POLICY NOTE

THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991 (VARIATION OF SCHEDULE 5) ORDER 2018

SSI 2018/XXX

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 73 of the Agricultural Holdings (Scotland) Act 1991 ("the 1991 Act"). It is subject to the affirmative procedure.

Background

2. Schedule 5 of the 1991 Act sets out improvements to agricultural holdings for which compensation may be payable at the end of a tenancy. Schedule 5 has been in place for a lengthy period and some things which are widely accepted now as being legitimate improvements are not listed. The Bill for the Land Reform (Scotland) Act 2016 ("the 2016 Act) received Royal Assent on 22nd April 2016. Section 37 of Chapter 3 of Part 2 of the 2016 Act sets out that the Tenant Farming Commissioner must prepare a report setting out recommendations for a modern list of improvements to agricultural holdings. The Tenant Farming Commissioner submitted his report to Scottish Ministers in December 2017. Scottish Ministers accepted his recommendations and this Order amends Schedule 5 accordingly.

Policy Objective

3. Schedule 5 of the 1991 Act lists the types of improvements that tenants with tenancies formed under the 1991 Act ("1991 Act tenancies"), or with short limited duration tenancies, limited duration tenancies and modern limited duration tenancies, may claim compensation for. Any improvement claimed under schedule 5 must have begun on or after 1 November 1948.

4. Schedule 5 has been in place, unchanged, for a lengthy period, but modern farming practice has evolved significantly and continues to change. Items which were not thought of when the schedule was drawn up are commonplace today and widely considered to be appropriate for compensation. Private agreements between landlord and tenant may well mean that, in practice, these modern items are already compensated for. However, to protect the interests of both parties and to encourage tenants to invest in the holding, it is important to update the schedule. The overall policy objective of this Order, therefore, is to modernise the list of improvements for which compensation may be payable at the end of a tenancy, to ensure that they are fit for purpose and reflect the realities of modern farming practice.

5. Section 2(2) replaces paragraph 17 of the schedule in order to widen it. It previously referred to the provision or laying on of electric light or power, but electricity is not the only energy source used on farms. The new paragraph 17 refers to the installation, provision, distribution or storage of electricity, gas, power, heat and light – this covers the original paragraph 17 but also widens this out to include other sources of energy which the tenant may have invested in to the benefit of the holding. This new paragraph is deliberately fairly wide in order to ensure it can encompass new technologies which may come into use.

6. Section 2(3) replaces paragraph 22 of the schedule, again in order to widen it. It previously referred simply to sewage disposal, but now covers sewage, waste or pollutant disposal, and provision of means of managing water on land. This is to ensure that a range of anti-pollution devices are eligible. Again, the new paragraph is fairly wide to ensure it can encompass new technologies which may come into use.

7. Section 2(4) inserts new paragraphs to deal with items which the Tenant Farming Commissioner recommended be added to address clear omissions. Management or storage of slurries or manures is an essential aspect of farming and the erection of structures built for these purposes needs to be added, as does the storage of silage as a result. Works to dwellings is also added. This is to ensure that it is clear that improvements to homes can be considered to be improvements that are eligible for compensation. Whether or not such improvements are eligible will depend on the value to the incoming tenant, and will vary from holding to holding.

8. Section 3(2) and (3) replace paragraph 29 of the Schedule, splitting it into two. New paragraph 29 preserves part of old paragraph 29. New paragraph 29A widens the removal of obstacles to cultivation by applying it to both arable land and permanent pasture. Hill ground is not included as this type of land may be subject to environmental schemes that would require environmental impact assessments before removal of boulders etc.

9. Section 3(4) replaces paragraph 30, expanding it to include soil improvers, conditioners and digestates, which are all commonly used to improve the physical qualities of soil. The new paragraph also removes the requirement for manure or fertiliser to be purchased, to take account of situations where farmers might exchange such items with others for payment in kind.

Consultation

10. The impetus for this change came from industry engagement with the Agricultural Holdings Legislation Review Group in 2014. Significant consultation was carried out, which is detailed in the BRIA which accompanies this policy note. The update of schedule 5 then became part of the change envisaged by the 2016 Act, which placed a requirement on the Tenant Farming Commissioner to produce recommendations. The Tenant Farming Commissioner consulted with a range of relevant stakeholders in reaching his recommendations. These can be found here: https://landcommission.gov.scot/wp-content/uploads/2018/01/Update-of-Schedule-5-amends-Jan-2018.pdf

11. As part of the development of this Order, further informal consultation with key stakeholders has taken place to ensure that it meets requirements.

Impact Assessment and Financial Effects

12. This Order is part of the overall change and modernisation of legislation envisaged by the 2016 Act, the impacts and effects of which were considered in detail at that time, including the range of impacts for tenants and their landlords of legislative change. The relevant assessments can be found here.

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/SPBilll76AFMS042016.pdf

13. An additional BRIA has been prepared for this Order. This can be found on the Scottish Government web pages, and a copy has been lodged with SPICe.

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