POLICY NOTE

THE LAND REFORM (SCOTLAND) ACT 2016 (SUPPLEMENTARY PROVISION) (CORONAVIRUS) REGULATION 2020

SSI 2020/174

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 127 of the Land Reform (Scotland) Act 2016 ("the Act") and all other powers enabling them to do so. It is subject to the affirmative procedure.

Background

2. The Bill for the Act received Royal Assent on 22nd April 2016. Part 10 of the Act contains provisions which reform the law on agricultural holdings. The provisions contained within Chapter 8 of Part 10 of the Act relate to compensation for tenant's improvements ("amnesty"). The amnesty began on 13th June 2017 and was due to expire on 13 June 2020. These Regulations make supplemental provision to the effect that the amnesty will now expire on 12th December 2020.

Policy Objective

3. The overall policy objective of Part 10 of the Act is to modernise legislation relating to agricultural holdings. Chapter 8 of Part 10 introduces a three year amnesty period, during which time tenants have the opportunity to serve notice on landlords that specific relevant improvements are to be treated as tenant's improvements capable of compensation at waygo, if certain criteria are met.

4. The policy objective of these amnesty provisions is to give tenants an opportunity to establish entitlement to compensation for improvements that were not previously notified or consented to, or where notice and consent were given but records of such are not available. It is to help both sides have a clearer idea of their respective rights and liabilities in the event of termination of the tenancy.

5. These Regulations extend the amnesty period, so it will now expire on 12th December 2020. The amnesty period is being extended as a result of circumstances that could not have been reasonably anticipated when the Act was passed, and which have a direct effect on the ability of landlords and tenants to have meaningful engagement around tenant's improvements. Amnesty negotiations often involve on-farm, face-to-face discussions when parties can view and discuss the various improvements. The public health circumstances arising from the coronavirus mean that such visits cannot take place at a crucial time as the amnesty period was due to draw to a close.

6. Chapter 8 of the Act intended to give parties a period to discuss and agree the treatment of eligible tenants improvements, failing which a formal process could be initiated by way of a tenant giving an amnesty notice under s114 of the Act. Due to COVID 19 landlords and tenants have lost time in which they can discuss improvements in the normal way and this has affected the time that is available for individuals to reach agreement during the amnesty period, for reasons outwith parties' control. This extension seeks to give an opportunity for current

restrictions on movement to lift and allow people to conclude discussions within a broadly equivalent period that the Act intended, had the COVID 19 outbreak not taken place.

7. It is still open for tenants to give amnesty notices to landlords under the amnesty provisions of the 2016 Act. Extending the amnesty period does not reopen discussions which have already concluded or allow those who otherwise would not be eligible for the scheme to take advantage of it. Rather, it extends the time period in which parties may come to agreement without those parties having to rely on the formal dispute resolution mechanisms in the Act.

Consultation

8. This extension was requested by representatives of tenant farmers. No formal consultation has been carried out in relation to these Regulations. However, informal discussions took place with stakeholders to establish what was required.

Impact Assessment and Financial Effects

9. These Regulations do not change the impact assessments prepared for the Act. Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were carried out in relation to the Land Reform (Scotland) Bill (which became the Act). The Financial Memorandum which was prepared for that Bill 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

The Financial Memorandum can be found at:
http://www.parliament.scot/parliamentarybusiness/Bills/90675.aspx

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