assign the lease of the holding to an individual who is a new entrant to, or who is progressing in, farming.
- (3) That date is—
- (a) the date notice of declinature is served,
  - (b) where the landlord fails to serve notice of acceptance before the expiry of the period of 28 days mentioned in section 32Q(4), the date falling at the end of that period,
  - (c) the date notice of withdrawal is served, or
  - (d) where the landlord fails to pay the amount of compensation required before the expiry of the period of 6 months mentioned in section 32Q(5), the date falling at the end of that period.

#### **32V Application of section 10A to assignation under this Part**

Section 10A has effect in relation to an assignation by virtue of section 32U(2)—

- (a) as if subsections (1), (1A) and (6) were omitted,
  - (b) as if, for subsections (3), (3A) and (3B) there were substituted—
    - “(3) The landlord may withhold consent to the proposed assignation if—
      - (a) the proposed assignee is not an individual who is a new entrant to farming or who is progressing in farming, or
      - (b) there are reasonable grounds for doing so.
- (3A) In subsection (3)(b), reasonable grounds include, in particular, that the landlord is not satisfied that the proposed assignee—

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- (a) would have the ability to pay—
  - (i) the rent due under the lease, or
  - (ii) for adequate maintenance of the land, or
- (b) has the skills or experience that would be required properly to manage and maintain the land in accordance with the rules of good husbandry.

(3B) The ground of objection in subsection (3A)(b) does not apply where the proposed assignee is a new entrant to farming and—

- (a) is engaged in or will begin, before the expiry of the period of 6 months beginning with the date of the notice under subsection (2), a course of relevant training in agriculture which the person is expected to complete satisfactorily within 4 years from that date, and
- (b) has made arrangements to secure that the holding is farmed with reasonable efficiency until the person completes that course.”.

## CHAPTER 3

### INTERPRETATION

#### 32W Interpretation of Part

In this Part—

“new entrant to farming” and “person progressing in farming” are to be construed in accordance with section 32B,  
 “notice of acceptance” has the meaning given by section 32Q(6),  
 “notice of assessment” has the meaning given by section 32M(6),  
 “notice of declinature” has the meaning given by section 32R(2),  
 “notice of intention to relinquish” has the meaning given by section 32C(2),  
 “notice of withdrawal” has the meaning given by section 32S(2),  
 “Tenant Farming Commissioner” means the person appointed under section 10(1) of the Land Reform (Scotland) Act 2016,  
 “valuer” means the person appointed under section 32G(2) or, as the case may be, 32H(5)(b).”.

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

- (1) In section 21(1) of the 1991 Act, after “section 20” insert “ and Part 3A ”.
- (2) The 2003 Act is amended as follows.
- (3) In section 55 (right to compensation for yielding vacant possession), in subsection (4), after “Where” insert “ the tenancy is a limited duration tenancy or a modern limited duration tenancy and ”.
- (4) After section 74 insert—

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#### **“74A Application of Part 3A of the 1991 Act**

- (1) The Scottish Ministers may by regulations provide that Part 3A of the 1991 Act does not apply in relation to such types of partnership who are tenants, and in such circumstances, as the regulations may specify.
- (2) The Scottish Ministers may by regulations—
  - (a) provide that general partners, of such types of limited partnership as the regulations may specify, may, in such circumstances as may be so specified, exercise and enforce any rights of tenants conferred by Part 3A of that Act,
  - (b) provide that Part 3A, in its application in relation to—
    - (i) partnerships who are tenants, and
    - (ii) such partners of partnerships as may exercise or enforce any rights of tenants conferred by that Part,has effect with or subject to such modifications as the regulations may specify,
  - (c) make such further provision in relation to such partnerships and partners as they consider appropriate for the purposes of that Part.
- (3) Regulations under subsection (2) may make different provision for different types of partnership.”.

VALID FROM 13/06/2017

## **CHAPTER 8**

### **COMPENSATION FOR TENANT'S IMPROVEMENTS**

#### *Amnesty for tenant's improvements*

#### **112 Amnesty for certain improvements by tenant**

- (1) This Chapter applies where, in respect of a relevant improvement—
  - (a) a tenant of an agricultural holding to which the 1991 Act applies intends to claim compensation under section 34 of that Act, or
  - (b) a tenant—
    - (i) under a short limited duration tenancy within the meaning of section 4 of the 2003 Act,
    - (ii) under a limited duration tenancy within the meaning of section 5 of that Act, or
    - (iii) under a modern limited duration tenancy within the meaning of section 5A of that Act,intends to claim compensation under section 45 of that Act.
- (2) A “relevant improvement” is a Part 1, Part 2 or Part 3 improvement completed before the beginning of the amnesty period.

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- (3) In this Chapter the “amnesty period” means the period of 3 years beginning with the day on which this section comes into force.
- (4) A tenant may give notice of the relevant improvement to the landlord in accordance with section 114.
- (5) A tenant may not give such notice where—
  - (a) in relation to a Part 1 improvement—
    - (i) the tenant carried out the improvement without the landlord's consent, or
    - (ii) the landlord gave consent, whether orally or in writing, and the tenant carried out the improvement in a manner substantially different to the manner consented to,
  - (b) in relation to a Part 2 improvement, the tenant had given notice under section 38(1) of the 1991 Act or, as the case may be, under section 49(1) of the 2003 Act and—
    - (i) the tenant carried out the improvement in a manner substantially different to the manner proposed in the notice,
    - (ii) the landlord objected to the improvement under section 39(1) of the 1991 Act or, as the case may be, under section 49(2) of the 2003 Act (as read with section 39(1) of the 1991 Act), or
    - (iii) the tenant carried out the improvement in breach of any decision of the Land Court under section 39(2) of the 1991 Act or, as the case may be, under section 49(2) of the 2003 Act (as read with section 39(2) of the 1991 Act),
  - (c) in relation to a Part 3 improvement, the tenant had given notice under section 34(8) of the 1991 Act and the tenant carried out the improvement in a manner substantially different to the manner proposed in the notice.
- (6) Nothing in this section affects the extent to which compensation for a relevant improvement is recoverable by a tenant under custom, agreement or otherwise by virtue of the 1991 Act or 2003 Act in lieu of any compensation by virtue of this Chapter.
- (7) In this section—
  - (a) a “Part 1 improvement” means—
    - (i) an improvement specified in Part 1 of schedule 3 of the 1991 Act and begun before 31 July 1931,
    - (ii) an improvement specified in Part 1 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948, or
    - (iii) an improvement specified in Part 1 of schedule 5 of the 1991 Act, and begun on or after 1 November 1948,
  - (b) a “Part 2 improvement” means—
    - (i) an improvement specified in Part 2 of schedule 3 of the 1991 Act and begun before 31 July 1931,
    - (ii) an improvement specified in Part 2 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948, or
    - (iii) an improvement specified in Part 2 of schedule 5 of the 1991 Act and begun on or after 1 November 1948,



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- (c) a “Part 3 improvement” means—
- (i) an improvement specified in paragraph 29 of schedule 3 of the 1991 Act and begun before 31 July 1931, or
  - (ii) an improvement specified in paragraph 29 of schedule 4 of the 1991 Act and begun on or after 31 July 1931 and before 1 November 1948.

### **113 Amendment of the Agricultural Holdings (Scotland) Acts**

- (1) After section 34 of the 1991 Act insert—

#### **“34A Amnesty under the Land Reform (Scotland) Act 2016**

A tenant of an agricultural holding is entitled to compensation under section 34 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.”.

- (2) After section 45 of the 2003 Act insert—

#### **“45A Amnesty under the Land Reform (Scotland) Act 2016**

A tenant under a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy is entitled to compensation under section 45 if Chapter 8 of Part 10 of the Land Reform (Scotland) Act 2016 applies.”.

### **114 Amnesty notice**

- (1) A notice given in accordance with this section is an “amnesty notice”.
- (2) An amnesty notice must be in writing and given to the landlord within the amnesty period.
- (3) An amnesty notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address or such other description of the holding as will identify it,
  - (c) details of the relevant improvement, including the manner in which the improvement was carried out,
  - (d) the tenant's reasons as to why it is fair and equitable for compensation to be payable for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (4) Section 84(4) of the 1991 Act applies to the giving of an amnesty notice as it applies to the giving of a notice under that Act.
- (5) In this Chapter the “holding”, in the case of a short limited duration tenancy, limited duration tenancy or modern limited duration tenancy, means the land comprised in the lease.

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### *Objection to amnesty notice and referral to Land Court*

#### **115 Objection by landlord**

- (1) Compensation under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act is not payable to the tenant if, before the end of the period of 2 months beginning with the day on which the landlord receives an amnesty notice under section 114, the landlord objects to the relevant improvement or to part of it by giving notice in writing to the tenant.
- (2) A notice given under subsection (1) must be dated and must state the landlord's reasons for objecting to the relevant improvement or, as the case may be, to part of the relevant improvement.
- (3) The landlord's reasons for objecting must be one or more of the following—
  - (a) that it is not fair and equitable for compensation to be payable for the relevant improvement on the tenant quitting the holding at the termination of the tenancy,
  - (b) that the landlord carried out the improvement in whole or in part, or
  - (c) the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed such benefit in writing.

#### **116 Referral to Land Court**

- (1) Where the landlord has given notice of objection under section 115(1), the tenant may, before the end of the period of 2 months beginning with the day on which the tenant received the notice of objection, apply to the Land Court for approval of the relevant improvement for the purposes of section 34 of the 1991 Act or, as the case may be, section 45 of the 2003 Act.
- (2) The Land Court may—
  - (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms, as to reduction of the compensation which would otherwise be payable or as to other matters, as appears to it to be appropriate, or
  - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that—
  - (a) the landlord has benefited or would benefit from the improvement, and
  - (b) in all the circumstances it is just and equitable for compensation to be payable by the landlord for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (4) No compensation is payable to the tenant to the extent that the Land Court determines that—
  - (a) the landlord carried out the improvement, or
  - (b) the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed such benefit in writing.

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### *Agreements made during amnesty period*

#### **117 Amnesty agreements**

- (1) Where no compensation is payable for a relevant improvement under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act because a relevant requirement has not been met, the landlord and tenant may nonetheless enter into an agreement in writing during the amnesty period (an “amnesty agreement”) that the landlord will compensate the tenant for the improvement on the tenant quitting the holding at the termination of the tenancy.
- (2) Section 53 of the 1991 Act and section 59 of the 2003 Act do not apply where an amnesty agreement has been entered into.
- (3) The amount of compensation payable under an amnesty agreement must be as set out in section 36 of the 1991 Act or, as the case may be, in section 47 of the 2003 Act.
- (4) In subsection (1) a “relevant requirement” is a requirement, imposed by virtue of Part 4 of the 1991 Act or by virtue of Chapter 1 of Part 4 of the 2003 Act, compliance with which would entitle a tenant to compensation under section 34 of the 1991 Act or, as the case may be, under section 45 of the 2003 Act.

### *Resolution of disputes*

#### **118 Arbitration and other dispute resolution**

- (1) In the 1991 Act—
  - (a) in section 61 (agreement to refer matters to arbitration)—
    - (i) in subsection (1), after “this Act” insert “ or section 116 of the Land Reform (Scotland) Act 2016 ”,
    - (ii) in subsection (2)—
      - (A) “8(6),” is repealed,
      - (B) “39,” is repealed,
  - (b) in section 61A(5) (arbitration: procedure etc.), after “this Act” insert “ or of section 116 of the Land Reform (Scotland) Act 2016 ”,
  - (c) in section 61B (clauses in leases as to resolution of disputes), after “under this Act” insert “ or under section 116 of the Land Reform (Scotland) Act 2016 ”.
- (2) In section 1(7A) of the Scottish Land Court Act 1993, for “or the Agricultural Holdings (Scotland) Act 2003” substitute “, the Agricultural Holdings (Scotland) Act 2003 or section 116 of the Land Reform (Scotland) Act 2016 ”.
- (3) In the 2003 Act—
  - (a) in section 78 (agreement to refer matters to arbitration)—
    - (i) in subsection (1), after “this Act” insert “ or by virtue of section 116 of the Land Reform (Scotland) Act 2016 ”,
    - (ii) in subsection (2), for “section 21, 22 or 49(2)” substitute “ section 21 or 22 ”,
  - (b) in section 79(5) (arbitration: procedure etc.), after “this Act” insert “ or by virtue of section 116 of the Land Reform (Scotland) Act 2016 ”,

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- (c) in section 81 (clauses in leases as to resolution of disputes), after “this Act” insert “ or by virtue of section 116 of the Land Reform (Scotland) Act 2016 ”.

## CHAPTER 9

### IMPROVEMENTS BY LANDLORD

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

- (1) The 1991 Act is amended as follows.
- (2) After section 14 insert—

##### **“14A Landlord improvement notices**

- (1) This section applies where the landlord of an agricultural holding intends to carry out a relevant improvement.
- (2) A “relevant improvement” is an improvement specified in schedule 5 which is not intended to be carried out—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by landlord under section 39(3), or
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment.
- (3) The landlord must give notice in writing to the tenant before carrying out the relevant improvement, unless section 14F applies.
- (4) A notice served in accordance with this section is a “landlord improvement notice”.
- (5) A landlord improvement notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the holding or such other description of the holding as will identify it,
  - (c) details of the intended improvement, including the manner of the improvement,
  - (d) the landlord's reasons as to why the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

##### **14B Objection by tenant**

- (1) Where the landlord has given a landlord improvement notice under section 14A, the tenant may object to the improvement or to part of it by giving notice in writing to the landlord before the end of the period of 2 months beginning with the day on which the tenant received the landlord improvement notice.

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- (2) A notice under subsection (1) must be dated and must state the tenant's reasons as to why the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

#### **14C Referral to Land Court**

- (1) Where the tenant has given notice of objection under section 14B the landlord may, before the end of the period of 2 months beginning with the day on which the landlord received the notice of objection, apply to the Land Court for approval of the relevant improvement.
- (2) The Land Court may—
- (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms as appear to it to be appropriate, or
  - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry.

#### **14D Notice of dates of improvement**

- (1) This section applies where an improvement is to be carried out by the landlord—
- (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by the landlord under section 39(3),
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment, or
  - (d) after the landlord has given a landlord improvement notice in accordance with section 14A and—
    - (i) the tenant has not given notice of objection in accordance with section 14B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 14C(2)(a).
- (2) The landlord must give notice in writing to the tenant stating the period during which the landlord intends to carry out the improvement.
- (3) Unless the landlord and tenant agree otherwise, that period must not commence earlier than the expiry of 2 weeks beginning with the day on which the landlord gives notice under subsection (2).
- (4) Where the landlord has not begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for postponing the carrying out of the improvement, the landlord may give a new notice under subsection (2).

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- (5) Subsection (6) applies where the landlord has begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for extending the period during which the improvement is to be carried out.
- (6) The landlord may, at any time before the expiry of the period stated in the notice under subsection (2), extend the period by giving notice in writing to the tenant stating the extended period during which the landlord intends to carry out the improvement.
- (7) See section 14F on emergency improvements.

#### **14E Improvement by landlord without notice etc.**

- (1) Subsection (2) applies where a landlord has carried out an improvement and—
  - (a) the landlord did not give notice of the improvement to the tenant in accordance with section 14A,
  - (b) the tenant objected to the improvement under section 14B and the Land Court has not approved the improvement under section 14C(2)(a),
  - (c) the improvement is in breach of any decision of the Land Court under section 14C,
  - (d) the improvement was not an emergency improvement as defined in section 14F.
- (2) Any such improvement is to be disregarded for the purposes of—
  - (a) assessing the tenant's responsibilities—
    - (i) in relation to farming the holding in accordance with the rules of good husbandry,
    - (ii) in relation to fixed equipment under section 5(2)(b)(ii).
  - (b) any subsequent rent review under schedule 1A.

#### **14F Emergency improvements**

- (1) Where a landlord or a tenant considers that an emergency improvement is required, sections 14A(3) and 14D(2), (3), (5) and (6) do not apply.
- (2) In this section an “emergency improvement” means a relevant improvement that is necessary for the purposes of—
  - (a) protecting public health from infectious diseases, contamination or other hazards which constitute a danger to human health,
  - (b) preventing a danger or potential danger to public safety,
  - (c) enabling the tenant to comply with the requirements of the Animal Health and Welfare (Scotland) Act 2006,
  - (d) securing the provision of essential services including electricity and water supply services, or
  - (e) remedying an accident or natural cause or force majeure which was exceptional and could not reasonably have been foreseen.”
- (3) The 2003 Act is amended as follows.

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(4) After section 10 insert—

**“10A Landlord improvement notices**

- (1) This section applies where the landlord of—
  - (a) a short limited duration tenancy within the meaning of section 4,
  - (b) a limited duration tenancy within the meaning of section 5,
  - (c) a modern limited duration tenancy within the meaning of section 5A, or
  - (d) subject to subsection (2), a repairing tenancy within the meaning of section 5C,intends to carry out a relevant improvement.
- (2) Subsection (1) does not apply in respect of the landlord of a repairing tenancy in relation to which the repairing period has not expired.
- (3) A “relevant improvement” is an improvement specified in schedule 5 of the 1991 Act which is not intended to be carried out—
  - (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by landlord under section 49(2) (as read with section 39(3) of the 1991 Act), or
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment.
- (4) The landlord must give notice in writing to the tenant before carrying out the relevant improvement, unless section 10F applies.
- (5) A notice served in accordance with this section is a “landlord improvement notice”.
- (6) A landlord improvement notice must be dated and state the following—
  - (a) the names and designations of the landlord and the tenant,
  - (b) the name (if any) and the address of the land comprised in the lease or such other description of the land as will identify it,
  - (c) details of the intended improvement, including the manner of the improvement,
  - (d) the landlord's reasons as to why the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.
- (7) In this section and in sections 10B to 10F, what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

**10B Objection by tenant**

- (1) Where the landlord has given a landlord improvement notice under section 10A, the tenant may object to the improvement or to part of it by giving notice in writing to the landlord before the end of the period of 2 months beginning with the day on which the tenant received the landlord improvement notice.

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- (2) A notice under subsection (1) must be dated and must state the tenant's reasons as to why the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.

### **10C Referral to Land Court**

- (1) Where the tenant has given notice of objection under section 10B the landlord may, before the end of the period of 2 months beginning with the day on which the landlord received the notice of objection, apply to the Land Court for approval of the relevant improvement.
- (2) The Land Court may—
- (a) approve the carrying out of the relevant improvement—
    - (i) unconditionally, or
    - (ii) upon such terms as appear to it to be appropriate, or
  - (b) withhold its approval.
- (3) Before approving a relevant improvement, the Land Court must be satisfied that the improvement is necessary to enable the tenant to fulfil the tenant's responsibilities to farm the land comprised in the lease in accordance with the rules of good husbandry.

### **10D Notice of dates of improvement**

- (1) This section applies where an improvement is to be carried out by the landlord—
- (a) at the request of or in agreement with the tenant,
  - (b) in pursuance of an undertaking given by the landlord under section 49(2),
  - (c) in pursuance of a direction given by the Scottish Ministers under powers conferred on them by or under any enactment, or
  - (d) after the landlord has given a landlord improvement notice in accordance with section 10A and—
    - (i) the tenant has not given notice of objection in accordance with section 10B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 10C(2) (a).
- (2) The landlord must give notice in writing to the tenant stating the period during which the landlord intends to carry out the improvement.
- (3) Unless the landlord and tenant agree otherwise, that period must not commence earlier than the expiry of 2 weeks beginning with the day on which the landlord gives notice under subsection (2).
- (4) Where the landlord has not begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for postponing the carrying out of the improvement, the landlord may give a new notice under subsection (2).



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(5) Subsection (6) applies where the landlord has begun to carry out an improvement, notice of which has been given under subsection (2), and there is a good reason for extending the period during which the improvement is to be carried out.

(6) The landlord may, at any time before the expiry of the period stated in the notice under subsection (2), extend the period by giving notice in writing to the tenant stating the extended period during which the landlord intends to carry out the improvement.

(7) See section 10F on emergency improvements.

### **10E Improvement by landlord without notice etc.**

(1) Subsection (2) applies where a landlord has carried out an improvement and—

- (a) the landlord did not give notice of the improvement to the tenant in accordance with section 10A,
- (b) the tenant objected to the improvement under section 10B and the Land Court has not approved the improvement under section 10C(2)(a),
- (c) the improvement is in breach of any decision of the Land Court under section 10C,
- (d) the improvement was not an emergency improvement as defined in section 10F.

(2) Any such improvement is to be disregarded for the purposes of—

- (a) assessing the tenant's responsibilities—
  - (i) in relation to farming the land comprised in the lease in accordance with the rules of good husbandry,
  - (ii) in relation to fixed equipment under sections 16(4)(b) and 16A(5)(b)(ii),
- (b) any subsequent rent review under section 9.

### **10F Emergency improvements**

(1) Where a landlord or a tenant considers that an emergency improvement is required, sections 10A(4) and 10D(2), (3), (5) and (6) do not apply.

(2) In this section an “emergency improvement” means a relevant improvement that is necessary for the purposes of—

- (a) protecting public health from infectious diseases, contamination or other hazards which constitute a danger to human health,
- (b) preventing a danger or potential danger to public safety,
- (c) enabling the tenant to comply with the requirements of the Animal Health and Welfare (Scotland) Act 2006,
- (d) securing the provision of essential services including electricity and water supply services, or
- (e) remedying an accident or natural cause or force majeure which was exceptional and could not reasonably have been foreseen.”

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

- (1) Section 15 of the 1991 Act (increase of rent for certain improvements by landlord) is amended as follows.
- (2) After subsection (1)(b), “or” is repealed.
- (3) After subsection (1)(c), insert “, or
  - (d) after giving a landlord improvement notice in accordance with section 14A and—
    - (i) the tenant has not given notice of objection in accordance with section 14B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 14C.”.
- (4) Section 10 of the 2003 Act (increase in rent: landlord's improvements) is amended as follows.
- (5) After subsection (1)(b), “or” is repealed.
- (6) After subsection (1)(c), insert “, or
  - (d) after giving a landlord improvement notice in accordance with section 10A and—
    - (i) the tenant has not given notice of objection in accordance with section 10B, or
    - (ii) the tenant has given such notice of objection but the Land Court has approved the improvement under section 10C.”.

## **CHAPTER 10**

### **DIVERSIFICATION**

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

- (1) The 2003 Act is amended as follows.
- (2) In section 40—
  - (a) in subsection (1), for “section 41” substitute “ in sections 40A and 41 ”,
  - (b) after subsection (5) insert—
 

“(5A) Where the landlord objects to the notice of diversification, the land may be used for the purpose specified under paragraph (a), and as specified under paragraphs (b) and (c), of subsection (2)—

    - (a) only if—
      - (i) the landlord withdraws the objection,
      - (ii) the landlord does not apply under section 40A for a determination in relation to the objection, or
      - (iii) such an application having been made, the Land Court determines under section 41 that the objection is unreasonable,
    - (b) from the relevant date, and

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- (c) subject to any conditions imposed—
  - (i) by the landlord under subsection (14), or
  - (ii) by the Land Court under section 41(2) or (3).

(5B) For the purposes of subsection (5A)(b), the relevant date is—

- (a) where no application is made under section 40A—
  - (i) the date specified under subsection (2)(d),
  - (ii) if the objection is withdrawn, the date of the withdrawal,
  - (iii) the date the period mentioned in section 40A(3) expires,whichever is the later,
- (b) where an application is made under section 40A, the date fixed by the Land Court under section 41(1)(b)(ii).”,

(c) after subsection (13) insert—

“(14) Where the landlord withdraws the objection under subsection (9) before the expiry of the period mentioned in section 40A(3), the landlord—

- (a) must notify the tenant in writing of the withdrawal, and
- (b) may impose any conditions as mentioned in subsection (10) and, where such conditions are imposed, must, at the same time as notifying the tenant of the withdrawal of the objection, notify the tenant in writing of the conditions (and the reasons for imposing them).”.

(3) After that section insert—

**“40A Landlord's objection: application to Land Court**

- (1) This section applies where the landlord gives notice of an objection under section 40(11)(a) to a notice of diversification.
- (2) The landlord may, before the expiry of the period mentioned in subsection (3), apply to the Land Court for a determination under section 41 that the objection is reasonable.
- (3) That period is 60 days from the giving of notice of the objection under section 40(11)(a).
- (4) The objection ceases to have effect—
  - (a) on the expiry of the period mentioned in subsection (3) unless the landlord applies, before the expiry of that period, to the Land Court under subsection (2), or
  - (b) if it is withdrawn before the expiry of that period, no such application having been made.”.

(4) In section 41—

- (a) in subsection (1), after “Where” insert “ , on an application made by the landlord under section 40A(2), ”,
- (b) in subsection (2), for “40(4)(a)” substitute “ 40(4)(a) or (5A) ”,
- (c) in subsection (3)—

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- (i) after “Where” insert “, on the application of the tenant,”,
- (ii) after “section 40(10)” insert “ or, as the case may be, (14) ”.

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

- (1) The 2003 Act is amended as follows.
- (2) In section 40—
  - (a) in subsection (5), for paragraph (b) substitute—
    - “(b) where the landlord has made a request for information under subsection (6), the date falling 70 days from the making of the request, if later than the date so specified,”
  - (b) for subsection (6) substitute—
    - “(6) The landlord may, on one occasion within 30 days of the giving of the notice of diversification, request the tenant to provide the landlord with relevant information.”
  - (c) in subsection (12), for paragraph (a) substitute—
    - “(a) where the landlord has made a request for information under subsection (6), 60 days from the making of the request,”

## **CHAPTER 11**

### IRRITANCY FOR NON-PAYMENT OF RENT

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

- (1) The 2003 Act is amended as follows.
- (2) In section 18 (irritancy of lease and good husbandry), after subsection (2) insert—
  - “(2A) Where such a lease may be irritated on the grounds that the rent is due and unpaid, notice as mentioned in subsection (7) may not be given unless—
    - (a) the landlord has given the tenant a demand in writing requiring the tenant to pay the rent due before the expiry of the period of 2 months beginning with the date of the demand, and
    - (b) the demand has not been complied with.”

VALID FROM 23/12/2016

## **PART 11**

### SMALL LANDHOLDINGS

## **124 Review of small landholdings legislation**

- (1) The Scottish Ministers must—
  - (a) review the legislation governing small landholdings, and

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- (b) lay a report of that review before the Scottish Parliament no later than 31 March 2017.
- (2) The Scottish Ministers must, in carrying out the review under subsection (1), consult—
  - (a) small landholders, and
  - (b) such other persons as they consider appropriate.
- (3) In this section, a “small landholding” is a landholding the tenancy of which is one to which—
  - (a) section 32 of the Small Landholders (Scotland) Act 1911 applies, or
  - (b) any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies,and “small landholders” is to be construed accordingly.

## PART 12

### GENERAL AND MISCELLANEOUS

#### 125 General interpretation

In this Act—

- “the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991,
- “the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003,
- “Land Court” means the Scottish Land Court.

#### 126 Subordinate legislation

- (1) Each power of the Scottish Ministers to make regulations under this Act includes power—
  - (a) to make different provision for different purposes,
  - (b) to make any incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate.
- (2) Regulations under—
  - (a) section 4(5),
  - (b) section 52(10)(b),
  - (c) section 54(5)(a) or (c),
  - (d) section 55(4),
  - (e) section 56(9),
  - (f) section 57(2),
  - (g) section 57(8),
  - (h) section 67(5),
  - (i) section 68(6),
  - (j) subject to subsection (3)(m), section 127(1),are subject to the negative procedure.
- (3) Regulations under—

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- (a) section 24(5),
  - (b) section 39(1),
  - (c) section 46(2)(b) or (e),
  - (d) section 46(3),
  - (e) section 48(1)(c),
  - (f) section 49(1)(c),
  - (g) section 49(8),
  - (h) section 49(9)(a),
  - (i) section 50(4),
  - (j) section 52(7),
  - (k) section 61(1),
  - (l) section 61(3),
  - (m) section 127(1) which add to, replace or omit the text of an Act,
- are subject to the affirmative procedure.

(4) This section does not apply to regulations under section 130(2).

#### **127 Ancillary provision**

- (1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of or in connection with this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

VALID FROM 16/12/2020

#### **128 Crown application**

- (1) The Crown is not criminally liable in respect of any contravention of provision made in regulations under section 39.
- (2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.

VALID FROM 23/12/2016

#### **129 Minor and consequential modifications**

- (1) Schedule 1, which contains minor amendments and amendments consequential upon the provisions of Part 5, has effect.
- (2) Schedule 2, which contains minor amendments and repeals, and amendments and repeals consequential upon the provisions of Part 10, has effect.

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PROSPECTIVE

### **130 Commencement**

- (1) This section and sections 125 to 127 and 131 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) Regulations under subsection (2) may include transitional, transitory or saving provision.

### **131 Short title**

The short title of this Act is the Land Reform (Scotland) Act 2016.

**Status:** Point in time view as at 01/11/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Land Reform (Scotland) Act 2016 is up to date with all changes known to be in force on or before 28 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 23/12/2016

VALID FROM 27/06/2018

## SCHEDULE 1

*(introduced by section 129(1))*

### RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT: MINOR AND CONSEQUENTIAL MODIFICATIONS

#### *Land Reform (Scotland) Act 2003*

- 1 (1) The Land Reform (Scotland) Act 2003 is amended as follows.
- (2) In section 35 (provisions supplementary to section 34)—
- (a) for subsection (A1) substitute—
- “(A1) During the relevant period, a community body which modifies its memorandum, articles of association, constitution or registered rules (as defined in section 34(8)) must, as soon as possible after such modification, notify the Scottish Ministers in writing of the modification.”,
- (b) for subsection (1) substitute—
- “(1) A community body—
- (a) which—
- (i) has registered a community interest in land under this Part and remains so registered, or
- (ii) has bought land under this Part, any part of which remains in its ownership, and
- (b) which modifies its memorandum, articles of association, constitution or registered rules (as defined in section 34(8)),
- must, as soon as possible after such modification, notify the Scottish Ministers in writing of the modification.”.
- (3) In section 52 (ballot procedure), for subsection (4) substitute—
- “(4) The period referred to in subsection (3) above is—
- (a) the period of 12 weeks beginning with the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise its right to buy, or
- (b) where—
- (i) the balloter receives notification under section 60(3C), and
- (ii) the date notified under paragraph (c) of that subsection is after the end of the 12 week period beginning with the date on which a valuer is appointed under section 59(1),



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the period beginning with the date on which a valuer is appointed under section 59(1) and ending with the day after the date notified to the balloter under section 60(3C).”.

(4) In section 72 (provisions supplementary to section 71), for subsection (1) substitute—

“(1) A crofting community body—

- (a) which has bought land under this Part, any part of which remains in its ownership, and
- (b) which modifies its memorandum, articles of association, constitution or registered rules (as defined in section 71(8)),

must, as soon as possible after such modification, notify the Scottish Ministers in writing of the modification.”.

(5) In section 97E (provisions supplementary to section 97D), for subsection (1) substitute—

“(1) A Part 3A community body—

- (a) which has bought land under this Part, any part of which remains in its ownership, and
- (b) which modifies its memorandum, articles of association, constitution or registered rules (as defined in section 97D(12)),

must, as soon as possible after such modification, notify the Scottish Ministers in writing of the modification.”.

(6) In section 97N (effect of Ministers' decision on right to buy), in subsection (2) (b), for “Register of Community Rights in Abandoned, Neglected or Detrimental Land” substitute “ New Register ”.

(7) In section 97V (appeals), in subsection (9)(a), for Register of Community Interests in Abandoned, Neglected or Detrimental Land” substitute New Register”.

SCHEDULE 2

(introduced by section 129(2))

AGRICULTURAL HOLDINGS: MINOR AND CONSEQUENTIAL MODIFICATIONS

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**Status:**

Point in time view as at 01/11/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

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