

POLICY NOTE

THE LAND REFORM (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 3, TRANSITORY AND SAVING PROVISIONS) REGULATIONS 2016

SSI 2016/365 (C. 33)

1. The above instrument is made by Scottish Ministers in exercise of the powers conferred by section 130(2) and (4) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). It is not subject to any Parliamentary procedure.

Background

2. The 2016 Act received Royal Assent on 22nd April 2016. A number of the provisions of the Act are brought into force by this instrument. These relate to provisions for agricultural tenancies and small landholdings, contained in Part 10 and Part 11 of the 2016 Act. These Regulations form part of an implementation package for the 2016 Act, and the provisions of the 2016 Act relating to agricultural tenancies are being commenced in several stages. These Regulations are the third set of Commencement Regulations bringing provisions of the 2016 Act into force, and the first instrument which brings into force some of the provisions of the 2016 Act which relate to agricultural tenancies.

Policy Objective

3. The overall policy objective of Part 10 of the 2016 Act is to modernise legislation relating to agricultural tenancies. Among other things, Part 10 makes amendments to the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”) and the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”). The overall policy objective of Part 11 of the 2016 Act is to provide for a review of the legislation governing small landholdings.

4. Regulation 2(1) of these Regulations provides that a number of provisions of the 2016 Act will come into force on 23rd December 2016. Those provisions which are being commenced are listed in column 1 of the table in schedule of these Regulations.

5. These relate to:

- *Assignment of agricultural tenancies*
Sections 103 and 104 of the 2016 Act make amendments to the 1991 Act and the 2003 Act which widen the class of relatives eligible to be an assignee in relation to 1991 Act tenancies or Limited Duration Tenancies (LDTs) respectively. Other changes include that narrower grounds of objection will apply when the assignee is a near relative (definitions of near relatives are inserted into the 1991 Act and 2003 Acts by sections 103 and 104 respectively). Both the 1991 Act and the 2003 Act require a tenant to give written notice to the landlord of the tenant’s intention to assign the lease. Regulations 3 and 4 of these Regulations make saving provision to provide that where notice of an intention of the tenant to assign is given to the landlord before 23rd December 2016, the law in force at that time continues to apply on and after that date in relation to that particular assignment. This means that the changes made by sections 103 and 104 will not apply in those circumstances.

- *Succession of agricultural tenancies*
Sections 107, 108(2) and (3)(a)(ii) and (b) and 109 and paragraphs 14 to 17 of schedule 2 of the 2016 Act make changes to the succession of 1991 Act tenancies, LDTs, and Short Limited Duration Tenancies (“SLDTs”). The changes have the effect of widening the scope of those to whom a tenant may bequeath their tenancy. Changes are also made to the process and grounds on which a landlord can object to a person succeeding to a lease as a legatee or to a person acquiring a lease on intestacy. As with assignation, different grounds and processes for objecting will apply where the legatee or acquirer is a near relative and when they are not a near relative. Regulations 5 and 7 of these Regulations make saving provision so that the changes to the law on testate succession have no effect where the will or other testamentary writing containing the bequest was made before 23rd December 2016. Regulations 6 and 8 make saving provision so that changes to the law on acquisition of a lease on intestacy do not apply where the deceased died before 23rd December 2016 and at the time of death had not made a will or other testamentary writing which bequeathed the lease.
- *Improvements by landlords*
Sections 119 and 120 of the 2016 Act amend the 1991 Act and the 2003 Act to establish processes in which landlords are required to give notice in writing to tenants before carrying out certain improvements. Tenants will have the opportunity to object to an improvement which is to be carried out by the landlord and provision is made to enable the matter to be referred to the Scottish Land Court. Regulations 9 and 10 of these Regulations make saving provision to the effect that the changes made by section 119 of the 2016 Act will not apply where the landlord had already begun carrying out the improvement before 23rd December 2016.

The new provisions which are being inserted into the 2003 Act by section 119(4) of the 2016 to establish this new process in relation to LDTs and SLDTs also make reference to Modern Limited Duration Tenancies (“MLDTs”) and repairing tenancies. However, the provisions of the 2016 Act which establish these new types of tenancies are not being fully commenced yet. Regulation 11 of these Regulations makes transitory provision to remove references to MLDTs and repairing tenancies until these new types of tenancies are fully established.

- *Diversification*
Sections 121 and 122 of the 2016 Act amend section 40 and 41 of the 2003 Act as regards diversification. The changes alter the diversification process, including the grounds under which a landlord can object, timings of parts of the process, and the role of the Scottish Land Court. Regulation 12 of these Regulations makes saving provision so that where a diversification notice is issued by the tenant before 23rd December 2016, the changes made by sections 121 and 122 will have no effect. This means that the law in force before 23rd December 2016 will continue to apply to that diversification notice.
- *Irritancy for non-payment of rent*
Section 123 of the 2016 Act amends section 18 of the 2003 Act. Section 18 applies to SLDTs and LDTs. The amendment creates a new step in the irritancy process which applies where a lease may be irritated on the grounds that the rent is due and unpaid. The new step is that a landlord may not give notice under section 18(7) unless the

landlord has given the tenant a demand in writing requiring the tenant to pay rent within two months and this has not been complied with. Regulation 13 of these Regulations makes saving provision so that this new step applies regardless of when the grounds for irritancy arose except where the landlord gave notice in writing of the landlord's intention to remove the tenant before 23rd December 2016.

- *Small landholdings*

Section 124 of the 2016 Act requires Scottish Ministers to review the legislation governing small landholdings and lay a report of that review before the Scottish Parliament no later than 31 March 2017. As part of this, Scottish Ministers are required to consult small landholders and any other persons they consider appropriate.

6. Minor and consequential modifications are made through the implementation of section 129(2) and schedule 2 of the 2016 Act so far as they relate to paragraph 7(1), (16)(b), (29) and (30)(b) of schedule 2 of the 2016 Act. Paragraph 7(29) of schedule 2 of the 2016 Act inserts a reference to MLDTs and repairing tenancies to section 92(2) of the 2003 Act. This increases the scope of the power to make Orders under section 92(1) of the 2003 Act in that ancillary provision can be made which relates to MLDTs and repairing tenancies. Regulation 14 of these Regulations makes transitory provision as regards changes made by paragraph 7(16)(b) of schedule 2 of the 2016 Act to omit references to MLDTs until this new type of tenancy is fully established. Regulation 15 of these Regulations makes transitory provision which provides a definition of MLDTs for the purposes of section 92(2) of the 2003 Act.

7. Other provisions of the 2016 Act are commenced for the purpose of commencing the regulation making powers contained in those provisions. This is to enable other regulations to be made as part of future implementation of other provisions in Part 10 of the 2016 Act. Where this is the case, column 3 of the table in the schedule of these Regulations specifies the limited purposes for which those provisions of the 2016 Act are commenced.

Consultation

8. No formal consultation was required to be carried out in relation to these Regulations. However, a formal consultation exercise was carried out in May 2015 as part of the drafting of the Land Reform (Scotland) Bill. Informal consultation with stakeholders will continue to take place during the implementation process. The link below shows the relevant consultation documentation: <http://www.gov.scot/Resource/0047/00477022.pdf>

Impact Assessment and Financial Effects

9. Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were carried out in relation to the 2016 Act. The Financial Memorandum which was prepared for the 2016 Act considered the financial impact and remains valid. The links below show the relevant documentation.

Link to the Equality Impact Assessment: <http://www.gov.scot/Resource/0048/00480754.pdf>

Link to the Business and Regulatory Impact Assessment:
<http://www.gov.scot/Resource/0048/00481018.pdf>

Link to the Financial Memorandum:

[http://www.parliament.scot/S4_Bills/Land%20Reform%20\(Scotland\)%20Bill/SPBill176AFM/S042016.pdf](http://www.parliament.scot/S4_Bills/Land%20Reform%20(Scotland)%20Bill/SPBill176AFM/S042016.pdf)

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