



## EXPLANATORY NOTES

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### **Land Reform (Scotland) Act 2016 (asp 18)**

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# **LAND REFORM (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Land Reform (Scotland) Act 2016. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **COMMENTARY ON SECTIONS**

#### **PART 1 – LAND RIGHTS AND RESPONSIBILITIES STATEMENT**

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

3. Section 1 imposes a duty on the Scottish Ministers to prepare and publish a land rights and responsibilities statement (subsection (1)) setting out principles for land rights and responsibilities in Scotland (subsection (2)). In preparing the statement, the Scottish Ministers must have regard to the desirability of—
  - promoting respect for, and observance of, relevant human rights,
  - promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant,
  - encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998),
  - furthering the reduction of inequalities of outcome which result from socio-economic disadvantage,
  - supporting and facilitating community empowerment,
  - increasing the diversity of land ownership, and
  - furthering the achievement of sustainable development in relation to land (subsection (3)).
4. For the purposes of interpreting subsection (3), the term “relevant human rights” means such human rights as the Scottish Ministers consider to be relevant to the

preparation of the statement. In considering what human rights are relevant, Ministers may consult with the Scottish Commission for Human Rights and such other persons or bodies as they consider appropriate (subsection (4)).

5. For the purposes of section 1, the term “human rights” is defined to mean the Convention rights (within the meaning of section 1 of the Human Rights Act 1998), and 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 (subsection (6)). This definition includes other human rights which could be relevant to the preparation of the statement such as rights in the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.
6. For the purposes of section 1, “internationally accepted principles and standards for responsible practices in relation to land” is defined to 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 (subsection (5)). Other internationally accepted principles and standards for responsible practices in relation to land, including those which may come into effect in the future, also fall within this definition.

## **Section 2 - Publication and review of land rights and responsibilities statement**

7. The first statement must be published within 12 months of the commencement of section 2 (subsection (1)). The first statement must be reviewed within five years of it being published (subsection (4)). The statement must be further reviewed within the five years of the revised statement being laid before the Scottish Parliament (subsection (5)), or if no revised statement was published as a result of the review, within 5 years of the consultation report being laid before Parliament following the reviews (subsection (6)). The first statement, and any revised statement, must be laid before the Scottish Parliament (subsections (1), (7) and (9)).
8. Before the first statement is published, a draft statement must be published and consulted on (subsection (2)). Consultation must also take place as part of the review process (subsections (5) and (9)). A report on the consultation process must be laid before the Scottish Parliament when the first statement is laid (subsection (3)) and as part of the review process (subsections (6), (7) and (9)).
9. After undertaking a review of the statement, Scottish Ministers may decide a revised statement is not necessary. Scottish Ministers must set out their reasoning for revising or not revising the statement in the report laid before Parliament (subsections (6), (7) and (9)).

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

10. The Scottish Ministers are required to promote the principles set out in the statement, as far as reasonably practicable, in exercising their functions.

## **PART 2 – THE SCOTTISH LAND COMMISSION**

### **CHAPTER 1 – THE COMMISSION**

#### ***Establishment***

##### **Section 4 – The Scottish Land Commission**

11. This section establishes the Scottish Land Commission as a body corporate with its own legal personality (subsection (1)). The Scottish Land Commission's Gaelic name (Coimisean Fearainn na h-Alba) has equal legal status. The Commission will consist of a total of six members, comprising five Land Commissioners and the Tenant Farming Commissioner. The Commission will provide staff to support the Land Commissioners and the Tenant Farming Commissioner by virtue of section 6(a).
12. Subsection (5) contains a delegated power to allow the Scottish Ministers to make regulations changing the number of Land Commissioners in the future.

##### **Section 5 – Status**

13. This section provides that the Commission is not a servant or agent of the Crown, that it does not enjoy any status, immunity or privilege of the Crown, and that its property neither belongs to the Crown nor is held on behalf of the Crown. Subsection (4) sets out that its members and staff are not servants or agents of the Crown, that they have no status, immunity or privilege of the Crown and that the staff of the Commission are not to be regarded as civil servants.

#### ***Functions of the Commission***

##### **Section 6 – Functions of the Commission**

14. Section 6 sets out the functions of the Commission, which are to provide property, staff and services to the Land Commissioners and the Tenant Farming Commissioner and to ensure that arrangements are in place to co-ordinate the performance of their functions.

##### **Section 7 – General powers**

15. Subsection (1) states that the Commission can do anything which it considers necessary or expedient for the exercise of the functions of the Commission, the Land Commissioners and the Tenant Farming Commissioner. Subsection (2) sets out a non-exhaustive list of particular powers of the Commission, namely the power to enter into contracts, acquire and dispose of land, co-operate with any person and obtain advice or assistance from certain persons and pay that person fees, remunerations or allowances.

#### ***Strategic plan and programme of work***

##### **Section 8 – Strategic plan**

16. To provide for proper corporate governance within the Commission, section 8 imposes a duty on the Commission to regularly set out in a strategic plan how it, the Land

Commissioners and the Tenant Farming Commissioner plan to exercise their functions.

17. Subsection (2) requires the Commission to include in each strategic plan the objectives and priorities of the Commission, the Land Commissioners and the Tenant Farming Commissioner, and cost estimates for the exercise of their respective functions. Subsections (3) to (7) set out the required time frames and procedure for the preparation of each strategic plan. In particular, the strategic plan must be submitted to the Scottish Ministers under subsection (3) and, following the approval of the plan, it must be published and laid before the Scottish Parliament under subsection (5). The Scottish Ministers may reject the strategic plan and direct the Commission to submit a revised strategic plan (subsection (4)(c)).

### **Section 9 – Programme of work**

18. In addition to the strategic plan required under section 8, section 9 imposes a duty on the Land Commissioners to prepare a programme of work to set out information on the proposed reviews into the impact and effectiveness of any law or policy under section 22(1)(a), information about other activities being undertaken by the Land Commissioners and the timetable for the programme of work. The programme of work must be submitted to the Scottish Ministers by the Commission on behalf of the Land Commissioners at the same time as the strategic plan, but the Scottish Ministers cannot reject the programme of work. There is no duty on Scottish Ministers to comment upon the programme of work and no duty on the Commissioners to take into account any direction or comment made by the Scottish Ministers. The Commission must then publish the programme of work and lay a copy before the Scottish Parliament. Subsection (4) enables the Commission to submit a revised programme of work to Ministers and subsection (5) places a duty on the Commission to publish and lay before the Scottish Parliament any revised programme.

### ***Membership***

#### **Section 10 – Membership**

19. Section 44(4) of the Act provides that the members of the Commission are to be five Land Commissioners and one Tenant Farming Commissioner. Section 10 sets out the procedure for the appointment of the members of the Commission.
20. Under subsection (2), the Scottish Parliament has to approve the appointment of the members. Section 11(4) sets out that when an appointment is referred to the Scottish Parliament, the Scottish Ministers must lay a statement before the Scottish Parliament as to how they have complied with the appointment duties set out in section 11. The Scottish Ministers will determine the appointment period for each member and the appointment can last up to five years (subsection (3)). Sections 11 to 13 contain particular conditions regarding the appointment of members, but otherwise the Commission, with the approval of the Scottish Ministers, is free to determine the terms and conditions of appointment under subsection (4). Subsection (5) allows the Scottish Ministers to re-appoint an existing or previous member and subsection (7) places a duty on the Scottish Ministers to select one of the Land Commissioners to chair the Commission.

## **Section 11 – Eligibility for appointment**

21. Land matters are complex and multi-faceted. Therefore, to ensure that there is a range of expertise in the Commission, subsection (1) places a duty on the Scottish Ministers to have regard to the overall expertise of the members of the Commission in—

- Land reform
- Law
- Finance
- Economic issues
- Planning and development
- Land management
- Community empowerment
- Environmental issues
- Human rights
- Equal opportunities
- The reduction of inequalities of outcome which result from socio-economic disadvantage.

22. Subsection (1)(b) requires the Scottish Ministers to encourage equal opportunities and the observance of the equal opportunity requirements.

23. Subsection (2) requires Ministers, when appointing the Land Commissioners, to take every reasonable step to ensure that at least one of them speaks the Gaelic language.

24. Subsection (3) requires Ministers to ensure that the Tenant Farming Commissioner has the necessary expertise or experience in relation to agriculture.

## **Section 12 – Disqualification from membership**

25. Subsection (1) prevents persons from being appointed as a member of the Commission if they have been in office within a relevant category listed in (a) to (e) within the previous 12 months. For instance, a person who was either a Member of Parliament or a Member of the Scottish Parliament in the last 12 months would be ineligible for appointment as a member of the Commission.

26. Subsection (2) excludes a person who is either a landlord or tenant in a “relevant tenancy” as defined in subsection (3) from being appointed as the Tenant Farming Commissioner. A “relevant tenancy” is a 1991 Act tenancy, a short limited duration tenancy, a limited duration tenancy, a modern limited duration tenancy or a repairing

tenancy (in respect of the last two see, respectively, Part 10, Chapters 1 and 2 of the Act).

27. Subsection (4) provides that any member of the Commission who becomes one of the persons listed in subsection (1)(a) to (f) will cease to be a member of the Commission.
28. Similarly, subsection (5) provides that the appointment of the Tenant Farming Commissioner ceases if subsection (2) applies and the Commissioner becomes a landlord or tenant in a “relevant tenancy” under subsection (3).

### **Section 13 – Resignation and removal**

29. Subsection (1) allows a member of the Commission to resign by serving notice in writing to the Scottish Ministers.
30. Subsection (2) sets out the circumstances in which the Scottish Ministers can revoke the appointment of a member of the Commission: for instance, insolvency of a member will allow the Scottish Ministers to use their discretion to end an appointment.
31. Subsection (3) defines insolvency for the purposes of subsection (2)(a).

### ***Remuneration and staff***

### **Section 14 – Remuneration, allowances and pensions**

32. Section 14 permits the Commission to pay its members and employees remuneration and expenses. Subsection (1)(a) sets out that remuneration is to be determined by the Commission with the approval of the Scottish Ministers. Subsection (2) provides that the Commission may also make payment of pensions, allowances or gratuities as the Commission determines, but with the approval of the Scottish Ministers. Subsection (3) allows for pensions, allowances and gratuities to be paid to staff and members in compensation for any loss of office.

### **Section 15 – Staff**

33. Subsection (1) provides that the Commission must employ a person as a chief executive. The first appointment will be made by the Scottish Ministers (subsection (2)), with subsequent appointments being made by the Commission with the approval of the Scottish Ministers (subsection (3)).
34. Subsection (4) allows the Commission to employ other staff, and subsection (5) sets out that the Commission are to determine the terms and conditions for staff, with the approval of the Scottish Ministers.

### ***Operational matters***

### **Section 16 – Validity of things done**

35. To ensure that the Commission is always able to perform its functions, section 16 provides that the validity of any of its actions is not adversely impacted by a vacancy of membership, a defect in the appointment of a member or any resignation or removal under section 13 of the Act.



### **Section 17 – Committees**

36. Subsection (1) allows the Commission to set up committees for any purpose relating to the functions of the Commission, the Land Commissioners or the Tenant Farming Commissioner. Subsection (2) authorises the Commission to delegate the exercise of its functions to any committee but the Commission will remain responsible for the exercise of its functions notwithstanding any such delegation of the exercise of its functions (subsection (3)). Similarly, section 23(1)(a) authorises the Land Commissioners to delegate the exercise of their functions to any committee and section 25(1)(b) authorises the Tenant Farming Commissioner to delegate the exercise of the Tenant Farming Commissioner's functions to any committee.
37. Subsection (4) enables persons who are not members of the Commission to be appointed to be a member of any committee established.
38. Subsection (5) allows for the payment of remuneration or allowances to any person who is not a member of the Commission who is appointed to be a member of any committee established.
39. Subsection (6) provides that any committee established must comply with any directions given to it by the Commission.

### **Section 18 – Regulation of procedure**

40. Subsection (1) imposes a duty on the Commission to establish and maintain a register of interests for its members. Subsection (2) clarifies that, with the exception of the duty in subsection (1), the Commission is free to regulate its own internal procedures.

### ***Accounts and annual report***

#### **Section 19 – Accounts**

41. Subsection (1) imposes a duty on the Commission to keep proper accounts and accounting records, and prepare a statement of accounts for each financial year.
42. Subsection (2) requires the Commission to send accounts to the Scottish Ministers and subsection (3) provides that the Commission must comply with any direction from the Scottish Ministers regarding the preparation of the accounts under subsection (1).
43. Subsection (4) places a further duty on the Commission to ensure that an audited statement of accounts and accounting records is made available for public inspection.

#### **Section 20 – Annual report**

44. Subsection (1) places a duty on the Commission to prepare an annual report shortly after the end of each financial year, with an assessment of its performance in carrying out its functions, of the performance of Land Commissioners and the Tenant Farming Commissioner in carrying out their functions, an assessment of the performance of the Commission and its members in achieving their main objectives as set out in any strategic plan having effect in that financial year, and an assessment of the

performance of the Land Commissioners in relation to any programme of work having effect in that financial year.

45. Subsection (2) imposes procedural duties on the Commission to ensure that the annual report is published, sent to the Scottish Ministers and laid before the Scottish Parliament.
46. Subsection (3) enables the Commission to publish other reports and information in relation to its functions, and where it does do, it is under a duty to lay the report before the Scottish Parliament.

### ***Application of public bodies legislation***

#### **Section 21 – Application of legislation relating to public bodies**

47. This section makes a number of consequential amendments to other primary legislation in relation to public bodies. Subsection (1) adds the Commission to the list of public bodies required to produce a code of conduct under the Ethical Standards in Public Life etc. (Scotland) Act 2000. Subsection (2) makes the Commission a “Scottish public authority” for the purposes of the Freedom of Information (Scotland) Act 2002, conferring a general entitlement for any person to request information from the Commission, subject to the procedures and exemptions in that Act. Subsection (3)(a) makes the Commission subject to the Scottish Ministers’ power under section 14 of the Public Services Reform (Scotland) Act 2010 to make provision by order to improve the exercise of public functions, and subsection (3)(b) makes the Commission subject to the duties to provide information contained in Part 3 of the 2010 Act.

## **CHAPTER 2 – THE LAND COMMISSIONERS**

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

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

48. Subsection (1) sets out the functions of the Land Commissioners, which generally concern matters relating to land in Scotland.
49. Subsection (2) imposes a duty upon the Land Commissioners to consider any matter referred to them by the Scottish Ministers.
50. Subsection (3)(a) lists a number of matters that the Land Commissioners must have regard to when exercising their functions, including the land rights and responsibilities statement to be published by the Scottish Ministers under section 1 or revised under section 2. Subsection (3)(b) provides that the Land Commissioners must work with the Tenant Farming Commissioner in exercising their functions.
51. Subsection (4) provides that the Land Commissioners must have regard to the exercise of the Tenant Farming Commissioner’s functions under section 24 when the Land Commissioners exercise their functions in relation to agriculture and agricultural holdings.

52. Subsection (5) defines “matters in relation to land in Scotland” for the purposes of subsection (1). Subparagraphs (a) to (c) state that this definition includes ownership and other rights in land, management of land, and use of land. Subparagraph (d) ensures that the Land Commissioners, when exercising their functions, can take in to consideration the land use strategy prepared under section 57(1) of the Climate Change (Scotland) Act 2009 (“the 2009 Act”), Subparagraph (d) does not affect Scottish Ministers’ obligations under section 57 of the 2009 Act, nor does it allow the Land Commissioners to produce a new or revised Land Use Strategy themselves to supersede that produced by Scottish Ministers under that Act.

***Land Commissioners: delegation of functions***

**Section 23 – Land Commissioners: delegation of functions**

53. Subsection (1) allows the Land Commissioners to delegate their functions to a committee established by the Commission under section 17, any employee of the Commission or any other person. The Land Commissioners cannot delegate their functions to the Tenant Farming Commissioner. Subsection (2) makes it clear that any delegation under subsection (1) does not affect the responsibility of the Land Commissioners for the exercise of the functions delegated.

**CHAPTER 3 – THE TENANT FARMING COMMISSIONER**

***Functions of the Tenant Farming Commissioner***

**Section 24 – Functions of the Tenant Farming Commissioner**

54. This section makes provision about the functions of the Tenant Farming Commissioner.
55. Subsection (1) sets out the functions of the Tenant Farming Commissioner
56. Subsection (2) places a duty on the Tenant Farming Commissioner to exercise their functions with a view to encouraging good relations between landlords and tenants of agricultural holdings.
57. Subsection (3) places a duty on the Scottish Ministers to review the functions of the Tenant Farming Commissioner within three years of this section coming into force and to publish the findings of the review.
58. Subsection (4) requires Scottish Ministers, when carrying out a review of the Tenant Farming Commissioner’s functions, to seek and have regard to, the views of the Commissioner on the operation of the Commissioner’s functions and, in particular, on the question of whether the Commissioner has sufficient powers to carry out his or her duties. Scottish Ministers must also seek views from any other persons appearing to Ministers to have an interest in the Commissioner’s functions (i.e. stakeholders within the tenant agricultural sector such as tenants, landlords and groups that represent them.)
59. Subsection (5) gives the Scottish Ministers the power to make regulations to amend, remove or add to the functions of the Tenant Farming Commissioner.

**Section 25 – Tenant Farming Commissioner: delegation of functions**

60. Section 25 makes provision for when the Tenant Farming Commissioner can delegate functions and to whom those functions can be delegated.
61. Subsection (1) gives the Tenant Farming Commissioner the power to authorise another person to exercise some, part of or all of the Tenant Farming Commissioner's functions. This includes the Land Commissioners, a committee of the Commission, and an employee of the Commission.
62. Subsection (2) sets out an exception to subsection (1) and makes clear that the Tenant Farming Commissioner cannot delegate the power under section 24(1)(f) and section 38 to refer for the opinion of the Land Court any question of law relating to agricultural holdings. That is a discretion which only the Commissioner can exercise.
63. Subsection (3) makes clear that the Tenant Farming Commissioner remains responsible for the exercise of the Commissioner's functions, even if some, or part of those functions are delegated to another person.

**Section 26 – Acting Tenant Farming Commissioner**

64. Section 26 makes provision for the Scottish Ministers to appoint an acting Tenant Farming Commissioner to carry out all of the functions of the Tenant Farming Commissioner when no Commissioner is in office.
65. Subsection (2) makes clear that if a person is disqualified from being appointed as the Tenant Farming Commissioner then that person is also disqualified from being appointed as an acting Tenant Farming Commissioner. The circumstances under which a person can become disqualified are set out in section 12.
66. Subsection (3) sets out specific provision for when the acting Tenant Farming Commissioner can resign or be removed and allows the Scottish Ministers to otherwise determine the terms and conditions of the acting Tenant Farming Commissioner's appointment.
67. Subsection (4) makes clear that an acting Tenant Farming Commissioner is to be treated the same as the Tenant Farming Commissioner, except for the terms under which the Commissioner can resign, be removed or remunerated. For an appointed Tenant Farming Commissioner, provision is made for resignation and removal in section 13 and provision for remuneration, allowances and pensions in section 14. Subsection (3) of this section provides the equivalent of these sections for an acting Tenant Farming Commissioner.

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

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

68. Section 27 places a duty on the Commissioner to prepare and publish codes of practice for the purpose of providing guidance to landlords and tenants of agricultural holdings and their agents.

69. Subsection (2) provides an indicative list of the issues relating to agricultural holdings that the codes of practice may cover.
70. Subsection (3) requires the Commissioner to review the codes of practice and revise the codes if appropriate. There is no set period within which a review must be carried out.
71. Subsection (4) provides that the Commissioner must consult with persons appearing to the Commissioner to have an interest in the draft code before publishing any code of practice.
72. Subsection (5) requires the Commissioner to lay a copy of the code before the Scottish Parliament when the code is published. There is no prescribed form for a code and a code can be published in any form the Commissioner considers appropriate.
73. Subsection (7) provides that any published code of practice can be admitted as evidence in any proceedings before the Scottish Land Court.
74. Subsection (8) requires the Scottish Land Court to take into account any part of a code of practice that it considers may be relevant to any proceedings before it.
75. Subsection (9) provides that a published code of practice can also be admitted, and should also (where relevant) be taken into account, as part of any arbitration proceedings under the 1991 and 2003 Agricultural Holdings Acts.

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

76. Section 28 places a duty on the Tenant Farming Commissioner to promote the observance of codes of practice published under section 27, in accordance with the Tenant Farming Commissioner's function under section 24(1)(b), and sets out a non-exclusive list of ways in which this is to be done.

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

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

77. Sections 29 to 35 make provision about the exercise of the Tenant Farming Commissioner's function to inquire into alleged breaches of the codes of practice under section 24(1)(c). Section 29 sets out the process for a person with an interest in the tenancy, or who would have an interest but for an alleged breach, to apply to the Tenant Farming Commissioner to inquire into an alleged breach of any code of practice published under section 27.
78. Subsection (2) sets out what any application under subsection (1) must contain.
79. Subsection (3) provides that an application must be accompanied by the appropriate fee, unless the Commissioner waives the need to pay the fee under subsection (5).
80. Subsection (4) requires the Commissioner, when setting the fee for the application, to consider the likely impact that the amount of the fee might have on the number of applications.

81. Subsection (5) sets out the circumstances in which the Commissioner can waive the fee for an application under subsection (1).
82. Subsection (6) makes clear that any application under subsection (1) does not affect any time limits for proceedings before the Scottish Land Court.

### **Section 30 – Procedure for inquiry**

83. Section 30 provides for the process of an inquiry into an alleged breach of a code of practice, following receipt of an application under section 29, by setting out the conditions that must be satisfied in order for the Tenant Farming Commissioner to inquire into an alleged breach; what the Commissioner may do in cases where those conditions are met; and in cases where those conditions are not met.
84. Subsection (1) sets out the conditions that must be satisfied in order for the Tenant Farming Commissioner to inquire into an alleged breach of a code of practice. For example, the effect of subsection (1)(c) is that repeat applications concerning the same alleged breach are not permitted.
85. Subsection (2) provides that, where the Commissioner is not satisfied that the application contains sufficient information to proceed with an inquiry, the Commissioner can require the applicant to provide any additional information that is considered appropriate within a specified period.
86. Subsection (3) sets out the circumstances under which the Commissioner may dismiss an application.
87. Subsection (4) sets out what the Commissioner must do when satisfied that an application meets the conditions in subsection (1).

### **Section 31 – Enforcement powers**

88. Section 31 makes provision for requests by the Tenant Farming Commissioner for information for the purposes of applications and inquiries relating to alleged breaches of published codes of practice, and for the imposition of non-compliance penalties.
89. Subsection (1) gives the Commissioner a general power to make a request during an inquiry for any person to provide information appropriate for the purposes of that inquiry.
90. Subsection (2) provides that the Commissioner may impose a non-compliance penalty where a person has failed to provide a response to an application which meets the relevant conditions within the period specified by a request under section 30(4)(c); and where a person has failed to provide information requested under subsection (1) for the purposes of an inquiry.
91. Subsection (3) sets out that the Commissioner must set the amount of the non-compliance penalty, but this must not be set above £1000.
92. Subsection (4) provides that any non-compliance penalty imposed must be paid to the Commission.

93. Subsection (5) gives the Commission the power to recover any non-compliance penalty that is not paid as a civil debt.

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

94. Section 32 makes provision about the content of a notice of a non-compliance penalty given by the Tenant Farming Commissioner under section 31(2) and provides a right of appeal for any person in receipt of such a notice.

95. Subsection (1) sets out the information that must be included in a notice of a non-compliance penalty.

96. Subsection (2) provides that a person served with a notice has the right to appeal to the Scottish Land Court against the notice and sets out the permitted grounds for any appeal. The grounds for appeal are broad and allow, for example, the Court to consider whether a request for confidential information should be upheld.

97. Subsection (3) requires any appeal under subsection (2) to be made within 28 days of the day the notice of non-compliance was received.

98. Subsection (4) provides that, where a non-compliance notice is appealed, the penalty is suspended from the day the appeal is made until the appeal is determined or withdrawn.

99. Subsection (5) allows the Scottish Land Court to overturn, confirm or vary any notice of non-compliance that is appealed.

### **Section 33 – Report on inquiry**

100. Section 33 makes provision for the production and publication by the Tenant Farming Commissioner of a report following an inquiry into an alleged breach of a code of practice.

101. Subsection (1) provides that the Commissioner must publish a report as soon as practicable after the completion of an inquiry and sets out the information the report must contain where (a) there is sufficient information to reach a decision and (b) where there is not sufficient information to reach a decision.

102. Subsection (2) provides that any report published can be admitted as evidence in any proceedings before the Scottish Land Court.

103. Subsection (3) requires the Scottish Land Court to take into account any part of a report that it considers may be relevant to any proceedings before it.

104. Subsection (4) provides that any report published can also be admitted as evidence, and should also (where relevant) be taken into account, as part of any arbitration proceedings under the 1991 and 2003 Agricultural Holdings Acts.

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

105. Section 34 makes provision about the confidentiality of information obtained by or on behalf of the Tenant Farming Commissioner for the purposes of an inquiry into the breach of a code of practice.
106. Subsection (1) prohibits any person mentioned in subsection (6) from disclosing any information obtained for the purposes of an inquiry into the breach of a code of practice unless authorised to do so under subsection (2).
107. Subsection (2) sets out the limited circumstances under which a relevant person can disclose any information obtained for the purposes of an inquiry into the breach of a code of practice.
108. Subsection (3) provides that any person who knowingly discloses any information obtained for the purposes of an inquiry into an alleged breach of a code of practice, where they are not authorised to do so under subsection (2), commits an offence.
109. Subsection (4) sets out the potential penalty where a person is found to be guilty of an offence under subsection (3).
110. Subsection (5) sets out the defences available to a person charged with an offence under subsection (3).

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

111. Section 35 provides that, for the purposes of the law of defamation, any statement made by the Tenant Farming Commissioner as part of the exercise of the Commissioner's function under section 24(1)(c) to inquire into alleged breaches of the codes of practice attracts qualified privilege. This means that any such statement would not be defamatory unless it could be shown that the statement was motivated by express or actual malice.

### **Section 36 – Report on operation of agent of landlords and tenants**

112. Section 36 places an obligation on the Tenant Framing Commissioner to prepare a report on the operation of agents of landlords and tenants and to submit this report to Scottish Ministers within 12 months of this section coming into force. In preparing the report the Commissioner must consult any persons appearing to the Commissioner to have an interest in the operation of agents of landlords and tenants.

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

113. Section 37 places an obligation on the Tenant Farming Commissioner to prepare a report for submission to the Scottish Ministers with recommendations for a modernised list of improvements to agricultural holdings. The Commissioner must consult persons appearing to the Commissioner to have an interest in the draft recommendations before submitting the report to the Scottish Ministers.



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

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

114. Under section 24(1)(f), the Tenant Farming Commissioner has the function of referring for the opinion of the Scottish Land Court any question of law relating to agricultural holdings, and this section provides the Commissioner with the power to make such a reference where the question of law is one which may be competently determined by the Scottish Land Court.

**PART 3 – INFORMATION ABOUT CONTROL OF LAND ETC.**

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

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

115. Subsection (1) puts a duty on the Scottish Ministers to make regulations which make provision for the matters set out in paragraphs (a) and (b). Paragraph (a) provides that the regulations must make provision requiring information to be provided about persons who have controlling interests in owners and tenants of land and paragraph (b) provides that the regulations must make provision about the publication of that information in a public register kept by the Keeper of the Registers of Scotland.

116. Subsection (2) sets out matters that the regulations made under subsection (1) may include. This list is not exhaustive.

117. Subsection (2)(a) provides that the regulations may set out which owners and tenants of land the regulations will apply to.

118. Subsection (2)(b) provides that the regulations may define what constitutes a controlling interest in an owner or tenant of land. For example, a controlling interest in an owner or tenant of land could be defined as a specified level of shareholding in a company that owns or leases land, where that shareholding would give an individual a control over the landowner or tenant.

119. Subsection (2)(c) provides that the regulations may set out which persons are to be treated as having a controlling interest in an owner or tenant. Subsection (2)(d) provides that the regulations may provide what information must be disclosed under the regulations and the manner in which it is to be disclosed. For example, the regulations may provide the information must be provided on a specified form and the information which must be disclosed is the name and contact details of an individual that has a controlling interest in an owner or tenant of land.

120. Subsection (2)(e) provides that the regulations may set out circumstances in which the information about persons with a controlling interest must be provided. For example, information may have to be disclosed within a certain time of a person acquiring a controlling interest in an owner or tenant of land.

121. Subsection (2)(f) provides that the regulations can make provision for the publication of the information that is required. As well as publication in a register this could be publication by other means. The regulations may also set out the form the register, how the register is made up, how the information will be held and the entry of the information in it. For example this section could provide that the register will be electronic and it will be made available on the internet.
122. Subsection (2)(g) provides that the regulations may set out the circumstances when the information entered in the register may be corrected or updated. For example, the regulations could provide that if there is an inaccuracy in the register the information may be corrected by the Keeper.
123. Subsection (2)(h) provides that the regulations can set out circumstances where a person that has a controlling interest in an owner or tenant of land can make a request that the information is not published. In particular it provides that the regulations may provide that such circumstances include where the person with a controlling interest may be at serious risk of violence or abuse, threat of violence or abuse, or intimidation.
124. Subsection (2)(i) provides that the regulations may set out the effect of providing, or failing to provide, the information required under the regulations.
125. Subsection (2)(j) provides that the regulations may set out sanctions that could be applied for failure to comply with a requirement imposed under the regulations. For example, the regulations could provide that a failure to provide information about a person with a controlling interest in a landowner or tenant, where the information was required, is a criminal offence and the penalty for this could be a fine.
126. Subsection (2)(k) provides that the regulations may make provision for the delegation of functions under the regulations.
127. Subsection (2)(l) provides that the regulations may make provision for the fees that may be payable for providing the information, for publication or accessing the information. There is no requirement for the regulations to make provision about fees.
128. Subsection (2)(m) provides that the regulations may set out when a person may appeal against a decision made under the regulations. For example, where a person has made a request for information not to be published and this request has been refused, the regulations may provide a right of appeal against that decision and set out who will hear the appeal.
129. Subsection (3) provides that the regulations under subsection (1) may provide that a failure to comply with a requirement imposed under the regulations may be a criminal offence or may result in the imposition of a civil penalty, including a fixed penalty. For example, the regulations could provide that a person may be liable for a civil penalty or commit an offence if that person fails, without good reason, to provide information about a person with a controlling interest where the regulations provide for this.
130. Subsection (4) provides that if the regulations made under subsection (1) make a provision imposing a criminal offence then the regulations must provide that the

offence is triable summarily only and the maximum penalty that can be imposed is a fine, that must not exceed level 5 on the standard scale.

131. Subsection (5) provides that where regulations made under subsection (1) make provision for the imposition of civil penalties or an offence they must also include provision about appeals against a decision to impose those penalties.
132. Subsection (6) provides that regulations made under subsection (1) may modify any enactment (including this Act).
133. Subsection (7) places a duty on the Scottish Ministers to consult before laying draft regulations before the Scottish Parliament. This consultation must include the Keeper of the Registers of Scotland.
134. Subsection (8) provides that the duty to consult set in subsection (7) does not apply for the first regulations made under subsection (1). A separate procedure applies to the first regulations made under subsection (1). The affirmative procedure will apply to regulations under subsection (1) (but see sections 40 to 42 regarding the first regulations under section 39).

#### **Section 40 - Procedure for first regulations under section 39**

135. Section 40 provides that the Scottish Ministers may not lay before the Scottish Parliament a draft of the first regulations that must be made under section 39(1) unless they have consulted in accordance with the provisions set out in section 41 and following the consultation they have laid before the Scottish Parliament a copy of proposed draft regulations and a copy of the explanatory document that has been prepared in accordance with section 42.

#### **Section 41 - Procedure for first regulations under section 39: consultation**

136. Subsection (1) provides that before laying a draft of the first regulations under section 39(1) before the Scottish Parliament the Scottish Ministers must consult the Keeper of the Registers of Scotland and such other persons as they consider appropriate.
137. The Scottish Ministers must lay before the Scottish Parliament a copy of the proposed draft regulations and a copy of the proposed explanatory document that is required under the terms of section 40(b)(ii) (subsection (2)(a)) and send a copy of the proposed draft regulations and the proposed explanatory document to any person that is consulted under subsection (1) (subsection (2)(b)).
138. The Scottish Ministers must have regard to any representations made to them about the proposed draft regulations and proposed explanatory document if these representations are made within the period of 60 days from the date the proposed draft regulations are laid in the Scottish Parliament under subsection (2)(a) (subsection (2)(c)). When calculating the 60 day period provided for in subsection (2)(c) no account is to be taken of any time that the Parliament is dissolved or is in recess for more than 4 days (subsection (3)).

**Section 42 - Procedure for first regulations under section 39; explanatory document**

139. Subsection (1)(a) provides that the explanatory document referred to in section 40(b)(ii) must set out reasons for the provisions contained in the proposed draft regulations. Subsection (1)(b) provides that the explanatory document must include the details of any consultation undertaken under section 41, the details of any representations received by the Scottish Ministers as a result of the consultation and the details of any changes that may have been made to the proposed draft regulations as a result of the representation received by the Scottish Ministers during the consultation period.
140. Subsection (2) provides that where a person making a representation to the Scottish Ministers in response to the consultation under section 41 has not consented to the disclosure of their representation, the Scottish Ministers cannot disclose the representation in the explanatory document.
141. Subsection (3) provides that where a representation made by a person in response to the consultation includes information that relates to another person, the Scottish Ministers must not disclose that information in the explanatory document if, or to the extent that, it appears to the Scottish Ministers that the disclosure of that information could adversely affect the interests of that other person and the Scottish Ministers have not been able to obtain the consent of that other person.
142. Subsection (4) provides that if a committee of the Scottish Parliament charged with reporting on the proposed draft regulations requests copies of the representations that have been made to the Scottish Ministers, disclosure of the representations will not be subject to the provisions in subsections (2) and (3).

***Information relating to proprietors of land etc.***

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

143. This section amends the Land Registration etc. (Scotland) Act 2012 to insert new sections 48A and 48B.
144. Inserted section 48A(1) provides a power for the Scottish Ministers to make regulations allowing the Keeper to request or require information relating to the category of person or body into which a relevant person falls. A relevant person is a person mentioned in inserted section 48A(2) falls.
145. Inserted section 48A(2) provides that the relevant persons are (a) the 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.
146. Inserted section 48A(3) sets out matters that regulations made under section 48A(1) may include. This is not an exhaustive list.
147. Inserted section 48A(3)(a) provides that regulations may make provision about the persons who are owners, proprietors and tenants for the purposes of subsection (1). For example, the regulations may set out the persons about whom information may be

requested or required will be proprietors of registered plots or tenants of registered leases.

148. Inserted section 48A(3)(b) provides that regulations may make provision about the information relating to the category of person or body into which the relevant person falls. For example, provision may be made for the Keeper to require information from proprietors which states whether they are a community body or charity (or equivalent). Inserted section 48A(3)(c) provides that regulations may make provision about the form in which information is to be provided to the Keeper. For example, regulations may provide that the information be provided as part of an application form to register a deed in the Land Register. In addition this subsection provides that the information may be provided by the proprietor or on behalf of a proprietor, for example by their legal representative.
149. Inserted section 48A(3)(d) provides that regulations may specify the circumstances where information may be requested by the Keeper. Where information is requested from a person there will be no obligation on that person to provide this information, and no sanction for not providing the information.
150. Inserted section 48A(3)(e) provides that regulations may specify circumstances where the Keeper may require information to be provided, and circumstances where information is not required. Where information is required there may be a sanction for failure to provide the information.
151. Inserted section 48A(3)(f) provides that the regulations may specify if providing information under the regulations will have any effect or will not have any effect.
152. Inserted section 48A(3)(g) provides that the regulations may set out how the information provided under the regulations, whether requested or required, will be entered on the Land Register.
153. Inserted section 48A(3)(h) provides that regulations may provide if the information obtained under the regulations will, or will not, be subject to the Keeper's warranty under Part 7 of the Land Registration etc. (Scotland) Act 2012.
154. Inserted section 48A(3)(i) provides that regulations may set out when information that has been disclosed under regulations made under section 48A(1) can be corrected or updated. For example, where a proprietor provides information that it is a community body and then it ceases to be so, the regulations may set out how the proprietor can notify the Keeper of this change.
155. Inserted section 48A(3)(j) provides that regulations may set out when the Keeper could provide information obtained under regulations made under section 48(1) to other persons.
156. Inserted section 48A(3)(k) provides that regulations may set out when the information obtained under the regulations made under subsection (1) can be published.

157. Inserted section 48A(3)(l) provides that regulations may set out the fees to be payable to the Keeper for providing, correcting or updating the information that is requested or required under the regulations.
158. Inserted section 48A(4) provides that regulations may include provision for an offence for a failure to comply with the requirements imposed by the regulations. This only applies where the regulations require the provision of information.
159. Inserted section 48A(5) provides that where the regulations provide for an offence for failure to comply with the requirements of the regulations, the regulations must provide that the offence is triable summarily only and the maximum penalty that can be imposed is a fine that can be no more than level 3 on the standard scale.
160. Inserted section 48A(6) provides that, before regulations are laid in draft before the Scottish Parliament, the Scottish Ministers must consult the Keeper.
161. The inserted section 48B(1) provides a power for the Scottish Ministers to make regulations enabling the Keeper to enter information relating to the category of person or body into which a relevant person falls in the Land Register. Regulations made under this section would allow the Keeper to enter certain information in the Land Register on their own initiative without requesting or requiring the information from a relevant person.
162. The inserted section 48B(2) provides that the persons referred to in subsection (1) as “relevant persons” are (a) the 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.
163. The inserted section 48B(3) sets out matters regulations made under section 48B(1) may include. This is not an exhaustive list.
164. The inserted section 48B(3)(a) provides that regulations may make provision about the persons who are owners, proprietors and tenants for the purposes of subsection (2). For example, the regulations may set out the proprietors of registered plots and tenants of registered leases are persons about whom the Keeper can enter certain information on the Land Register on her own initiative.
165. The inserted section 48B(3)(b) provides that regulations may set out details about notifications by the Keeper about the intention to enter in the Land Register information about the category of person. For example, regulations may provide for the notification to be sent to an owner of land about the Keeper’s intention to enter information about the category of person on body that the proprietor falls into in a particular title sheet.
166. Inserted section 48B(3)(c) provides that regulations can set out the circumstances when the Keeper may enter information in the Land Register. For example, the regulations could set out that if the category of person or body that an owner of land falls into is clear the Keeper may update the Land Register to include information about the category of the owner of land.

167. Inserted section 48B(3)(d) provides that regulations may specify the information that may be entered in the Land Register and the form in which it is to be entered. This provides that the regulations can specify the categories of person or body that can be entered in the Land Register. For example, the categories may include Scottish local authority, companies or community bodies. The regulations may specify how this information is to be entered in the Land Register, for example it may be entered as a note in the proprietorship section of the title sheet.
168. Inserted section 48B(3)(e) provides that the regulations may specify if the Keeper entering information in the Land Register, as permitted by the regulations under this section, will have any effect.
169. Inserted section 48B(3)(f) provides that the regulations may set out whether the warranty under Part 7 of the Land Registration etc. (Scotland) 2012 will, or will not, apply, to information about the category of person or body that has been entered in the Land Register by the Keeper.
170. Inserted section 48B(3)(g) provides that the regulations may set out how the information entered on the Land Register may be corrected or updated. For example, the regulations may provide that if the Keeper is satisfied that the information is inaccurate it should be corrected. The regulations may also provide that the person who the information relates to could apply to have the information the Keeper has entered in the register updated where the information has changed, for example where an owner of land has ceased to have charitable status they may wish the Land Register to be updated to reflect the change in category, if this is a category that is specified in the regulations.
171. Inserted section 48B(3)(h) provides that regulations may set out that the Keeper may provide information that she has entered on the Land Register under these regulations to another person in certain circumstances. For example the information about the category of owners and tenants of land may be useful to the Scottish Government to assist in monitoring the Scottish Government's stated policy aim of increasing the amount of land in community ownership to 1 million acres by 2020, the regulations may provide that the Keeper could provide information that she has entered on the Land Register under the regulations about the land owned by a community body to the Scottish Government.
172. Inserted section 48B(3)(i) provides that regulations may set out how the information entered under the regulations is published. That could include publication by entering the information in the Land Register or publication by other means, such as a report on land mass coverage.
173. Inserted section 48B(3)(j) provides that the regulations may set out fees for correcting or updating the information entered on the Land Register by the Keeper under the regulations. There is no requirement for a fee to be charged for correcting or updating the information.
174. Inserted section 48B(4) provides that before the regulations are laid in draft before the Scottish Parliament the Scottish Ministers must consult the Keeper.

175. Subsection (3) amends section 116 of the Land Registration etc. (Scotland) Act 2012. This provides that the affirmative procedure will apply to regulations under the new sections 48A(1) and 48B(1)

176. Subsection (4) amends section 121 of the Land Registration etc. (Scotland) Act 2012 to provide that the Crown cannot be criminally liable for any breaches of the requirements imposed by regulations made under section 48A(1).

#### **PART 4 – ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND**

##### **Section 44 – Guidance on engaging communities in decisions relating to land**

177. Subsection (1) imposes a duty on Ministers to produce guidance about engagement with communities in decisions relating to land that may affect communities.

178. Subsection (2) requires the Scottish Ministers, in producing guidance, to have regard to the desirability of—

- promoting respect for, and observance of, relevant human rights,
- promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant,
- encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998),
- furthering the reduction of inequalities of outcome which result from socio-economic disadvantage, and
- furthering the achievement of sustainable development in relation to land.

179. Subsection (3) defines “relevant human rights” in subsection (2) as such human rights as the Scottish Ministers consider to be relevant to the preparation of the guidance. In considering what human rights are relevant, Ministers may consult with the Scottish Commission for Human Rights and such other persons or bodies as they consider appropriate. “Human rights” is defined in subsection (11), see below.

180. Subsection (4) defines “internationally accepted principles and standards for responsible practices in relation to land” in subsection (2) to 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 (subsection (2)(d)). Other internationally accepted principles and standards for responsible practices in relation to land, including those which may come into effect in the future, also fall within this definition.

181. Subsection (5) sets out certain information that must be included in the guidance.

182. Subsection (6) requires the Scottish Ministers to consult such persons as they consider appropriate prior to issuing the guidance.



183. Subsection (7) requires the Scottish Ministers to lay the first guidance before the Scottish Parliament.
184. Subsection (8) requires the Scottish Ministers to prepare and lay before the Scottish Parliament reports assessing the effectiveness of the guidance issued under section 44(1) and setting out Ministers' views on any further steps which should be taken to improve the effectiveness of the guidance.
185. Subsection (9) requires that the first report on the guidance is laid before the Scottish Parliament no later than 3 years after the date on which the first guidance is issued.
186. Subsection (10) requires that subsequent reports on the guidance are to be laid before the Parliament no later than 5 years after the date on which the last such report was laid.
187. Subsection (11) defines "human rights" in section 44 as the Convention rights (within the meaning of section 1 of the Human Rights Act 1998), and 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. This definition includes other human rights which could be relevant to the preparation of the guidance such as rights in the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.

## **PART 5 – RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT**

### ***Key terms***

#### **Section 45 – Meaning of "land"**

188. Subsection (1) provides that land for the purposes of Part 5 includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).
189. It also provides land for the purposes of Part 5 includes salmon fishings in inland waters or mineral rights that are owned separately from the land in respect of which they are exigible but that land also does not include any other separate tenements owned separately from the land in respect of which they are exigible.
190. Subsection (2) sets out that "mineral rights" does not include rights to oil, coal, gas, gold or silver.
191. Subsection (3) sets out the meaning of "inland waters" in Part 5.

#### **Section 46 – Eligible land**

192. This section defines the land which is to be classed as eligible for the purposes of the right to buy in Part 5.

193. Subsection (1) provides that all land is eligible for the purposes of Part 5 except for land which is defined as “excluded land”.
194. Subsection (2) sets out the meaning of “excluded land”. Excluded land includes: land on which there is an individual’s home, except where the home is occupied by an individual under a tenancy; land pertaining to an individual’s home as may be set out in regulations; croft land (as defined in section 68 of the Land Reform (Scotland) Act 2003); land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be identified) or it having fallen to the Crown as *ultimus haeres* (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.
195. Subsection (3) provides that Ministers may make regulations setting out the buildings or structures that are or are to be treated as an individual’s home and the types of occupation and possession that are or are to be treated as a tenancy.

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

196. Subsection (1) sets out circumstances in which a Part 5 community body may apply to buy eligible land consisting of salmon fishings or mineral rights only. This can only be done where the Part 5 community body is also applying, or has applied, to buy the land to which the fishings or minerals relate, or the application is made during the relevant period.
197. Subsection (2) sets out that an application can only be made during the relevant period if the Part 5 community body has applied to buy the land that in respect of which the salmon fishings and mineral rights are eligible and the Part 5 community body, or third party purchaser nominated by the Part 5 community body, has confirmed its intention to proceed with buying that land or has already bought and retained the land in accordance with Part 5.
198. Subsection (3) sets out the meaning of “relevant period”. This is defined as beginning with the date on which the Scottish Ministers consented to the application for the Part 5 right to buy. It ends either with (a) where the Part 5 community body, or third party purchaser as the case may be, does not proceed to exercise its right to buy that related land, on the date on which it withdraws its intention to proceed, or the date of its failure to complete its purchase; or (b) where the Part 5 community body, or third party purchaser as the case may be, has bought the land in respect of which the salmon fishings or mineral rights are eligible, within one year (in relation to salmon fishings), or within five years (in relation to minerals right) after the date on which the land was so bought.

#### **Section 48 – Eligible land: tenant’s interests**

199. This section sets out the circumstances in which the right to buy may be exercised in relation to the interest of a tenant over tenanted land.
200. Subsection (1) states that the provisions about a tenant’s interest apply where a tenancy has been created over land at least part of which is eligible land provided that it is not a croft tenancy, tenancy of a dwelling-house or such other type of tenancy that the Scottish Ministers may set out in regulations.

201. Subsection (2) specifies definitions of “principal subjects” and “tenanted land”.
202. Subsection (3) specifies the situations in which a Part 5 community body may apply to buy a tenant’s interest in land. An application may be made if the Part 5 community body has made a simultaneous application to buy the land, or part of the land, to which the tenancy relates, it has made a prior application to buy the land on which Ministers have not yet made a decision or the application is made during the relevant period (and certain conditions are met).
203. Subsection (4) provides that the interest that the Part 5 community body may apply to buy under section 54 is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.
204. Subsection (5) specifies the conditions under which the Part 5 community body can apply to purchase a tenant’s interest during the relevant period. The conditions are that the Part 5 community body, or third party purchaser who was nominated by a Part 5 community body has confirmed to Scottish Ministers its intention to proceed to buy the land, or part of it, to which the tenancy relates or has already bought and retained that land in accordance with Part 5.
205. Subsection (6) defines the “relevant period”. This is defined as beginning with the date on which Scottish Ministers approved the application for the Part 5 right to buy in relation to the land, or part of it, to which the tenancy relates. It ends either with (a) where the Part 5 community body, or third party purchaser as the case may be, does not proceed to exercise its right to buy, the date on which it withdraws its confirmation of intention to proceed, or the date of its failure to complete the purchase; or (b) where the Part 5 community body or third party purchaser has bought and retained the land, five years from the date where the Part 5 community body, or third party purchaser as the case may be, bought the land.
206. Subsection (7) specifies that reference to a tenant includes sub-tenant.

#### **Section 49 – Part 5 community bodies**

207. Subsection (1) sets out the meaning of a Part 5 community body. Where a body applies under section 54 to exercise the right to buy itself then a Part 5 community body is a body that falls within subsection (2), (3) or (4). Where a body applies under section 54 but nominates a third party purchaser to exercise the right to buy then a Part 5 community body is a body falling within subsection (5). Ministers may also make regulations setting out additional descriptions of bodies that are to be Part 5 community body.
208. Subsection (2) sets out that a company limited by guarantee whose articles of association meet certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
209. Subsection (3) sets out that a Scottish charitable incorporated organisation whose constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).

210. Subsection (4) sets out that a community benefit society whose registered rules meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
211. Subsection (5) specifies that a body corporate whose written constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(b).
212. Subsection (6) provides that, in terms of subsection (2), (3) and (4), Ministers may dis-apply the requirement that there must be not fewer than 10 members.
213. Subsection (7) provides that a body is not a Part 5 community body until Scottish Ministers have confirmed in writing that the main purpose of the body is consistent with furthering the achievement of sustainable development.
214. Subsection (8) provides that the Scottish Ministers may by regulations modify subsections (2), (3), (4), (5) and (6).
215. Subsection (9)(a) sets out that the community of a body is defined by reference to a postcode unit (or units) or a type of area which Ministers set out in regulation. A community may also be defined with reference to both of these things.
216. Subsection (9)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations. The Scottish Ministers may make regulations specifying unit or type of area included.
217. Subsection (10) provides that a Part 5 community body which is a company limited by guarantee may specify in its articles of association that, if the company is winding up, its property may only pass to another person if that person that is a charity.
218. Subsection (11) provides definitions for the purposes of this section.

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

219. Section 50 sets out the constraints which apply to a Part 5 community body after it has acquired land under Part 5.
220. Subsection (1) provides that a Part 5 community body, which has bought land under Part 5 and still owns that land, must notify Scottish Ministers as soon as possible after any modification it has made to its memorandum, articles of association, constitution or registered rules. Subsection (2) allows Ministers to acquire the land compulsorily if a Part 5 community body, which has bought land under Part 5, would no longer be entitled to buy the land.
221. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily on the basis that the land is no longer eligible land.

222. Subsections (4) and (5) provide that Ministers may set out in regulations provisions relating to the compulsory acquisition of land under this section.

### **Section 51 – Interpretation of Part**

223. Section 51 sets out some matters of interpretation for Part 5 of the Act and subsection (1) and (2) clarify terms “Lands Tribunal” and “a creditor in a standard security with a right to sell land”.

224. Subsections (3) and (4) provide that public or local holidays should not be taken into account when calculating time periods in Part 5, except for the six-month period of completion for the right to buy referred to in section 64(2), the 28-day period for lodging an appeal to the sheriff (section 69(7)) and the 21-day period for lodging an appeal to the Lands Tribunal on the valuation of land or a section 66 determination (section 70(3)).

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

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

225. Section 52(1) provides for the creation of a Register of Applications by Community Bodies to Buy Land (the “New Register”) to be set up and kept by the Keeper of the Registers of Scotland (the “Keeper”).

226. Subsection (2) specifies the information and documents which must be kept in the Part 5 Register and provides that these must be kept in a form convenient for public inspection.

227. Subsection (3) requires that any person providing information or making a decision that requires to be registered in the New Register must give it or a copy of it to the Keeper to be as soon as reasonably practicable.

228. Subsections (4) and (5) allow a Part 5 community body when registering an application to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection and is to be kept separately by the Scottish Ministers. Such information or documentation will not be entered in the New Register. Subsection (6) states that nothing in subsections (4) and (5) empowers Ministers to require a Part 5 community body or third party purchaser to provide such information or documentation.

229. Subsection (7) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the New Register, to amend the provision about the Part 5 community body requesting that certain information can be withheld from the Register and amending the type of information that may be withheld.

230. Subsection (8) and (9) requires the Part 5 community body to notify the Keeper of changes to its name, registered office address or principal office address (as the case may be depending on its constitution).

231. Subsection (10) sets out the duties which are imposed on the Keeper. The Keeper must make the New Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a true copy of the original document this will be supplied on payment of such a charge. Subsection (11) confirms that a certified extract is allowable as evidence.
232. Subsection (12) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper's functions and subsection (13) allows for the appointment of different person for different persons.

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

233. Section 53 amends section 97F of the Land Reform (Scotland) Act 2003 to remove the requirement for there to be a Register of Community Interests in Abandoned, Neglected or Detrimental Land. It requires the Keeper to include applications for the community right to buy abandoned, neglected or detrimental land as part of the Register of Applications by Community Bodies to Buy Land: in effect, the two Registers are thus merged. The amendment also makes consequential amendments to section 97F of the Land Reform (Scotland) Act 2003 to reflect this change.

### ***Applications for consent***

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

234. Section 54 sets out the process a Part 5 community body must undertake in submitting an application to exercise the right to buy.
235. Subsection (1) specifies that the right can be exercised by a Part 5 community body or by a third party purchaser which is nominated by the Part 5 community body in its application.
236. Subsection (2) specifies that the right to buy can only be exercised with Ministers' consent on the written application of the Part 5 community body.
237. Subsection (3) provides that a right to buy land can be exercised in relation to more than one holding of land or more than one tenancy, but separate applications must have been made for each holding of land or tenancy. Subsection (4) defines "holding" of land and "tenancy". Ministers may make different decisions in relation to each separate application.
238. Subsection (5) specifies that an application must set out who the owner of the land is and, where the application is for a tenant's interest in land, who the tenant is, and identify any creditor in a standard security with a right to sell the land or any part of it. Ministers may set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.
239. Subsection (6) lists the matters which the information to be included in or to accompany the application made by the Part 5 community body is to be about. These

include the reasons why 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(5)(a)) the location and boundaries of the land, all rights and interests in the land known to the Part 5 community body and the proposed use, development and management of the land.

240. Subsection (7)(a) specifies that at the same time as the Part 5 community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land.
241. Subsection (7)(b) specifies that where the application is for a tenant's interest, the Part 5 community body must send a copy of its application form (including the accompanying material) to the tenant.
242. Subsection (7)(c) specifies that, where the Part 5 community body nominates a third party purchaser, at the same time as the Part 5 community body applies to Ministers, it must send a copy of its application form (including the accompanying information) to the third party purchaser.
243. Subsections (7)(d) and (8) require the Part 5 community body to send a copy of the application to any known creditor in a standard security over the land and invite the creditor to notify, within 60 days, the Part 5 community body and Ministers of circumstances in which a calling-up notice has been served by the creditor, a notice of default has been served, a notice of default has been upheld or varied or where the court has granted the creditor a warrant under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

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

244. Subsection (1) provides that upon receiving the application under section 54, Scottish Ministers must invite: the owner of the land; where the application is to buy a tenant's interest, the tenant; any creditor in a standard security; where the application includes a third party purchaser, the third party; and any other person that may have an interest in the application, to send written comments on the application to Scottish Ministers within 60 days of the Ministers' invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of the invitations.
245. Subsection (2) specifies matters which the invitation to a landowner and, where the application is to buy a tenant's interest, the tenant, must invite the landowner or tenant to provide comment on.
246. Subsection (3) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice, and subsection (4) provides that the public notice is to be given by advertisement in such manner as specified in regulations.
247. Subsection (5) provides that Ministers must pass all views received on an application to the Part 5 community body and invite them to respond to these views within 60 days of Ministers sending the invitation.

248. Subsection (6) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received in answer and responses to those views to the invitation sent under this section.
249. Subsection (7) provides that Ministers must decline to consider an application that does not comply with the requirements of section 54, is otherwise incomplete or otherwise indicates that it is one which the Scottish Ministers would be bound to reject.
250. Subsection (8) sets constraints on the timing of the Ministers' decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a Part 5 community body may respond to an invitation by Ministers under subsection (5) to provide responses to the comments on an application. Alternatively, if by the date of 60 days after the date on which the Part 5 community body may provide Ministers with a response to an invitation sent under subsection (5), the Lands Tribunal has not notified Ministers of any finding under section 71, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.
251. Subsection (9) provides that, where requested by the Part 5 community body or third party purchaser where relevant, the Scottish Ministers must treat as confidential any information or document relating to the financial aspects of the application.

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

252. Subsection (1) sets out that Ministers must not consent to an application to buy land under section 54 unless they are satisfied that application meets the sustainable development conditions and the procedural requirements have been complied with.
253. Subsection (2) sets out the sustainable development conditions. All conditions must be met for Ministers to consent to an application. These conditions are that the transfer of land is likely to further the achievement of sustainable development in relation to the land, that the transfer is in the public interest, that the transfer of land is likely to result in significant benefit to the community and is the only practicable, or most practicable, way of achieving that benefit, and that not granting consent to the transfer is likely to result in harm to the community in question.
254. Subsection (3) sets out the procedural requirements. These include that the community body has, at least six months prior to the application being made, submitted a written request to the owner of the land to transfer the land to the community body or person named in the application and the owner has not responded or agreed to the request. They also include a requirement that land is eligible land, the owner and any creditor in standard security is correctly identified, where a third party purchaser is nominated that the party is correctly identified and shown to consent to the application and that the owner is not prevented from selling the land or subject to any enforceable personal obligation (otherwise than an obligation which has been suspended by regulations made under section 61(3)) to sell the land to anyone other than the Part 5 community body or the third party purchaser. If a significant number of the members of the community have a connection with the land, that the land is sufficiently near to land with which those members of the community have a



connection or that the land is in or sufficiently near to the area comprising that community. The community must have approved the exercise of the right to buy and Part 5 community body must comply with the provisions of section 49.

255. Subsection (4) provides that 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 (as defined in subsection (11), that is, by reference to a postcode unit or units or a type of area that Ministers may specify by regulations, regard has been had to guidance issued under section 44 (the Part 4 Guidance on Engaging Communities in Decisions Relating to Land).
256. Subsection (5) provides that, where an application relates to land which consists of salmon fishings or mineral rights only, Ministers must in addition be satisfied that the application complies with the requirements of section 47. That section contains provision requiring the Part 5 community body or third party purchaser to have already purchased the land, under Part 5, which the salmon fishings or mineral rights relate to, or to be in the process of applying to buy that land under Part 5.
257. Subsection (6) sets out that, where an application includes a request to buy a tenant's interest, the Scottish Ministers must be satisfied that the sustainable development conditions under subsection (2) are met in respect of the tenant's interest, and that the procedural requirements set out in subsection (7) have also been complied with.
258. Subsection (7) sets out the procedural requirements that must be complied with in respect of an application to buy a tenant's interest. These require that, at least six months prior to making the application, the Part 5 community body has submitted a written request to the tenant to transfer the tenant's interest to the community body or person named in the application. They also require that the tenant, owner and any creditor in standard security is correctly identified, where a third party purchaser is nominated, that the party is correctly identified and is shown to consent to the application and that the application complies with the requirements of section 48. The requirements also include that a significant number of the members of the community have a connection with the land, that the land is sufficiently near to land with which those members of the community have a connection or that the land is in or sufficiently near to the area comprising that community. Also, the community must have approved the exercise of the right to buy and the Part 5 community body must comply with the provisions of section 49.
259. Subsection (8) provides that in considering whether the application to buy a tenant's interest meets the sustainable development criteria, the Scottish Ministers must take into account any related application under section 54 to buy land to which the tenancy relates, and may take into account the extent to which, with regard to the relevant community (as defined in subsection (11) that is, by reference to a postcode unit or units or a type of area that Ministers may specify by regulations), regard has been had to guidance issued under section 44 (the Part 4 Guidance on Engaging Communities in Decisions Relating to Land).

260. Subsection (9) states that the Scottish Ministers may by regulations make provision about the form and content of requests referred to in subsections (3)(a) and (7)(a) of section 56, the form and content of responses to requests referred to in subsection (3)(a) and the circumstances in which landowners are to be taken not to have responded or not to have agreed to requests referred to in subsection (3)(a).
261. Subsection (10) requires that 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 take into account any information given under section 55(2)(a), that is, the owner's or tenant's views on the likely impact on the owner or tenant of the proposals, and they must also consider the likely effect of granting or not granting the consent to the transfer on land use in Scotland generally.
262. Subsection (11) defines "relevant community" for the purposes of sections (2)(c)(i), (3)(g)(i), (4), (7)(g)(i) and (8)(b).
263. Subsection (12) provides that, in determining what constitutes significant benefit to the community for the purposes of subsection (2)(c) or harm to a community for the purpose of subsection (2)(d), the Scottish Ministers must consider the likely effect of granting or refusing consent to the transfer of land or tenant's interest on the lives of the persons comprising that community, including the likely effect on economic development, regeneration, public health, social wellbeing and environmental wellbeing.
264. Subsection (13) provides that in considering a decision under section 56 on an application under section 54, the Scottish Ministers must have regard to relevant non-Convention human rights and the desirability of encouraging equal opportunities within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998. Convention rights are excluded from this definition as the Scottish Ministers are already required to act compatibly with the Convention by virtue of section 57(2) of the Scotland Act 1998.
265. Subsection (14) defines relevant non-Convention human rights as meaning such human rights, other than Convention rights, as the Scottish Ministers consider to be relevant, and 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 any amendment in force in relation to the United Kingdom for the time being, and any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

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

266. Section 57 sets out the requirements for a ballot to establish that a right to buy application by a Part 5 community body, or the third party purchaser where relevant, has the support of its community.
267. Subsection (1) provides that a proposal by a Part 5 community body to exercise a right to buy, with a third party purchaser where relevant, will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-

month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of the proposal to buy the land or tenant's interest.

268. Subsection (2) provides that the ballot must be conducted as may be set out in regulations made by the Scottish Ministers. Subsection (3) sets out matters which must be included in those regulations.
269. Subsection (4) provides that if the ballot is not conducted as specified by regulations the right to buy under the application is extinguished.
270. Subsection (5) specifies that the Part 5 community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the Part 5 community body must provide to Ministers.
271. Subsection (6) provides that Ministers may require a Part 5 community body to provide further information about the ballot or any consultation that the community body may have held undertaken.
272. Subsection (7) provides that the Part 5 community body is responsible for the expense of conducting the ballot.
273. Subsection (8) provides that Scottish Ministers may set out in regulations circumstances in which the Part 5 community body may seek reimbursement for the expense of conducting a ballot from the Scottish Ministers.
274. Subsection (9) provides that Ministers may set out in regulations details about the circumstances, method, criteria and procedure for reimbursement of expenses for conducting a ballot. In particular subsection (9)(d) to (f) provides that regulations may make provision regarding the procedure to be followed when appealing a decision made by the Scottish Ministers in respect of the expenses of conducting the ballot, the persons who may consider an appeal and the powers of such persons.

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

275. Section 58 deals with the situation where there is more than one Part 5 community body applying to buying the same land or tenant's interest.
276. Subsection (1) provides that only one Part 5 community body may apply under Part 5 in relation to the same land or tenant's interest.
277. Subsection (2) provides that, where more than one Part 5 community body submits an application seeking to buy the same land or tenant's interest, Ministers have to decide which application is to proceed.
278. Subsection (3) provides that Ministers must not take any decision on any of the applications relating to the same land or tenant's interest before they have considered

all views and responses related to each application which they have received in answer to invitations under section 55.

279. Subsection (4) provides that, once Ministers have decided which Part 5 community body's application is to be allowed to proceed, the other Part 5 community body's right to buy shall be extinguished. It also specifies that Ministers must notify the decision to the owner of land, the tenant where the application is to buy a tenant's interest, the Part 5 community body and a third party purchaser, where relevant, and any person invited under section 55(1)(a) to send views on the application.

### **Section 59 – Consent conditions**

280. Section 59 provides that Ministers may impose conditions on their consent to an application under section 54 to exercise the right to buy.

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

281. Section 60 sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.
282. Subsection (1) provides that Ministers must give notice in writing of their decision, and their reasons for it, to consent to or refuse an application under section 54, and sets out that notice must be given to the owner of land, the tenant where the application is to buy a tenant's interest, the Part 5 community body and a third party purchaser where relevant, the Keeper and every other person who was invited to send views on the application under section 55(1)(a). The form of the notice is to be set out in regulations.
283. Subsection (2) provides that the notice must set out the land, or where relevant, the tenant's interest to which the decision relates, must set out to whom the land is to be transferred or the tenant's interest assigned and, where consent is given, must set out any conditions imposed by Ministers. It further specifies that the notice must contain information about the consequences of the decision and the date on which the consent is given or refused.

### ***Procedure following consent***

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

284. Subsection (1) gives Ministers power to make regulations prohibiting certain persons from transferring or otherwise dealing with the land, or tenant's interest where appropriate, in respect of which an application under section 54 has been made.
285. Subsection (2) sets out matters that the regulations under subsection (1) may include.
286. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 5 application has been made.
287. Subsection (4) sets out that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.

288. Subsection (5) provides that nothing in Part 5 prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

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

289. Section 62 sets out the procedure which follows the consent by Ministers to the exercise of a right to buy.

290. Subsection (1) provides that, where an application made under section 54 does not nominate a third party purchaser, the right to buy can only be exercised by the Part 5 community body if that body notifies the Scottish Ministers, the owner of the land and, where the application is to buy the tenant's interest, the tenant, of its intention to proceed within 21 days of receiving the notice of the valuation under section 56(13).

291. Subsection (2) provides that, where an application made under section 54 nominates a third party purchaser, the third party's right to buy can only be exercised if both the Part 5 community body and the third party purchaser notify the Scottish Ministers, the owner of the land and, where the application is to buy the tenant's interest, the tenant, of intention to proceed within 21 days of receiving the notice of the valuation under section 56(13).

292. Subsection (3)(a) provides that where a Part 5 community body does not nominate a third party purchaser, the Part 5 community body may withdraw its right to buy application at any time up to receipt of the valuation, by notice in writing to Ministers. Subsection (3)(b) allows the Part 5 community body to withdraw a confirmation of intention to proceed it has previously given, by giving notice in writing to Ministers.

293. Subsection (4) provides that, where an application nominates a third party purchaser, up until receipt of the valuation only the Part 5 body may withdraw the application. After receipt of the valuation, either the Part 5 body or the third party purchaser may withdraw a confirmation of intention to proceed it has previously given, by giving notice in writing to Ministers.

294. Subsection (5) provides that the Scottish Ministers must acknowledge receipt of a notice withdrawing an application, a notice of intention to proceed or a notice withdrawing the intention to proceed and send a copy of the acknowledgement to the Keeper, the owner of the land and, where the application is to buy a tenant's interest, the tenant.

### **Section 63 – Completion of purchase**

295. Section 63 deals with the purchase of land following Ministers giving consent to a Part 5 right to buy application.

296. Subsection (1) provides that the Part 5 community body, or third party purchaser where relevant, is responsible for preparing the documents necessary to effect the transfer of the land or assignation of the tenant's interest, for ensuring that the land or interest transferred or assigned is the same as that specified in the application and for ensuring that the transfer or assignation is undertaken in accordance with any conditions specified in the consent given by Ministers.

297. Subsection (2) provides that, where the Part 5 community body, or third party purchaser where relevant, cannot comply with its duty regarding the land or tenant's interest to be conveyed, due to the fact that all or part of the land or tenancy covered by the consent to the application is not owned or tenanted by the person named as owner or tenant in the application, then it must refer this matter to Ministers.
298. Subsection (3) provides that where a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.
299. Subsection (4) requires the owner of the land subject to the Part 5 right to buy to make title deeds and other documents available to, and transfer title to, the Part 5 community body, or third party purchaser where relevant.
300. Subsection (5) provides that if, within six weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be found, the Part 5 community body, or third party purchaser where relevant, can apply to the Lands Tribunal for an order requiring the production of those documents.
301. Subsection (6) provides that the Part 5 community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.
302. Subsection (7) applies where the application is to buy a tenant's interest and requires the tenant of the land subject to the Part 5 right to buy to make deeds and other documents available to and assign the interest to the Part 5 community body, or third party purchaser where relevant.
303. Subsection (8) provides that if, within six weeks of Ministers consenting to the application to buy the tenant's interest, the tenant refuses or fails to make these deeds available, or if they cannot be found, the Part 5 community body, or third party purchaser where relevant, can apply to the Lands Tribunal for an order requiring the production of those documents.
304. Subsection (9) provides that the Part 5 community body may apply, or third party purchaser where relevant, to the Lands Tribunal to authorise its clerk to effect the assignation where the tenant refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the tenant.

#### **Section 64 – completion of transfer**

305. Section 64 sets out the process for completing the transfer or assignation of a tenant's interest.
306. Subsection (1) provides that the consideration payable for the land or tenant's interest in respect of which the Part 5 right to buy is exercised is the value of that land or interest as assessed under section 65 by the valuer appointed by Ministers.

307. Subsection (2) provides that, subject to subsections (3) to (5), the consideration must be paid not later than six months after the date on which Ministers consented to the right to buy application under section 54.
308. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular, it allows the landowner, or tenant where the application is to buy a tenant's interest, and the Part 5 community body, or third party purchaser where relevant, to agree an alternative payment date. It provides that, where the assessment of the valuation of the land or tenant's interest or determination under section 66 (as the case may be) has not been completed within four months of the date that the Scottish Ministers consent to the application, then payment must be made not later than two months after the date of completion of the valuation or two months after the date when the section 66 determination is made, whichever comes later. Finally, it provides that where the valuation or section 66 determination is subject to an appeal which has not been decided within four months of the date of Ministers' consent, payment must be paid not later than two months after the date of the decision on the appeal against the valuation or, as the case may be, not later than two months after the date of the decision on the appeal the appeal against the section 66 determination, whichever occurs later.
309. Subsection (4) specifies circumstances where Scottish Ministers may extend the final settlement date on application of any of the parties. This can be done where there is an appeal of a decision or determination in relation to a related application under section 54.
310. Subsection (5) specifies that, where the owner is unable to grant a good and marketable title to the Part 5 community body, or third party purchaser where relevant, by the date of payment, or, where relevant, the tenant is not able to assign the tenant's interest to the Part 5 community body, or third party purchaser, as appropriate, then payment is to be made to and held by the Lands Tribunal pending either title is granted or the assignation effected or notification to the Lands Tribunal by the Part 5 community body, or third party purchaser where relevant, that it has decided not to complete the transaction.
311. Subsection (6) provides that the Scottish Ministers must within seven days acknowledge receipt of notice not to proceed under subsection (5), copying acknowledgement to the Keeper, the owner of the land, where the application is to buy a tenant's interest, the tenant, and the Part 5 community body or, as the case may be, the third party purchaser.
312. Subsection (7) specifies that, if the consideration is not paid by the Part 5 community body, or third party purchaser where relevant, by the due date, then confirmation of intention to proceed is treated as withdrawn and so the right to buy will no longer be able to exercised (this subsection does not apply where subsection (5) applies).
313. Subsection (8) provides that, when the Part 5 community body, or third party purchaser is granted title to the land or is assigned the tenant's interest, any heritable security which burdened the title or assignation immediately before granting of title or

assignment will cease to do so once the interest of the Part 5 community body or third party purchaser is registered in the Land Register of Scotland.

314. Subsection (9) provides that a heritable security that related to land or a tenant's interest other than that acquired through the Part 5 right to buy will continue to apply to that other land or interest.
315. Subsection (10) provides that where land is disburdened of a heritable security on purchase of the land or assignment of a tenant's interest, then unless the creditors otherwise agree, the Part 5 community body, or third party purchaser where relevant, must pay the creditors under that heritable security whatever sums are due to them.
316. Subsection (11) provides that the Part 5 community body, or third party purchaser where relevant, must deduct any sums paid to a heritable creditor under the provisions of subsection (10) from the amount that the body is due to pay the owner or the tenant. In effect, the landowner or tenant will receive a sum for the land or tenant's interest which will take account of the sum required to clear any securities.

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

317. Section 65 sets out the procedure for valuation of the land or tenant's interest in respect of which a Part 5 community body, or third party purchaser where relevant, is exercising its right to buy.
318. Subsection (1) requires that the Scottish Ministers, where they have consented to right to buy application made under Section 54, must appoint a valuer to assess the value of that land or tenant's interest within 7 days of that consent.
319. Subsection (2) provides that the validity of anything done under this section will not be affected by any failure by the Scottish Ministers' to comply with the time limit specified in subsection (1).
320. Subsection (3) sets out the role of the valuer.
321. Subsection (4) specifies that the value of the land or tenant's interest to be ascertained is the market value at the date Ministers consented to the application made under Section 54 to exercise the right to buy.
322. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, plus any depreciation in the value of other land and interests belonging to the seller or tenant as a result of the transfer of land or assignment of tenant's interest, plus any disturbance to the seller or tenant resulting from the transfer or assignment.
323. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 5 community body or third party purchaser where relevant). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or interests or disturbance.



324. Subsection (7) states that the Scottish Ministers will pay for the valuation under this section.
325. Subsection (8) requires the valuer to ask both the owner, or tenant, and the Part 5 community body, or third party purchaser where relevant, for their views in writing on the value of the land or tenant's interest and to take these representations into account in arriving at the valuation.
326. Subsection (9) requires that where the valuer receives views from the owner, or tenant, then the Part 5 community body, or third party purchaser where relevant, must be invited to send their views to the valuer. Similarly, that where the valuer receives views from the Part 5 community body, or third party purchaser where relevant, then the owner, or tenant, must be invited to send their views to the valuer.
327. Subsection (10) requires the valuer to consider any views sent under subsection (9)
328. Subsection (11) specifies that where the Part 5 community body, or third party purchaser where relevant, and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.
329. Subsection (12) specifies that where the Part 5 community body, or third party purchaser where relevant, and the tenant have agreed the valuation, they must notify the valuer in writing of that valuation.
330. Subsections (13) and (14) provide the parties the appointed valuer must notify of the valuation. This must be done within eight weeks of the valuer being appointed or within a longer period set by Ministers, as requested by the valuer.
331. Subsection (15) sets out that the validity of anything done under Part 5 is not affected by a failure by the valuer to comply with the time limit.

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

332. Section 66 sets out the implications of the exercise of the right to buy where the application to purchase a tenant's interest does not apply to the entirety of the land that the tenancy relates to.
333. Subsection (1) specifies that the valuer will consider and determine any questions as to the allocation of rents or rights and obligations generally payable or receivable under the tenancy.
334. Subsection (2) provides that the determination will be as the valuer considers to be equitable in all the circumstances.
335. Subsection (3) provides that the valuer must notify the Part 5 community body, the third party purchaser where relevant, and the tenant of the valuer's determination.

## **Compensation**

### **Section 67 – Compensation**

336. Section 67 provides for payment of compensation in connection with an application to exercise the Part 5 right to buy. It provides that the compensation will be payable by the Part 5 community body or third party purchaser, except where Ministers have refused the application, in which case the compensation due to the owner of land, or tenant, will be paid by Ministers.
337. Subsection (1) specifies the circumstances in which eligibility for compensation will arise in circumstances where there is no third party purchaser and provides that this compensation will be payable by the Part 5 community body.
338. Subsection (2) specifies the circumstances in which eligibility for compensation will arise in circumstances where there is a third party purchaser and provides that this compensation will be payable by the third party purchaser or, in one circumstance, the Part 5 community body.
339. Subsection (3) provides that the Part 5 community body, third party purchaser where relevant, will not be liable to pay compensation when a Part 5 right to buy application is made but is not approved by Ministers.
340. Subsection (4) provides that where an application has been refused, an owner of land, or where relevant, a tenant, is entitled to recover certain losses or expenses from the Scottish Ministers.
341. Subsection (5) provides that the Scottish Ministers may set out in regulations further detail on the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed.
342. Subsection (6) provides that, where the amount of compensation has not been settled by the parties within the timescale set out in regulations, either party can refer the question to the Lands Tribunal.
343. Subsection (7) provides that where parties refer compensation to the Lands Tribunal the party making the referral must notify the Scottish Ministers of the reference and its date (this doesn't apply where it is the Scottish Ministers who make the referral).
344. Subsection (8) requires the Lands Tribunal to send a copy of its findings on a question referred to it under subsection (6) to the Scottish Ministers.
345. Subsection (9) provides that failure to comply with subsections (7) or (8) has no effect on the right to buy or the validity of the reference under subsection (6).

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

346. Subsection (1) provides that the Scottish Ministers may, in certain circumstances, pay a grant to a Part 5 community body or, where relevant, a third party purchaser to

assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.

347. Subsection (2) specifies the circumstances in which payment of such a grant may be permitted and subsection (3) makes it clear that Ministers are not bound to pay a grant even if all the circumstances specified arise.
348. Subsection (4) provides that payment of a grant may be subject to conditions including conditions relating to repayment in the event of a breach.
349. Subsection (5) provides that a grant may be paid only if the Part 5 community body, or third party purchaser where relevant, applies for it, and subsection (6) provides that Ministers may set out in regulations the form of the application and the application procedure.
350. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers' decision on whether to pay a grant or not is final.

### *Appeals and references*

#### **Section 69 – Appeals to sheriff**

351. Section 69 sets out rights of appeal in connection with decisions of the Scottish Ministers on an application under section 54.
352. Subsections (1), (2), (5) and (6) provide that the owner of land, the tenant where the application relates to a tenant's interest, a person who is a member of the community to which a Part 5 community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Scottish Ministers' decision to consent to an application made under section 54.
353. Subsection (3) allows the Part 5 community body to appeal against a decision by the Scottish Ministers to refuse an application. Where there is more than one Part 5 community body wishing to purchase the land, subsection (4) provides that Ministers' decision on which community body's application will proceed is final and cannot be appealed to the sheriff.
354. Subsection (7) specifies the timeframe within which an appeal may be made.
355. Subsection (8) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriffdom in which the land which is the subject of the application (or as the case may be, over which the tenancy has been created) is located.
356. Subsection (9) specifies who each appellant must inform when an appeal is made.
357. Subsection (10) provides that the sheriff's decision may require rectification of the New Register, may impose conditions on the appellant, and is final.

**Section 70 – Appeals to Lands Tribunal: valuation**

358. Subsection (1) sets out the persons that may appeal the valuation under section 65 to the Lands Tribunal.
359. Subsection (2) identifies which persons may appeal a determination of allocation of tenant's interest under section 66 to the Lands Tribunal.
360. Subsection (3) requires an appeal under section 70 to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 65(13).
361. Subsection (4) provides that the Lands Tribunal may reassess the valuation of the land or, as the case may be, tenant's interest and may substitute its own determination for any determination under section 66.
362. Subsection (5) provides that the valuer may be a witness in the appeal proceedings.
363. Subsections (6) and (7) provide that the Lands Tribunal must give reasons for its decision on an appeal and issue a written statement of these reasons. They also specify the timescales within which the Lands Tribunal must issue the written statement of its reasons.
364. Subsection (8) provides that the validity of anything done under Part 5 is not affected by any failure of the Lands Tribunal to issue a written statement by the date required in subsection (6) or (7).
365. Subsection (9) requires the person making the appeal to notify Scottish Ministers within 7 days of the making of the appeal and also notify the date of the making of the appeal.
366. Subsection (10) requires the Lands Tribunal to send a copy of the written statement of reasons issued under subsection (6) to Scottish Ministers.
367. Subsection (11) provides that failure to comply with subsection (9) or (10) does not affect the right to buy or the validity of the appeal.
368. Subsection (12) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.
369. Subsection (13) provides that Ministers' powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 5.

**Section 71 – Reference to Lands Tribunal of questions on applications**

370. Section 71 sets out rights to refer questions relating to the Part 5 application to the Lands Tribunal.
371. Subsection (1) identifies the persons that can refer a question on application to the Lands Tribunal.

372. Subsection (2) identifies the persons whose representations the Lands Tribunal may consider in determining a reference.
373. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application only if they impose certain conditions under section 59, as directed by the Lands Tribunal.
374. Subsection (4) provides that, if the Lands Tribunal finds that the question on the application is not relevant to the Ministers' decision, the Lands Tribunal may decide not to consider the question further and find accordingly.
375. Subsection (5) provides that the person referring a question to the Lands Tribunal must notify the Scottish Ministers of the reference and the date of reference within seven days of referring it.
376. Subsection (6) provides that failure to comply with subsections (3)(a) or (5) has no effect on the validity of the application, the right to buy or the validity of the reference under this section.

#### **Section 72 – Agreement as to matters appealed**

377. Section 72 provides that parties to the Part 5 application are not prevented from settling or agreeing a matter which is subject to an appeal under sections 69 or 70 between or among them.

#### ***Mediation***

#### **Section 73 – Mediation**

378. Subsection (1) provides that the Scottish Ministers may arrange or facilitate mediation in relation to a proposed exercise of the Part 5 right to buy.
379. Subsection (2) sets out the persons who may request mediation under subsection (1).
380. Subsection (3) identifies steps the Scottish Ministers may take in arranging or facilitating mediation.

#### **PART 6 – ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS**

381. This Part provides for valuation of shootings and deer forests by the assessors (who are statutorily appointed by local authorities to undertake valuation of properties, including for the purposes of levying non-domestic rates) and corresponding entries in the valuation rolls.

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

382. Shootings and deer forests are each specified as lands and heritages in section 42 of the Lands Valuation (Scotland) Act 1854 but have been excluded from valuation rolls (and thereby exempted from non-domestic rates) since 1 April 1995, as provided for

by section 151 of the Local Government etc. (Scotland) Act 1994 (the 1994 Act). Section 74 repeals the exclusion of shootings and deer forests from valuation rolls by amending the 1994 Act to repeal the words “shootings, deer forests” from section 151(1) of that Act.

383. Once the exclusion has been repealed, section 7 of the Local Government (Scotland) Act 1975 applies to the new entries, and these shootings and deer forests will be liable to non-domestic rates, based on the assessors’ valuations, subject to any eligibility for rates relief.

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

384. Schedule 14 of the 1994 Act had repealed the Sporting Lands Rating (Scotland) Act 1886, provisions of which related to the valuation of shooting and deer forests. Section 75 amends the Local Government (Scotland) Act 1975 to insert section 1A, which requires separate entries in the valuation rolls for any shootings and any deer forests in so far as they relate to or are situated in the corresponding valuation area, when the assessors are making up or altering valuation rolls.

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

385. Section 76 amends section 6 of the Valuation and Rating (Scotland) Act 1956 by inserting subsections (8ZA) and (10A). The effect of this amendment is that, in arriving at the net annual value of deer forests, assessors may have regard to such factors relating to the management of deer as they consider appropriate.

## **PART 7 – COMMON GOOD LAND**

### **Section 77 – Change of use of land forming part of the common good**

386. At present, where there is a question as to the right of a local authority to take land out of the common good the authority can dispose of such land but only after obtaining the consent of the Court of Session or the sheriff. By amending section 75 of the Local Government (Scotland) Act 1973, this section extends this power to cases where an authority wishes to use such land for a different purpose without disposing of it. As with the existing power, the Court of Session or the sheriff will be able to impose conditions on any consent that may be granted.

## **PART 8 – DEER MANAGEMENT**

### **Section 78 – Functions of deer panels**

387. This section allows for further functions to be conferred on deer panels. Deer panels are appointed by Scottish Natural Heritage (SNH) under section 4 of the Deer (Scotland) Act 1996 (the 1996 Act), subject to the approval of the Scottish Ministers. Deer panels are appointed for the purpose of providing advice to SNH on the subject of deer management. This section inserts new subsections into section 4 of the 1996 Act to enable the Scottish Ministers to make regulations conferring new functions on deer panels, including encouraging engagement of the local community in deer management; communicating issues regarding deer management to the local

community; and, communicating the views of the local community to those involved in deer management.

### **Section 79– Review of compliance with code of practice on deer management**

388. This section inserts new section 5B into the 1996 Act, and requires SNH to carry out a review into compliance with the code of practice on deer management.
389. Subsection (1) specifies that SNH must carry out a review into the extent to which the code of practice on deer management is being complied with and is effective in promoting sustainable deer management. In accordance with subsection (2), SNH must submit a report to Scottish Ministers setting out their views as to the extent to which the code has been complied with, and has been effective in promoting sustainable deer management. It must also include any recommendations SNH consider appropriate. Subsection (3) requires the Scottish Ministers to lay the report before the Scottish Parliament. Subsection (4) specifies the timescales for the review. The first review must be carried out within 3 years of section 79 of the Land Reform (Scotland) Act 2016 coming into force, and subsequent reviews are to be carried out within three years of the date on which the report in respect of the previous review was laid before the Scottish Parliament.

### **Section 80 – Deer management plans**

390. This section provides for a new power for SNH to require a land owner or occupier to produce a deer management plan. SNH can approve the plan with or without modification or reject it. Failure to develop or implement a plan would be grounds for SNH to move to the development of a deer control agreement under section 7 of the 1996 Act. SNH already has the power, where a section 7 agreement fails, or where it is not possible to reach agreement, to proceed to a deer control scheme under section 8 of the 1996 Act.
391. Subsections (1) and (2) provide that section 5A(2)(c) of the 1996 Act is amended to specify that the code of practice on deer management may set out examples of circumstances where SNH may require a deer management plan to be produced. Subsection (3) makes a textual amendment to the italic cross heading before section 6 of the 1996 Act.
392. New section 6A is inserted into the 1996 Act by section 80(4) of the Act. New section 6A requires two sets of conditions (A and B) to be met before SNH, having had regard to the code of practice on deer management, can require an owner or occupier of land to produce a deer management plan.
393. Subsection (1)(a) specifies that the plan should set out the measures that those owners and occupiers consider should be taken, the time limit for taking those measures, who is to take those measures, and any other matters which appear to SNH to be necessary. Subsection (1)(b) provides that the plan is to be submitted to SNH for approval.
394. Subsection (2) sets out that condition A is met where deer or deer management or the lack of deer management have caused, are causing, or are likely to cause damage, including to woodland, to agricultural production, including any crops or foodstuffs, to

livestock, to the welfare of deer to the natural heritage generally, to public interests of a social, economic or environmental nature, or where they have become a danger to public safety.

395. Subsection (3) sets out that condition B is met if management of deer is required to prevent further damage, remedy damage or prevent danger.
396. Subsection (4) provides that, in subsection (2)(a)(i), “the natural heritage” has the same meaning as in section 7(2) of the 1996 Act.
397. Subsection (5) provides that a deer management plan must be submitted to SNH within 12 months unless a later date is specified by SNH.
398. Subsection (6) provides that SNH may approve a deer management plan with or without modification or reject it. In accordance with subsection (7), before approving a plan with modifications, SNH must consult the owners and occupiers of land who submitted the plan on the proposed modification. Subsection (8) provides that a plan can be amended until SNH decides to approve or reject it.
399. New subsections (4A) and (4B) are inserted in section 7 (control agreements) of the 1996 Act. Subsection (4A) provides that subsection (4) applies where new subsection (4B) applies. Section 7(4) of the 1996 Act provides for SNH, after giving notice to owners and occupiers it considers to be substantially interested in SNH forming a preliminary view on damage caused by deer, to consult with those owners or occupiers on what measures are to be taken, on the time limit for those measures to be taken, and on who is to carry out such measures. New subsection (4B) applies where SNH has given notice under the new section 6A(1) that a deer management plan is required and either the date has passed and a plan has not been submitted, or the plan has been submitted but rejected, or the plan has been approved but the measures set out have not been taken, and in addition where SNH is satisfied that conditions A and B in section 6A(1) continue to be met.

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

400. This section amends the 1996 Act to insert new section 40A (power of SNH to require return on number of deer planned to be killed), and to make amendments to sections 16 and 17A and schedule 3 of that Act consequential to the insertion of this new section.
401. Subsection (2) amends section 16 (service of notices) to take account of notices served under new section 40A.
402. Subsection (3) amends section 17A (register of persons competent to shoot deer) to allow regulations made under that section to repeal and replace the provision made by section 40A.
403. New section 40A (which is inserted by subsection (4)) provides for a new power for SNH to require a return from an owner or occupier on the number of deer planned to be killed on their land in the following year. The return is to show how many deer of each species and of each sex are planned to be killed.



404. Section 40A(2) provides that any notice 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. Section 40A(3) specifies that anyone who fails to provide the required return within 36 days after service of the notice commits an offence.
405. Subsection (5) amends Schedule 3 of the 1996 Act so that the offence of failing to submit a return is punishable by a fine of up to level 3 on the standard scale. This applies both to the offence under new section 40A(3) and to an offence under section 17A(6)(aa) of the Act.

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

406. Schedule 3 of the 1996 Act is amended so that the maximum fine for the offence of failing to comply with a control scheme is increased from level 4 on the standard scale to £40,000.

## **PART 9 – ACCESS RIGHTS**

### ***Core paths***

#### **Section 83 – Core paths plans**

407. Subsection (1) provides that the Land Reform (Scotland) Act 2003 is to be amended. Some minor amendments are made to section 18 by subsection (2). In subsection (3) a number of textual amendments are made to section 20 of the Land Reform (Scotland) Act 2003, which provides for the review and amendment of the core paths plan. Inserted section 20(1) provides that two alternative circumstances (which are not required simultaneously) may activate a review. The local authority may review their plan when they consider it appropriate to do so. Alternatively, they must review their plan where Ministers require them to do so.
408. Subsection (4) of the Act inserts new sections 20A to 20D into the Land Reform (Scotland) Act 2003.
409. Inserted section 20A sets out the procedure to be followed when amending a core paths plan following a review. Subsection (1) sets out notification and consultation requirements. Subsection (2) provides that where there are no objections (or where any objection made is withdrawn), the local authority must adopt the amended plan. However, where there are unwithdrawn objections the local authority must not adopt the amended plan unless Ministers direct them to do so (subsection (3)). Subsection (4) provides that, where the local authority modifies the amended plan following the notification and consultation carried out under subsection (1) (which could be done for example to resolve an objection or to respond to a change in circumstances), it must notify and consult such persons as they consider appropriate on that modification. Where an objection remains unwithdrawn, Ministers cannot make a direction without a local inquiry first being held into whether the amended plan will, if adopted, fulfil the purpose in section 17(1), namely whether the system of paths set out in the plan will be sufficient for the purpose of giving the public reasonable access throughout the local authority's area (subsection (5)). In accordance with subsection (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. Subsection (9) sets

out the procedure to be followed by the local authority following adoption of the amended plan, and subsections (10) and (11) make provision for circumstances where Ministers decline to make a direction under subsection (8).

410. Inserted section 20B provides for the service of a written notice on the owners and occupiers of land which is to be included in a core paths plan for the first time following a review. Such a notice is to be served at the same time the local authority complies with section 20A(1). The notice is to explain the potential effect of the amended plan on the land in question, set out where the original core paths plan and the amended plan may be inspected, and specify the period for objections and representations to be made. Subsection (3) provides for the form of notification to be given under section 20B where it has not been possible to identify the owner or occupier of the land.
411. Inserted section 20C provides that a single amendment may be made in between full core paths plan reviews where the local authority consider this would be appropriate. The local authority must carry out such consultation on and notification of the proposal as it thinks fit, inviting objections and representations within a specified period.
412. Inserted section 20D sets out the considerations that the local authority must take into account when adding, removing or diverting a core path under section 20C, and applies much of the procedure used in a full core paths plan review (e.g. service of notice under section 20B, referral to a local inquiry where there are unwithdrawn objections) to a single amendment under that section.

### ***Court applications***

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

413. Section 84 amends section 28 of the Land Reform (Scotland) Act 2003 (judicial determination of existence and extent of access rights and rights of way) to expand upon current notification requirements when an application to the sheriff court is made. In making an application for a declaration under section 28(1)(b)(i) as to whether a person who has exercised, or purported to exercise access rights, has exercised those rights responsibly for the purposes of section 2 of that Act, inserted subsection (7A) provides that the person seeking the declaration must serve the application on the person whose exercise of access rights (or purported exercise of access rights) is in question. This is additional to the existing requirements in section 28(4) to serve the application on the local authority and in section 28(7) to serve the application on the owner of the land (if the person seeking the declaration is not the land owner).

## **PART 10 – AGRICULTURAL HOLDINGS**

### **CHAPTER 1 – MODERN LIMITED DURATION TENANCIES**

#### *Modern limited duration tenancies*

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

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

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

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

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

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

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

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

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

420. Section 8D sets out the notice process to be used for tenants and landlords when applying the break clause for MLDTs (as inserted in the 2003 Act by section 85 of this Act) which enables a tenancy to be terminated after five years. Subsections (6) and (7) set out the grounds on which a landlord can give notice: in cases when the new entrant is not using the land in accordance with the rules of good husbandry, or is failing to comply with other terms of the MLDT lease.
421. Section 8E provides that an MLDT is extended for a further seven year period unless terminated in accordance with section 8A, 8B or 8C and also provides the ability for a landlord and tenant to extend the term of the MLDT by agreement in writing.

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

422. Section 88 amends the 2003 Act by inserting a new section 16A after section 16 (leases not terminated by variation of terms, etc). Section 16A provides for the regulation of fixed equipment in relation to MLDTs. Subsection (1) requires a landlord, within six months of the lease starting, to provide such fixed equipment to enable the tenant to maintain efficient agricultural production for the land as specified by the terms of the lease, and to put the fixed equipment present on the holding into the condition specified in the schedule of fixed equipment. Subsection (2) specifies the information to be provided in the schedule of fixed equipment. Subsection (3) requires that the schedule of fixed equipment must be agreed within 90 days of the tenancy starting and subsection (4) enables the schedule to be varied or substituted if both parties are in agreement.
423. Subsection (5) incorporates a default term into every lease for an MLDT, in the absence of express provision to the contrary, that a landlord is required to renew or replace the fixed equipment as necessary due to natural decay or fair wear and tear. It also confirms that the tenant's liability for fixed equipment extends only to the condition the equipment was in at the time of the completion of the schedule of fixed equipment or to its condition following any improvement, provision, renewal or replacement during the tenancy.
424. Subsection (6) sets out that costs associated with compiling the schedule must be covered equally by the landlord and the tenant, unless agreed otherwise.
425. Subsection (7) states that any agreement which requires the tenant to accept the expense of works that a landlord is required to execute to fulfil a landlord's own obligations will have no effect.
426. Subsection (8) provides that any MLDT lease requiring a tenant to pay all or part of a premium for fire insurance for fixed equipment will be of no effect.

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

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

428. Subsection (2) states that any terms within a lease which provide for irritancy solely on the grounds that the tenant is not resident is to have no effect.
429. Subsection (3) states that where a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, subject to subsections (4) and (5), what is good husbandry is to be construed in accordance with schedule 6 of the Agriculture (Scotland) Act 1948.
430. Subsection (4) provides that conservation activities are to be treated as being in accordance with the rules of good husbandry if carried out in accordance with any agreement entered into by the tenant under any Act, or if carried out in accordance with the conditions of a grant for any activities paid out of the Scottish Consolidated Fund or any other public grant which the Scottish Ministers may specify by regulations.
431. Subsection (5) requires use of the land, or a change to the land, for a non-agricultural purpose permitted under sections 40 and 41 of the 2003 Act (diversification) to be treated as being use in accordance with the rules of good husbandry.
432. Subsection (6) sets out the process to be followed by a landlord if the landlord intends to irritate the lease, stating that a landlord must confirm in writing to the tenant the timescale for the tenant to remedy the breach, which cannot be less than a year from the date of the notice.
433. Subsection (7) enables the notice served under subsection (6) to be extended by agreement of both the parties or by the Land Court.
434. Subsection (8) provides that a landlord cannot enforce their right to remove the tenant on grounds of irritancy unless the period of the notice or any extension to that notice has expired, the tenant has not remedied the breach, and the landlord has given notice to the tenant of the landlord's intention to enforce the right to remove the tenant at least two months before the date on which the landlord plans to do so.

### ***Conversion of 1991 Act tenancies***

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

435. Section 90 of the Act amends the 2003 Act by inserting section 2A to allow the conversion of a 1991 Act tenancy into a modern limited duration tenancy. The provision in section 2 of the 2003 Act allowing for conversion from a 1991 Act tenancy to a limited duration tenancy is repealed as no new LDTs will be created (due to the repeal of section 5 of the 2003 Act by section 85(2) of the Act).
436. Subsections (1) and (2) of new section 2A of the 2003 Act state that the tenant and the landlord may agree in writing that the 1991 Act tenancy is to be terminated on a fixed date provided that an MLDT lease of at least 25 years' duration is entered into that comprises the same land under the 1991 Act tenancy and that the MLDT has effect from the date on which the 1991 Act tenancy terminates under the agreement.

437. Subsection (3) provides that the landlord or tenant is entitled to revoke the agreed termination of the 1991 Act tenancy and the planned MLDT lease at any time before the date fixed for termination.
438. Subsection (4) of new section 2A states that on termination of the 1991 Act tenancy, the tenant is entitled to any compensation due for improvements under Part 4 and section 45A of the 1991 Act.
439. Subsection (5) disapplies section 21 of the 1991 Act in relation to 1991 Act tenancies terminated under subsection (1) of this section.
440. Subsection (6) of new section 2A ensures that an MLDT converted from a 1991 Act tenancy may not provide for a break clause.

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

441. Section 91 of the Act inserts a new section 2B into the 2003 Act to provide for conversion of LDTs into MLDTs.
442. Subsections (1) and (2) of new section 2B of the 2003 Act state that the tenant and the landlord may agree in writing that the LDT is to be terminated on a fixed date provided that an MLDT lease of a duration not less than the term remaining under the LDT lease is entered into that comprises the same land under the LDT tenancy and that the MLDT has effect from the date on which the LDT terminates under the agreement.
443. Subsection (3) provides that the landlord or tenant is entitled to revoke the agreed termination of the LDT and the planned MLDT lease at any time before the date fixed for termination.
444. Subsection (4) and (5) of new section 2B provide that the tenant is not entitled to compensation under Part 4 of the 2003 Act (or, as the case may be, under the lease) for improvements at the point of conversion but that improvements for which compensation is due upon termination of the LDT are to be regarded as if they were improvements carried out under the MLDT.
445. Subsection (6) disapplies section 8 of the 2003 Act, on the continuation and termination of LDTs, in relation to LDTs terminated under subsection (1) of this section.
446. Subsection (7) of new section 2B ensures that an MLDT converted from an LDT may not provide for a break clause.

## **CHAPTER 2– REPAIRING TENANCIES**

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

447. Section 92 amends the 2003 Act by inserting new sections 5C and 5D.
448. Section 5C of the 2003 Act sets out how a repairing tenancy is created. Subsection (1) states that a repairing tenancy is to be for a period of not less than 35 years; it

cannot be a 1991 Act tenancy and the lease must expressly state that it is one to which section 5C applies; the land leased cannot be let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord; and during the "repairing period" the tenant is required by the lease to improve the land so as to bring it into a state capable of being farmed in accordance with the rules of good husbandry after the expiry of the repairing period.

449. Subsection (2) defines the duration of the repairing period as at least 5 years from the start of the tenancy or such longer period as is initially agreed between the parties. Alternatively, under subsection (3), the repairing period may be extended at any time before its expiry by agreement between the parties, or by the Land Court upon application of either party. The Land Court may extend the repairing period if it considers it appropriate in all the circumstances and by such a period as it considers necessary (subsection (4)). There are significant differences between the requirements on parties to a repairing tenancy during this period and after the expiry of the period.
450. Subsection (5) provides that the lease may contain provision for a break clause.
451. Subsection (6) states that for the purposes of section 5C and 5D, good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
452. Section 5D contains provision exempting the tenant from liability for not farming the land in accordance with the rules of good husbandry during the repairing period.

### **Section 93 – subletting**

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

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

454. Section 94 inserts new sections 8F and 8G into the 2003 Act. Section 8F applies the same process for the termination, continuation and extension of a repairing tenancy as provided for MLDTs by section 87 of the Act, subject to section 8G.
455. Section 8G provides the process whereby both parties may end a repairing tenancy during the repairing period if it contains a break clause.
456. Subsection (2) of new section 8G states that at any time during the repairing period, the tenant can terminate the tenancy by giving notice to the landlord.
457. Subsection (3) of that section sets out the notice requirements here: the notice must be in writing and given at least 1 year but no more than 2 years before the date specified in the notice on which the tenant intends to quit the land.
458. Subsection (4) of new section 8G states that the landlord may also terminate the tenancy but such termination can only take effect on the expiry of the repairing period. Subsection (5) then sets out the notice requirements here, including that the landlord

must give reasons for terminating the tenancy at this point.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

## **CHAPTER 3 – TENANT’S RIGHT TO BUY**

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

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

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

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

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

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

## **CHAPTER 4 – SALE WHERE LANDLORD IN BREACH**

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

475. Section 100 inserts a new Part 2A into the 2003 Act. This enables the tenant to apply to the Land Court for an order for sale of the holding where the landlord is in breach of obligations under the tenancy and this is affecting the tenant's ability to farm in accordance with the rules of good husbandry.
476. Section 38A sets out the circumstances when the tenant can make an application to the Land Court for order for sale.
477. Subsections (1) and (2) of inserted section 38A provide that a tenant can apply to the Land Court for an order for sale if the landlord has failed to comply with a previous order by the Land Court under section 84(1)(b) of the 2003 Act to remedy a breach of obligations to the tenant, or failed to comply with an equivalent arbitral award. The breach in question must be material and the landlord must not have complied with the order or award by the date specified.
478. Inserted section 38A(4) states that the tenant must give notice of the application for the order for sale to the landlord and to any creditor who holds a heritable security over an interest in the land and to anyone else that the Scottish Ministers may prescribe by regulations.
479. Section 38A(5) states that, where a tenant acquired the pre-emptive right to buy under section 28 of the 2003 Act and this right to buy was subsequently extinguished, the tenant may not apply for an order for sale until after the period of 12 months has elapsed from the date the right to buy was extinguished.
480. Inserted section 38B sets out the test which the Land Court is to apply when deciding an application for an order for sale.
481. Subsection (1) of section 38B provides that if the landlord has failed to comply with the order or award issued by the Land Court, then the Land Court has the power to order the sale if it is satisfied that the breach is material; that the order or award has not been complied with within the specified period; that the breach is substantially and adversely affecting the tenant's ability to farm in accordance with the rules of good husbandry; that greater hardship would be caused by not making the order than by making it; and that in all circumstances the order for sale is appropriate.
482. Subsection (2) of section 38B provides the Land Court with the power to make an order for sale despite the fact that the owner has a legal incapacity or disability (for instance, minority or a mental disorder) that would affect the owner's ability to transfer ownership.
483. Subsection (3) states that where the owner is already obliged to transfer ownership to a person other than the tenant – for example, where missives have already been concluded for the sale of the land – the Land Court may not make an order for sale. However, the Land Court can make the order for sale where the transfer is one set out in subsection (4) and where this transfer is or forms part of a scheme or arrangement,

or a series of transfers, and the main purpose or effect of which, or one of the main purposes or effects, is the avoidance of the making of an order for sale. The transfers set out in subsection (4) are: if the transfer is not for value; if the transfer is between spouses after they have ceased living together; if the transfer is between companies in the same group; if the transfer is as a result of assumption, resignation or death of one or more of the partners in a partnership, or the assumption, resignation or death of one or more of the trustees of a trust.

484. Subsection (5) states when it is considered that companies form part of the same group for the purposes of subsection (4)(c).
485. Subsection (6) states that the Land Court must give notice of the order for sale to the Keeper of the Registers of Scotland, the landlord, the owner, any creditor, and any other person whom the Scottish Ministers may prescribe by regulations.
486. Subsection (7) states that the definition of good husbandry, for the purposes of subsection (1)(b), is in schedule 6 of the Agriculture (Scotland) Act 1948.
487. Subsection (8) defines owner in this new Part of the 2003 Act as including persons in whom the land is vested for insolvency and for other purposes listed in paragraph (a), or for the purposes for which a person would be appointed as a judicial factor, under paragraph (b).
488. Inserted section 38C provides the Scottish Ministers with the power to make regulations prohibiting the transfer of ownership of the land which has been subject to an order for sale by the Land Court. These regulations may specify, among other things, exactly what transfers or dealings are allowable and which are prohibited, who is prohibited and for what period; and may also make provision for the inclusion and the removal of certain information in the deeds relating to the land.
489. Section 38D (1) provides that when an order for sale has been made by the Land Court, any pre-emption, redemption or reversion rights or any other rights deriving from any other option to purchase, exercisable over the land to which the order for sale relates, will be suspended from the date when the Land Court makes the order. These rights will be revived when the transfer of the land is completed, or if the transfer is not completed before the end of the period set out in subsection (2) – or, if the order for sale ceases to have effect, on the end of that period, or on the order ceasing to have effect, whichever occurs first. Subsections (4) and (5) of section 38D give the Scottish Ministers the power to make regulations to further provide for the suspension and revival of other rights in or over land in respect of which an order for sale has been made. The regulations may among other things specify the rights to which the regulations do and don't apply, the period that these rights are suspended for and the circumstances in which the rights are revived.
490. Section 38E(1) provides that, where the Land Court has ordered the sale of the land and where an appeal by the owner has been brought and dismissed, or the period in which to lodge an appeal has elapsed, the tenant has the right to buy the land.
491. Subsections (2) and (3) state that the tenant must give notice of intention to buy the land to the following people: the owner, the Land Court and the Keeper of the Registers of Scotland.

492. Subsection (4) states that this notice must be given within 28 days of the day after the appeal was dismissed or the day after the last day on which an appeal could be lodged.
493. Subsections (5) and (6) state that, if at any stage the tenant decides not to proceed with the purchase, notice must be given to the same group of people listed above. If the tenant does not give notice of intention to purchase within 28 days or if notice is given that the tenant does not wish to proceed, the tenant's right to buy is extinguished.
494. Inserted section 38F outlines the procedure for the tenant buying the land.
495. Subsection (2) requires the tenant to make an offer to buy the land at a price agreed between the tenant and the seller, or where no such agreement is available, at either the price assessed by an independent valuer or the price determined by an appeal against such an independent valuation. The tenant is not under any obligation to buy, if the parties do not agree on price or do not wish to appeal against the valuation. Under these circumstances the tenant should give notice that they do not want to proceed with the purchase as specified under section 38E(5).
496. Subsections (3) and (4) state that the offer must specify the date of entry and the date of payment of the price, and when these dates should occur.
497. Subsection (5) states that the offer to buy may also include any conditions which are necessary or expedient to achieve completion of the transfer of the land.
498. Subsection (6) places an obligation on the seller to provide the tenant with the deeds and other documents that the tenant needs to complete title and transfer ownership of the land; and a consequent obligation to transfer title.
499. Inserted section 38G makes provision for the process for the appointment of the valuer and valuation of the land where the tenant and the landlord cannot agree a price.
500. Sections 33 to 36 of the 2003 Act deal with the appointment of a valuer and the valuation procedures in relation to a tenant's right to buy under Part 2 of that Act. These sections will apply, subject to certain modifications set out in section 38G, when the Land Court orders sale of the land, as outlined in inserted section 38B and the tenant exercises the right to buy.
501. Section 33 of the 2003 Act provides for the appointment of a valuer where a price is not agreed between a landlord and a tenant, section 34 provides for the procedure for the valuation of the land, and section 35 covers special provision where the buyer is a general partner in a limited partnership. These provisions will apply when the court orders sale of the land, with slight modifications as outlined in section 38G(2)(a) to (c). In particular section 33(5), which provides for the requirement of two valuers and an oversman, does not apply here.
502. Section 36 of the 2003 Act contains further provisions for valuation procedures and these are to apply when the court orders sale of the land, with modifications as outlined in subsection (2)(d). A new subsection is inserted after section 36(6) which states that, if the Land Court has made an order requiring the seller to complete the sale and the seller complies with this order but the tenant does not proceed with the purchase, the

tenant is then liable for any expenses of the valuer met by the seller under section 36(5).

503. Section 37 of the 2003 Act, regarding appeals to the Lands Tribunal against valuation, and section 38, regarding referral of certain matters by the Lands Tribunal to the Land Court, apply when the court orders sale of the land, with modifications.
504. Inserted section 38H sets out the procedure if a seller fails to complete a transaction to transfer ownership of the land.
505. Subsections (1) and (2) provide that, if the seller has not, within the period fixed or agreed, supplied the tenant with the documents necessary to enable the tenant to complete the transfer of ownership, or has not concluded the missives or taken all the steps which the seller could reasonably have taken to conclude the missives, the tenant may under subsection (3) apply to the Land Court for an order directing the seller to carry out the necessary actions required to complete the sale, within such period as is specified by the order.
506. Subsection (4) provides the Land Court with the power to authorise its principal clerk to complete and deliver the necessary documents to enable the transfer of ownership if the seller does not comply with the order to conclude missives or transfer the ownership of land.
507. Inserted section 38I sets out the procedure if a tenant fails to complete a transaction to transfer ownership.
508. Subsections (1) and (2) provide that, if a tenant has not, within the period fixed or agreed, concluded the missives or taken all the steps which the tenant could reasonably have taken in the time available to conclude the missives, the seller may under subsection (3) apply to the Land Court for an order directing the tenant to carry out the necessary actions required to complete the sale within such period as is specified by the order.
509. Subsection (4) provides that the tenant's right to buy is extinguished if the tenant fails to comply with an order by the Land Court to take the necessary steps to complete the transfer of ownership. Alternatively, if the Land Court has not issued an order for either party to conclude missives and they have not been concluded, either within a 12 month period from when the tenant first gave notice of intention to buy or within the extended period granted by the Land Court in response to an application by the tenant, then the tenant's right to buy would also be extinguished.
510. Inserted section 38J sets out the procedure for completion of sale to the tenant
511. Subsections (1) and (2) state that the price to be paid for the land should be made by the "final settlement date", which is a date that has been agreed or specified by an order of the Land Court.
512. Subsection (3) states that if, on the final settlement date, the seller is not able to transfer ownership of the land to the tenant, the price, or the sum fixed by the valuer, is to be entrusted to the Land Court, until either title is transferred, or the tenant gives

notice that the tenant does not want to proceed with the transaction, or the Land Court orders its release.

513. Subsection (4) provides that, if the tenant has not paid the price for the land by the final settlement date, then the right to buy is extinguished except in circumstances where the seller has been unable to transfer title to the tenant by the final settlement date.
514. Subsection (5) provides that any security that burdened the land prior to the transfer of ownership to the tenant ceases to have effect after the transfer of ownership has occurred and title to the land is registered in the Land Register of Scotland.
515. Subsections (7) and (8) provide that the tenant is required to pay any outstanding amount due to any creditors who have an interest in the land, and this amount will be deducted from the price the tenant gives to the seller.
516. Subsection (9) provides that the validity of a title passed to a tenant under new Part 2A is unaffected by any legal incapacity or disability of the previous owner.
517. Inserted section 38K sets out the effect of extinguishing the right to buy.
518. Where the tenant's right to buy is extinguished under the new order for sale provisions, the tenant may exercise the pre-emptive right to buy under section 28 of the 2003 Act, providing that 12 months has elapsed since the right to buy is extinguished under the new order for sale provisions.
519. Inserted section 38L outlines the circumstances in which sale to a third party may arise.
520. Subsections (1), (2) and (3) provide that, where a tenant's right to buy has been extinguished, the tenant may within 28 days of that date make an application to the Land Court to order sale of the land on the open market.
521. Subsection (4) requires the tenant to give notice of the application for sale to the owner, any creditor with an interest in the land and any other persons that the Scottish Ministers prescribe by regulations.
522. Subsection (5) gives the Land Court the power, upon consideration of all the circumstances, to vary order the sale to allow sale of the land on the open market.
523. Subsection (6) states that the original order for sale ceases to have effect where no application has been made by the tenant under subsection (2) for the Land Court to vary the order for sale to allow sale of the land on the open market, or where such an application has been made and is refused by the Land Court.
524. Inserted section 38M outlines the procedure for sale to a third party.
525. Subsection (1) enables the Scottish Ministers to make further provision by regulations about the sale of land on the open market to a third party. These regulations could make provision to prevent the sale of the land on the open market to the tenant

or a family member of either the tenant or the landlord. Subsection (2) sets out a list of the matters that these regulations may make provision for.

526. Inserted section 38N sets out certain restrictions on notices to quit for a period of 10 years following the sale of the land to a third party.
527. Subsection (3)(a) prevents the landlord from issuing an incontestable notice to quit in the two circumstances set out in section 22(2)(a) and (b) of the 1991 Act. The first is where the notice to quit relates to permanent pasture which has traditionally been let annually for seasonal grazing or kept in the landlord's possession and which has been let for a definite and limited period as arable land. The second circumstance is where the notice to quit is given on the ground that the land is required for a use, other than agriculture, for which planning permission requires to be obtained or has been obtained.
528. Subsection (3)(b) modifies the incontestable notice to quit provision in section 22(2)(c) of the 1991 Act so that an incontestable notice to quit is possible where the Land Court, on an application by the new landlord, grants a certificate of bad husbandry.
529. Subsection (5) inserts new subsections into section 26 of the 1991 Act to provide that where the tenant's failure to farm in accordance with the rules of good husbandry is attributable to a material breach of the former landlord's obligations, which were the basis for the sale order, then no certificate of bad husbandry can be given.
530. Subsection (6) amends section 43 of the 1991 Act to provide that if a notice to quit on the permanent pasture ground is upheld by the Land Court then compensation continues not to be payable for disturbance of that.
531. Inserted section 38O makes provision for payment by the tenant or third party who has bought the land to the former owner where the land is sold within 10 years.
532. Subsections (1) and (2) provide that if, before the end of 10 years after acquiring the land following an order for sale by the Land Court, the tenant or third party who bought the land on the open market (the original buyer) sells the land on at a price higher than the price paid to the person from whom the land was bought (the original seller), then the original buyer must pay to the original seller a proportion of the difference between what the original buyer paid the original seller for the land and the price at which the original buyer subsequently sells the land.
533. Subsection (3) sets out what the proportion of the difference that must be paid to the original seller should be. This percentage varies depending at what stage within the 10 year period the land is sold.
534. Subsection (4) provides the Scottish Ministers with the power to make further provision by regulations about the amount that the original buyer must make to the original seller. Subsection (5) makes it clear that this includes circumstances where only part of the land bought under the order for sale is subsequently sold or circumstances where no payment at all is required. The regulations may also exclude from this "claw-back" calculation any increase in the value of the land, as

subsequently sold, which is due to specified factors: for instance, improvements which were carried out by the tenant.

535. Inserted section 38P sets out compensation provisions.

536. Subsection (1) provides that any person who has incurred a loss or expense as a result of complying with their obligations under Part 2A of the 2003 Act (as inserted by section 100 of this Act), or as a result of the failure of the tenant to complete the purchase after giving notice of intention to buy the land, is entitled to recover compensation from the Scottish Ministers.

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

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

## **CHAPTER 5 – RENT REVIEW**

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

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

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

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

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

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

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

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

546. Sub-paragraph (1) sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the holding, the current and proposed rent payable. The rent review notice also sets out the “rent agreement date” which is the date by which the landlord and tenant must agree



- the rent. Sub-paragraph (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.
547. Sub-paragraph (3)(a) sets out that the rent agreement date cannot fall earlier than 12 months or later than two years from the date on which the rent review notice is served.
548. Sub-paragraph (4) creates a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them.
549. Paragraph 3 of schedule 1A provides details around the timing of the rent review notice.
550. Sub-paragraph (1) provides that a rent review notice can be served only if the rent agreement date is three years after the beginning of the tenancy; three years after the date from which any previous variation in rent took effect; and three years after the date of any ruling by the Land Court that the rent should remain unchanged.
551. Sub-paragraph (2) lists a number of exceptions where a rent review can take place within three years from a date on which a previous variation in rent took effect. These are variations of rent under section 14, 15(1) or 31 of the 1991 Act. It also includes: variations arising either under the exercise or revocation of an option to tax under schedule 10 of the Value Added Tax Act 1994 or from a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.
552. Paragraph 4 of schedule 1A details the circumstances when a rent review notice can be withdrawn. When a notice has been served and no agreement has been reached between the parties as to the new rent payable, and the Land Court has not made a determination as to what rent is payable, then the person who served the rent review notice may withdraw it, but only with the consent of the other party.
553. Paragraph 5 of schedule 1A states that a rent review notice ceases to have effect on the earliest of the following: the date it is withdrawn; the date the parties reach agreement as to rent payable; the day after the rent agreement date if there is no referral made to the Land Court or, if a referral is made to the Land Court, the date on which it determines what the rent payable should be.
554. Paragraph 6 of schedule 1A provides for the ability of parties to refer the determination of the rent to the Land Court after a rent review notice has been issued and where they cannot reach agreement.
555. Sub-paragraphs (2) and (3) state that either party can refer the matter to the Land Court upon receipt of the rent review notice but may not do so after the rent agreement date.
556. Paragraph 7 of schedule 1A sets out the powers of the Land Court upon referral by either the tenant or landlord for determination of the rent.

557. Sub-paragraph (2) states that upon referral to the Land Court, a determination can be made to either vary the rent payable or leave it unchanged.
558. Sub-paragraph (3) sets out the new rent review test whereby the Land Court determines a fair rent taking account of all the circumstances.
559. Sub-paragraph (4) sets out the specific factors that the Land Court must have regard to when determining the fair rent for the holding. These are the productive capacity of the holding, the rent at which surplus residential accommodation might be let on the open market, and the rent at which the landlord's fixed equipment and land, used for non-agricultural purposes, might be let on the open market.
560. Paragraph 8 states that the rent agreed by the tenant and the landlord, or as determined by the Land Court, if relevant, takes effect from the rent agreement date.
561. Paragraph 9 of schedule 1A creates a power for the Scottish Ministers, by regulations, to make further provision about how productive capacity is to be determined and which information should be provided to the Land Court to make such determination. These regulations are subject to the affirmative procedure.
562. Paragraph 10 of schedule 1A provides further detail on the definition of the surplus residential accommodation on the holding and what the Land Court needs to consider when determining it.
563. Sub-paragraph (1) states that residential accommodation on the holding is considered surplus if it exceeds the accommodation required for the standard labour requirement ("SLR") of the holding.
564. Sub-paragraph (6) provides a power for the Scottish Ministers, by regulations, to make provision about the SLR of the holding, including how the SLR is to be determined and what information is required from the parties to enable the Land Court to do this. These regulations are subject to the affirmative procedure.
565. Sub-paragraph (2) states that in determining whether the accommodation is surplus, the Land Court may take into account whether the SLR varies (to take account of seasonal workers for example), and must disregard both the sole farmhouse occupied by the tenant and any accommodation that the tenant is prohibited from subletting, subject to sub-paragraph (3).
566. Sub-paragraph (3) provides that where, in the face of a prohibition against subletting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation by the Land Court, notwithstanding the prohibition.
567. Sub-paragraph (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing fair rent, the Land Court must take into account all the circumstances including the condition and location of the property. It must also take into account whether the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be. Where the accommodation is not currently let, the Land Court must disregard this fact.

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

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

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

Year 1 – original rent plus 1/3 of X

Year 2 – original rent plus 2/3 of X

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

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

Year 1 – original rent less 1/3 of X

Year 2 – original rent less 2/3 of X

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

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

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

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

572. Subsection (2) amends section 9(A1) and (1) of the 2003 Act by including provision for MLDTs and, in relation to section 9(A1), repairing tenancies. The effect is that for both these new tenancies, as well as LDTs, a purported term of the lease that states that a rent review may only be initiated by the landlord, or which states that the rent can only be increased, is void. For MLDTs, where the lease makes no provision for review of rent, then the rent due is to be reviewed and determined in accordance with section 9.

573. Subsection (2) also inserts new subsection (1A) into section 9 of the 2003 Act and this states that the rent payable under a repairing tenancy is to be reviewed and determined in accordance with section 9.
574. Subsections (2) to (8) of section 9 are replaced with new subsections (2), (3) and (4) by section 102(2)(c) of the Act. These state that the notice to review rent is called the “rent review notice” and can be initiated by either the landlord or the tenant in writing.
575. Subsection (3) inserts new sections 9A to 9C, after section 9, which set out the new rent review procedures for LDTs and MLDTs and repairing tenancies.
576. Inserted section 9A sets out requirements for the form and content of the rent review notice. Subsection (1) provides that the rent review notice must be dated and sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the land, the current and proposed rent payable, and the date by which the landlord and tenant must agree the rent (“rent agreement date”).
577. Subsection (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.
578. Subsection (3) provides a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them. These regulations are subject to negative parliamentary procedure.
579. Inserted section 9B sets out how the rent is to be determined.
580. Subsection (1) states that, on review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having particular regard to the productive capacity of the land, the rent at which surplus residential accommodation might be let, and the rent at which the landlord’s fixed equipment or land which is used for non-agricultural purposes might be let.
581. Subsection (2) provides that for the purposes of determining the open market rent for any surplus residential accommodation or any fixed equipment or land used for diversification for rent calculation purposes, “open market rent” means that which would be expected in an open market by a willing landlord to a willing tenant.
582. Subsection (3) contains a power for the Scottish Ministers, by regulations, to make further provision about the productive capacity of land, including how it is to be calculated. These regulations are subject to affirmative parliamentary procedure.
583. Subsection (4) states that the rent determined is to be payable from the “rent agreement date” (as defined in section 9A(1)(e)).
584. Inserted section 9C explains what is meant by surplus residential accommodation and how this is to be determined.

585. Subsection (1) states that residential accommodation on land comprised in the lease of an LDT, an MLDT or a repairing tenancy is considered surplus if it exceeds the accommodation required for the standard labour requirement (SLR) of the land.
586. Subsection (2) states that in determining whether the accommodation is surplus, consideration may be given as to whether the SLR varies (to take account of seasonal workers for example), and both the sole farmhouse occupied by the tenant and any accommodation that the tenant is prohibited from subletting by the terms of the lease or otherwise (subject to subsection (3)) must be disregarded.
587. Subsection (3) provides that where, in the face of a prohibition against subletting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation notwithstanding the prohibition on subletting.
588. Subsection (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing the fair rent, account must be taken of all the circumstances including the condition and location of the property. Where the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be, then this should also be taken into account. Where the accommodation is not currently let, this must be disregarded.
589. Subsection (5) provides that if, when determining fair rent, regard is given to the open market rent for surplus accommodation under section 9B(1)(b), then such accommodation is not also to be taken into account as fixed equipment or land under section 9B(1)(c).
590. Subsection (6) provides a power for the Scottish Ministers, by regulations, to make provision about the standard labour requirement of land comprised in the lease of an LDT, an MLDT or a repairing tenancy, including how the SLR is to be determined. These regulations are subject to affirmative parliamentary procedure.

## **CHAPTER 6 – ASSIGNATION OF AND SUCCESSION TO AGRICULTURAL TENANCIES**

### ***Assignation***

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

591. Section 103 makes provision about the persons to whom a 1991 Act tenancy may be assigned.
592. Section 10A of the 1991 Act makes provision for the assignation of 1991 Act tenancies. Under the current legislation, the tenant can assign the tenancy to any of the persons who would be entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964.
593. Section 103 amends section 10A of the 1991 Act by inserting a new subsection (1A), which extends the class of person that a tenancy can be assigned to. Subsection (3) of section 103 sets out the people to whom, under the new subsection (1A), the

tenant can assign the tenancy. Those that are already entitled to be assigned the tenancy under the Succession Act as mentioned above still remain so, including cousins of the tenant. However, this Act extends the right to a number of additional people as set out in subsection (1A)(b) to (n).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

612. Subsection (2) provides that the tenant must provide the landlord with written notice of intention to assign a repairing tenancy. The notice must contain details of the proposed assignee, the terms of the proposed assignation and the date from which it is to take effect.
613. Subsection (3) provides that the landlord can withhold consent to the proposed assignee during the repairing period if there are reasonable grounds for doing so. In particular, the landlord may withhold consent if they are not satisfied that the proposed assignee would have the ability to pay the rent. They can also withhold consent if they are not satisfied that the proposed assignee would have the financial resources or skills or experience necessary to bring the land up to a standard where it could be farmed in accordance with the rules of good husbandry after the repairing period.
614. Subsection (4) provides that this last ground of objection (on skills or experience required) does not apply where the proposed assignee is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years. The proposed assignee must also have made arrangements for the holding to be farmed efficiently while the course is completed.
615. Subsection (5) requires the landlord to give written notice to the tenant indicating withholding of consent within 30 days of receiving the tenant's notice of intention to assign. If no such notice is provided by the landlord, it is taken that consent has been given.
616. Subsection (6) defines "good husbandry" by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
617. At the end of the repairing period, subsection (7) provides that the provisions contained in new section 7B of the 2003 Act, pertaining to the assignation of an MLDT, apply to the assignation of a repairing tenancy.

### ***Succession***

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

618. Section 11 of the 1991 Act sets out the procedure for bequest of 1991 Act tenancies, including entitlement and procedure for the landlord to object to the bequest. Under the current legislation, the tenant can bequeath the tenancy to any of the persons who would be entitled to succeed to their estate on intestacy by virtue of the Succession (Scotland) Act 1964 and to the tenant's son or daughter-in-law. Section 107 amends section 11 by inserting a new subsection (1A), which expands the class of persons who are entitled to be the beneficiary of a bequest.
619. Section 107 sets out the persons to whom the tenant, under the new subsection (1A), can bequeath the tenancy. Those that are already entitled to be the beneficiary under the Succession Act as mentioned above still remain so, as do the tenant's son and daughter-in-law. However, this right has been extended to a number of additional people as set out in subsection (1A)(c) to (n).



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

620. Section 108 outlines the provisions for succession to LDTs, MLDTs and repairing tenancies.
621. Subsection (1) amends section 16 of the Succession (Scotland) Act 1964 to make provision for the new letting vehicles, MLDTs and repairing tenancies.
622. Subsection (3) amends section 21 of the 2003 Act, making provision for MLDTs and repairing tenancies by inserting a new subsection (1A) which expands the class of persons who are entitled to be the beneficiary of a bequest of an LDT, an MLDT or a repairing tenancy.

***Landlord's objection to tenant's successor***

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

623. Section 109 sets out a new objection process by a landlord to a legatee or acquirer.
624. Section 11 of the 1991 Act sets out the provisions for bequest of leases for 1991 Act tenancies, including the objection process. Section 12 of the 1991 Act outlines the right of the landlord to object to an acquirer of a lease under a 1991 Act tenancy on intestacy.
625. Section 109 amends sections 11 and 12 of the 1991 Act by repealing the relevant subsections which deal with the objection process and by inserting, after section 12, new sections 12A, 12B and 12C, which outline the procedures that the landlord is required to follow if the landlord wishes to object to a legatee or an acquirer under a 1991 Act tenancy.
626. Inserted section 12A outlines the procedure when the landlord is objecting to a near relative (legatee or acquirer) of the deceased tenant. The Act limits the grounds that the landlord has when objecting to a near relative.
627. Subsections (1) and (2) provide that, if a legatee or an acquirer who is a near relative of the deceased tenant gives notice to the landlord of intention to take on the tenancy, the landlord is entitled, within one month, to serve a counter-notice to that person stating that the landlord objects to receiving the person as a tenant under the lease.
628. Subsection (3) states that the landlord's grounds of objection to a near relative are limited to three circumstances. The three grounds available to the landlord for objection are: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, or that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.
629. Subsection (4) states that this last ground of objection does not apply where the person is engaged in a course of relevant agricultural training, or will begin such training before the end of the period of six months beginning with the date on which

notice was given to the landlord of the acquisition, and also states that the training must be completed within four years of that date. That person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

630. Subsection (5) provides that the landlord has one month after serving the counter-notice to apply to the Land Court for an order, in the case of a legatee, declaring the bequest to be null and void or, in the case of an acquirer, terminating the lease.
631. Subsection (6) states that, if any of the grounds of objection available to the landlord are established to the satisfaction of the Land Court, the Court is required to make an order, in the case of a legatee, declaring the bequest to be null and void and, in the case of an acquirer, terminating the lease, effective from either Whitsunday or Martinmas, as the court specifies.
632. Subsection (7) provides that, if the grounds of objection are not found, the Land Court must make an order declaring that the legatee or the acquirer is the new tenant under the lease and the lease is binding on the landlord from the date of death of the deceased tenant.
633. Subsection (8) states that, where the landlord does not make such an application to the Land Court within the one month period, the counter-notice becomes invalid and the lease is binding on the landlord and the legatee or acquirer from the date of the deceased tenant's death.
634. Section 12B sets out the procedure for objection by the landlord when the legatee or the acquirer is not a near relative of the deceased tenant.
635. Subsections (1) and (2) provide that, if a legatee or an acquirer who is not a near relative of the deceased tenant gives notice to the landlord of intention to take on the tenancy, the landlord is entitled, within one month, to serve a counter-notice to that person stating that the landlord objects to receiving the person as a tenant under the lease. The landlord has the power in the case of a legatee to declare the bequest to be null and void, and, in the case of an acquirer, to terminate the lease with effect from Whitsunday or Martinmas as the landlord specifies, but which must be at least one year and not more than two years from the date of the counter-notice.
636. Subsection (3) provides that the legatee or acquirer may make an appeal to the Land Court, within one month of receiving the counter-notice.
637. Subsections (4) and (5) state that if the legatee or acquirer can establish on any reasonable ground, to the satisfaction of the Land Court, why the bequest should not be null and void or why the lease should not be terminated, the Land Court must make an order quashing the counter-notice. If not, the Land Court must make an order confirming the counter-notice.
638. Inserted section 12C sets out supplementary provisions for landlord's objection.
639. Subsections (1) and (2) provide that the legatee or acquirer is to have possession of the holding, pending the outcome of any objection by the landlord under section 12A

or 12B. The legatee or the acquirer must have received consent from the executor and there must be no order from the Land Court directing otherwise.

640. Subsection (3) provides that, in the case of a legatee, if the bequest is declared null and void, the right to the lease is to be treated as part of the intestate estate of the deceased tenant in accordance with the Succession (Scotland) Act 1964.
641. Subsection (4) provides that, in the case of an acquirer, if the lease is terminated, that termination is to be treated as termination of the acquirer's tenancy of the holding for the purposes of the compensation provisions in Parts 4 and 5 of the 1991 Act. Subsection (5) also states that the acquirer is not entitled to compensation for disturbance.
642. Subsection (5) of section 109 of the Act repeals section 25 of the 1991 Act relating to the termination of tenancies acquired by succession. The ability of the landlord to object to an incoming tenant who has succeeded to the tenancy on the death of the previous tenant is replaced by the objection procedure in new sections 12A to 12B. Part 4 of schedule 2 of the Act also contains other amendments and repeals consequential on this change, including the repeal of schedule 2 of the 1991 Act (which contained the grounds on which a landlord could object to a near relative under section 25).

## **CHAPTER 7 – RELINQUISHING AND ASSIGNATION OF 1991 ACT TENANCIES**

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

643. Section 110 inserts a new Part 3A into the 1991 Act to provide for a process whereby a 1991 Act tenant can relinquish their tenancy to the landlord in exchange for compensation or, if the landlord does not buy them out, can assign the tenancy to a new entrant or progressing farmer for the tenancy's market value.
644. New section 32A of the 1991 Act sets out that the provisions of the new Part 3A are to apply to those 1991 Act tenancies where the tenant wishes to quit the tenancy before the date by which the tenancy could otherwise be brought to an end by notice of intention to quit or, failing which, assign their tenancy as above.
645. Section 32B gives the Scottish Ministers power to make regulations to define a new entrant and a progressing farmer for the purposes of this new process. These regulations are subject to negative parliamentary procedure.
646. Section 32C provides that a tenant can serve the landlord with a "notice of intention to relinquish", which says that the tenant will relinquish the tenancy if the landlord pays compensation as calculated under this new process (in section 32L). The tenant must send a copy of the notice to the Tenant Farming Commissioner (established by Part 2 of the Act) at the same time as serving it on the landlord.
647. Section 32D enables Ministers to make regulations about the form and content of notices of intention to relinquish. Subsection (2) gives examples of what these regulations might cover. These regulations are subject to negative parliamentary procedure.

648. Section 32E sets out circumstances in which a tenant may not serve a notice of intention to relinquish. These include where the tenant has already served a notice of intention to quit; where the tenant has not complied with written demands to pay rent or remedy breaches; where the landlord has already served an incontestable notice to quit; and where the landlord has served a contestable notice to quit that is still being considered by the Land Court or has been consented to by the Land Court (or in equivalent appeal situations).
649. Section 32F sets out some restrictions on a landlord's ability to issue a notice to quit once the tenant has issued a notice of intention to relinquish. The restrictions apply until the tenancy is terminated under Part 3A or until the window within which the tenant can assign the tenancy under this Part has expired. A landlord may still issue an incontestable notice to quit during this period on grounds that are due to failings on the part of the tenant.
650. Section 32G, subsections (1) to (3) provide that within 14 days of the notice to relinquish being served on the tenant, the Tenant Farming Commissioner must appoint a suitable person to calculate the amount of compensation payable by the landlord to the tenant as a result of the tenant quitting their tenancy. Ministers may specify a different period by regulations subject to negative parliamentary procedure.
651. Subsection (4) provides that the valuer who will calculate the compensation due to the tenant must be suitably qualified and independent of both the tenant and the landlord.
652. Subsection (6) requires the Tenant Farming Commissioner to give written notice to the tenant and the landlord of the name and address of the valuer appointed.
653. Section 32H sets out the objection process in respect of the valuer appointed by the Tenant Farming Commissioner.
654. Subsection (2) provides that either the tenant or the landlord may object to the valuer on the grounds that the valuer is not independent of either party or does not have the necessary qualifications, knowledge and experience to carry out the valuation.
655. Subsection (3) enables either the tenant or the landlord to apply to the Land Court to appoint an alternative valuer to the one appointed by the Tenant Farming Commissioner.
656. Subsection (4) states that either party has 14 days from the date of the Tenant Farming Commissioner's notice under section 32G(6) and must state the ground of objection to the valuer. They may propose the name of an alternative valuer in their application.
657. Subsection (5) and (6) state that the Land Court may reject the objection or appoint an alternative valuer and that the Court's decision is final.
658. Section 32I states that the tenant is liable for the costs of the valuer, whether the valuer is appointed by the Tenant Farming Commissioner or the Land Court. In cases where the valuer has been appointed by the Tenant Farming Commissioner, and these

expenses have been met by the Commissioner, they are entitled to recover these expenses from the tenant.

659. Section 32J sets out how the valuer must assess the value of the holding: the valuation must include both the value of the land as if it was sold with vacant possession and the value of the land as if it was sold with the sitting tenant. The valuer must also assess the amount of compensation that would be due to the tenant at waygo, and the amount of compensation that would be due to the landlord for dilapidations.
660. Subsection (2) sets out that in assessing the value of the land the valuer must have regard to the value that would be likely to be agreed between a reasonable seller and a reasonable buyer and sets out a number of things that the valuer should and should not take into account in calculating the valuation.
661. Subsection (5) enables Scottish Ministers by regulations to add, remove or vary the description of a matter which the valuer must take account of or not take account of, when assessing the value of the land. These regulations are subject to affirmative parliamentary procedure.
662. Section 32K makes further provision on the valuation process, stating that for the purposes of carrying out their work, the valuer may enter onto the land; make any reasonable request of the landlord and tenant; and may invite them to make written representations about the assessment.
663. Section 32L sets out the step-by-step calculation for how the compensation payable by the landlord to the tenant is to be assessed by the valuer, if the landlord accepts the notice of intention to relinquish. This is: 50% of the difference in value between the land if vacant and the land with the sitting tenant; plus the compensation the tenant would be entitled to at waygo; minus any compensation the landlord is entitled to for dilapidations.
664. Section 32M details the “notice of assessment” which the valuer must prepare and serve on the landlord and tenant.
665. Subsections (1) and (2) provide that the valuer must complete the valuation within eight weeks of being appointed and serve notice in writing to both the tenant and the landlord.
666. Subsections (3) to (6) state that this notice of assessment must set out the findings of the valuation including how the valuer arrived at the values and amounts stated, and any other information which the valuer considers appropriate.
667. Subsection (7) states that a copy of the notice of assessment must be sent to the Tenant Farming Commissioner.
668. Section 32N sets out the process for appealing to the Lands Tribunal against the valuer’s assessment.
669. Subsections (1) and (2) state that either party may appeal to the Lands Tribunal against a notice of assessment, stating what the grounds of appeal are, within 21 days of being served the notice of assessment.

670. Subsection (3) states that the Lands Tribunal may reassess the value or amount of compensation calculated by the valuer and may determine the amount payable by the landlord to the tenant if the landlord were to accept the tenant's notice of intention to relinquish.
671. Subsections (4) and (5) provide that as part of the appeal proceedings the following people are entitled to be heard: the owner of the land, any creditors in standard securities, and the valuer.
672. Subsections (6) and (7) state that the Lands Tribunal is to give written reasons for its decision and that its decision is final.
673. Section 32O requires the Lands Tribunal to refer to the Land Court any issue of law which arises during an appeal which may competently be determined by that Court, unless it considers it inappropriate to make such a reference.
674. Section 32P sets out the process for withdrawing a notice of intention to relinquish.
675. Subsections (1) and (2) allow a tenant to withdraw their notice of intention to relinquish at any time up until a) 35 days from the date the valuer provided their assessment, or b) if either the tenant or landlord appealed the valuation, then 14 days from the Lands Tribunal's decision on the appeal.
676. Subsection (3) requires that in order to withdraw their notice of intention to relinquish, the tenant must give written notice of such withdrawal to the landlord, and send copies to the Tenant Farming Commissioner and to the valuer.
677. Subsection (4) provides that where the tenant withdraws their notice of intention to relinquish, and a valuer has already been appointed by the Tenant Farming Commissioner, then the valuer's appointment comes to an end. If no valuer has been appointed at the time of withdrawal then none need be appointed.
678. Section 32Q sets out the process involved where the landlord wishes to accept the notice of intention to relinquish.
679. Subsections (2) to (7) specify that if the landlord wishes to proceed with buying out the tenant's interest, they must send the tenant a "notice of acceptance" within 28 days of the expiry of the tenant's option to withdraw the notice of intention to relinquish. The notice, a copy of which must be sent to the Tenant Farming Commissioner, must state that the landlord will pay the tenant the sum calculated by the valuer (or, as the case may be, determined by the Lands Tribunal), which must be paid within six months of the expiry of the tenant's option to withdraw, in exchange for the tenant quitting the tenancy. Under subsections (2)(b) and (5), the landlord must pay the compensation within six months of the expiry of the tenant's option to withdraw the notice to relinquish.
680. Subsection (8) gives Ministers a power to make regulations about the form and content of the landlord's notice of acceptance. These regulations are subject to negative parliamentary procedure.

681. Section 32R, subsections (1) and (2) provide that, if the landlord does not wish to buy out the tenant's interest, the landlord may serve the tenant a "notice of declinature", within 28 days of the expiry of the tenant's option to withdraw the notice of intention to relinquish.
682. Subsection (3) requires the landlord to send a copy of the notice to the Tenant Farming Commissioner and the valuer, if appointed.
683. Subsection (4) states that following the serving of the notice of declinature, if a valuer has been appointed, the valuer's appointment comes to an end; and if none has been appointed then none need be appointed.
684. Section 32S, subsections (1) and (2) enable the landlord to withdraw their notice of acceptance within a specified period, by serving a "notice of withdrawal" in writing to the tenant.
685. Subsection (3) requires the notice to be copied to the Tenant Farming Commissioner.
686. Subsection (4) provides that if the landlord withdraws in this way the tenant is entitled to recover from the landlord any loss or expense incurred because of action the tenant took based on having received the landlord's notice of acceptance.
687. Section 32T provides that where the landlord does pay the compensation within six months of the period specified in section 32P(5) then the tenancy comes to an end at the end of that six-month period or on such earlier date as both parties agree. Subsection (3) disapplies the notice to quit provisions of the 1991 Act here. Subsection (4) confirms that any other compensation or payment to which the parties may be entitled that is not mentioned in section 32I(1)(b) is preserved despite the payment of the compensation figure under section 32Q(2)(b).
688. Section 32U, subsections (1) and (2) state that if the landlord declines the notice to relinquish, fails to accept it within the specified period, or accepts it and fails to pay the compensation required within the specified period, then the tenant has one year to assign the tenancy.
689. Section 32V applies section 10A of the 1991 Act (which deals with lifetime assignation) with modifications for the particular circumstances of Part 3A. The modification of subsection (3) of section 10A of the 1991 Act has the effect that the landlord may withhold consent to the proposed assignee if the person is not a new entrant or progressing in farming or on other reasonable grounds.
690. The modification comprised in subsection (3A) of section 10A provides that 'reasonable grounds' include where the landlord is not satisfied that the proposed assignee has the necessary financial resources, or the landlord is not satisfied that the proposed assignee has the skills or experience needed, in order to farm the land in accordance with the rules of good husbandry.
691. The modification comprised in subsection (3B) states that if the proposed assignee is a new entrant then the landlord cannot object on the ground that the proposed assignee lacks skills or experience provided the new entrant is on, or shortly to begin,

relevant training, and has arranged for the land to be farmed efficiently until they have completed their training.

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

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

693. Section 111 makes consequential modifications to the 1991 and 2003 Acts in light of new Part 3A of the 1991 Act. In particular, new section 74A is inserted into the 2003 Act by section 111(4) of the Act. This provides that the Scottish Ministers may make regulations to disapply the new Part 3A process to tenants in certain types of partnership, such as limited partnerships; to allow general partners in certain types of limited partnership to be treated as if they were a tenant under the new Part 3A process; and to apply this new process to tenants in certain types of partnership with appropriate modifications. These regulations are subject to affirmative parliamentary procedure.

## **CHAPTER 8 – COMPENSATION FOR TENANT’S IMPROVEMENTS**

### *Amnesty for tenant’s improvements*

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

694. This Chapter provides for certain improvements carried out by the tenant of an agricultural holding to be capable of attracting compensation at waygo in certain circumstances notwithstanding historic anomalies. The duration of this amnesty is three years from the date of section 112 coming into force. During the amnesty, a tenant who intends to claim compensation at the end of the tenancy (at “waygo”) for certain improvements which have been carried out may give notice of this to the landlord in certain circumstances. A tenant may then be able to claim compensation at waygo for that improvement despite a previous failure to meet certain statutory procedures in relation to the improvement, or where paperwork showing that those procedures were followed has been lost, if the landlord does not object to the amnesty notice or if the Land Court considers that in all of the circumstances it is just and equitable for compensation to be payable for the improvement at waygo.

695. This Chapter also provides that a tenant and landlord may enter into an agreement during the amnesty period that an improvement will attract compensation at waygo despite certain previous failures to meet statutory procedures (see section 117). Agreements can relate to improvements in relation to which amnesty notices cannot be given as well as to ones that can.

696. Section 112 sets out which improvements the amnesty may apply to. Subsection (1) states that the provisions apply to relevant improvements for which a tenant intends to claim compensation under section 34 of the 1991 Act (1991 Act tenants) or section 45 of the 2003 Act (tenants of SLDTs, LDTs or MLDTs).

697. Subsections (2) and (3) provide that a relevant improvement is a Part 1, Part 2 or Part 3 improvement, as defined in subsection (7), which has been completed before the



beginning of the “amnesty period”, being the period of three years from when section 112 comes into force.

698. Subsection (4) enables the tenant to give notice of the relevant improvement to the landlord under section 114.

699. Subsection (5) details the circumstances in which the tenant is not entitled to use the amnesty provisions. Subsection (5)(a) excludes Part 1 improvements where the tenant has carried out the improvement without the landlord’s consent; or where the landlord gave consent, whether orally or in writing, and the tenant carried out the improvement in a manner substantially different to that which the landlord had consented to. Therefore, for example, if the landlord has only consented orally to a Part 1 improvement, that improvement is capable of being within the scope of the amnesty.

700. Subsection (5)(b) excludes Part 2 improvements where the tenant had given notice under the relevant sections of the 1991 Act or the 2003 Act but the tenant carried out the improvement in a manner substantially different to that proposed in the notice; the landlord objected to this improvement upon receipt of the notice; or the tenant carried out the improvement in breach of a decision by the Land Court.

701. Subsection (5)(c) excludes Part 3 improvements where the tenant had given notice under the relevant section of the 1991 Act and subsequently carried out the improvement in a manner substantially different to the manner proposed in the notice.

702. Subsection (6) provides that the amnesty is not to affect the extent to which compensation is recoverable for an improvement under custom, agreement or otherwise, as permitted by the 1991 Act or 2003 Act, in lieu of any compensation under this section. This would include, for example, a pre-existing agreement between landlord and tenant as to the compensation payable in respect of an improvement carried out before 1948, as permitted by section 34(4)(a) of the 1991 Act.

703. Subsection (7) explains what is meant by a Part 1, Part 2 and Part 3 improvement by referring to the relevant paragraphs and Parts of the schedules of the 1991 Act.

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

704. Section 113 inserts additional sections into the 1991 Act and the 2003 Act to provide for the operation of the amnesty.

705. Subsections (1) and (2) insert new sections 34A, and 45A after sections 34 and 45 (the right to compensation for improvements) of the 1991 Act and the 2003 Act respectively. These new sections are entitled “Amnesty under the Land Reform (Scotland) Act 2015” and enable compensation to be payable under section 34 of the 1991 Act and section 45 the 2003 Act when the amnesty provisions are applicable.

### **Section 114 – Amnesty notice**

706. Section 114 sets out the requirements for the amnesty notice.

707. Subsections (2) and (3) provide that the amnesty notice must be given to the landlord within the amnesty period as set out in section 112(3), be in writing, be dated, and contain the following information: the names of the tenant and the landlord; the name and address of the holding; details of the relevant improvement; and the tenant's reasons as to why it is fair and equitable for compensation to be payable for the improvement at waygo.
708. Subsection (4) applies section 84(4) of the 1991 Act which ensures the validity of notices given by tenants where the landlord has changed but the tenant has not been notified of this change.
709. For the purposes of this Chapter, subsection (5) defines "holding" in the case of an SLDT, LDT or MLDT as meaning the land comprised in the lease.

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

#### **Section 115 – Objection by landlord**

710. Section 115 sets out the objection process for the landlord.
711. Subsection (1) provides that within two months of receiving the amnesty notice from the tenant, the landlord can object on certain grounds to the relevant improvement by giving written notice to the tenant. Compensation is then not payable to the tenant unless the improvement is approved by the Land Court under section 116.
712. Subsection (2) states that the written notice must be dated and must state the landlord's reasons for objecting to the relevant improvement.
713. Subsection (3) provides that the objection by the landlord must be on one or more of three grounds. These are: that it is not fair and equitable for compensation to be payable at way-go for the relevant improvement; that the landlord carried out the improvement in whole or in part; or that the landlord gave or allowed a benefit to the tenant, in return for the tenant carrying out the improvement, regardless of whether or not the landlord agreed such benefit in writing. Such benefit need not necessarily be a financial contribution but it must be measurable in financial terms e.g. the supply of materials.

#### **Section 116 – Referral to Land Court**

714. Section 116 sets out the procedure for referral of the improvement to the Land Court.
715. Subsection (1) enables the tenant, within two months of receiving the notice of objection from the landlord, to make an application to the Land Court for approval of the relevant improvement for the purposes of compensation under section 34 of the 1991 Act or section 45 of the 2003 Act.
716. Subsection (2) gives the Land Court the power to withhold approval of the relevant improvement or approve it either unconditionally or under specific terms.

717. Subsection (3) provides that, for the Land Court to approve a relevant improvement, it must be satisfied that the landlord has benefitted or would benefit from the improvement and that it is fair and equitable in all the circumstances for the landlord to be liable to pay compensation for the relevant improvement at waygo.
718. Subsection (4) states that no compensation is payable to the extent that the Land Court determines that the landlord carried out the improvement; or that the tenant received a benefit in return for carrying out the improvement, regardless of whether or not the landlord agreed such benefit in writing. Such a benefit may have been monetary or non-monetary but must be measurable in financial terms e.g. the supply of materials. Otherwise the amount of compensation for the improvement will be determined by section 36 of the 1991 Act or, as the case may be, by section 47 of the 2003 Act: the operation of those sections flows from the application of section 34 of the 1991 Act and of section 45 of the 2003 Act.

### ***Agreements made during amnesty period***

#### **Section 117 – Amnesty agreements**

719. Section 117 sets out that a landlord and tenant may enter into agreements during the amnesty period setting out that certain improvements carried out by the tenant before the amnesty are to attract compensation at waygo.
720. Subsection (1) states that if no compensation is payable at waygo in respect of a relevant improvement under section 34 of the 1991 Act or section 45 of the 2003 Act because certain statutory requirements have not been met (subsection (4) defining these requirements), but the parties consider that despite this it would still be fair and equitable for the tenant to be compensated for the improvement at waygo, then the landlord and tenant may enter into a written agreement during the three year amnesty period setting out that the landlord will pay compensation to the tenant at waygo for the improvement.
721. Section 53 of the 1991 Act and section 59 of the 2003 Act set out that, unless those Acts explicitly state otherwise, where they make provision for compensation to be paid then a tenant shall not be entitled to compensation except under that provision. Therefore landlords and tenants may enter into agreements as to compensation at waygo other than as set out in statute but these may not be enforceable. The effect of subsection (2) of section 117 of this Act is that “amnesty agreements” are to be valid notwithstanding section 53 of the 1991 Act and section 59 of the 2003 Act. This means that parties can enter into written agreements during the amnesty period that compensation at waygo would be fair and equitable notwithstanding that statutory procedures have not been followed and parties can conduct their affairs in the knowledge that these agreements can be relied upon at waygo. Agreements can relate to improvements in relation to which amnesty notices cannot be given as well as to ones in relation to which notices can be given.
722. Subsection (3) of section 117 provides that the amount of compensation to be agreed as payable under an “amnesty agreement” must be as set out in section 36 of the 1991 Act or, as the case may be, under section 47 of the 2003 Act. It may not be any amount as agreed between parties.

723. Subsection (4) defines a “relevant requirement” for the purposes of subsection (1) as one imposed by virtue of Part 4 of the 1991 Act or by virtue of Chapter 1 of Part 4 of the 2003 Act which must ordinarily be complied with in order for the tenant to be entitled to compensation for an improvement under those Acts.

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

724. Section 118 provides that amnesty disputes can be settled by arbitration, and removes two items from the list of matters currently excluded from arbitration.

725. Subsection (1)(a)(i) provides for arbitration under section 116 for 1991 Act leases, and subsection (3)(a)(i) provides for the same in relation to 2003 Act leases, as an alternative to referring an amnesty dispute to the Land Court. Subsections (1)(c) and (3)(c) make it clear that any term of a lease which prevents parties from going to the Land Court on the amnesty is null and void.

726. The effect of subsections (1)(a)(ii) and (3)(a)(ii) is that certain issues currently ineligible to be dealt with by binding arbitration can now be brought to arbitration instead of to the Land Court, if the parties so agree. These are cases where (a) any question of difference between the landlord and tenant arises out of the making of a record of condition, (b) the landlord has objected to an improvement and the tenant has appealed to the Land Court for approval and (c) cases where the Land Court has granted approval and the landlord has said they will carry out the improvement themselves, but failed to do so in a reasonable time, and the tenant has applied to the Land Court to be able to carry the improvement out themselves.

## **CHAPTER 9 – IMPROVEMENTS BY LANDLORD**

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

727. Section 119 amends the 1991 Act by inserting new sections 14A to 14F after section 14 to provide for a formal process of notice and objection when landlords of agricultural holdings intend to carry out certain improvements.

728. Inserted section 14A states that the section applies to a “relevant improvement”, which means any improvement set out in schedule 5 of the 1991 Act which is not intended to be carried out at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following its approval by the Land Court; or as required by the Scottish Ministers.

729. Subsections (3) and (4) of section 14A require the landlord to give written notice (a “landlord improvement notice”) to the tenant before carrying out a relevant improvement, the exception being in the case of an emergency improvement.

730. Subsection (5) of section 14A states that a landlord improvement notice must be dated and contain the following information: the names of the tenant and the landlord, the address of the holding, details of the intended improvement and the landlord’s reasons as to why the improvement is necessary to enable the tenant to farm in accordance with the rules of good husbandry.

731. Inserted section 14B sets out the objection process available to the tenant. The tenant may object to the proposed improvement within two months of receiving the landlord improvement notice by giving written notice to the landlord. This notice must be dated and state the tenant's reasons as to why the improvement is not necessary to enable the tenant to farm in accordance with the rules of good husbandry.
732. Inserted section 14C provides that, within two months of receiving the written objection from the tenant, the landlord may apply to the Land Court to approve the proposed improvement. The Land Court may withhold its approval or may approve the improvement unconditionally or with certain terms attached. Before approving a relevant improvement, the Land Court must be satisfied that it is necessary to enable the tenant to farm in accordance with the rules of good husbandry.
733. Inserted section 14D requires the landlord to give written notice to the tenant stating when the landlord intends to carry out the improvement, which, unless the tenant and landlord agree otherwise, should not be earlier than two weeks before the landlord intends to start carrying out the improvement. This notice requirement applies where the landlord is intending to carry out an improvement at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement himself following its approval by the Land Court; required by the Scottish Ministers; or after the landlord has issued a landlord improvement notice and the tenant has not objected, or the tenant's objection has been dismissed by the Land Court.
734. Subsection (4) of section 14D allows the landlord to serve a new notice where the improvement has not already begun to be carried out and there is a good reason for the postponement of the improvement.
735. Subsections (5) and (6) of section 14D state that where the landlord has given notice of an improvement and work has started on the improvement, the landlord may, at any time before the expiry of the date given in the notice, extend the period during which the improvement is carried out by giving notice in writing to the tenant, if the landlord has a good reason for extending this period.
736. Subsection (7) of section 14D indicates the effect of section 14F: that these notice procedures do not apply where the improvement is an emergency one.
737. Inserted section 14E states that where a landlord has carried out an improvement and a notice under section 14A was not given to the tenant (and the improvement was not an emergency improvement), the tenant objected to the improvement and the Land Court has not approved the improvement, or the improvement was in breach of any decision by the Land Court, then any such improvement is to be disregarded in any subsequent rent review and in assessing the tenant's responsibilities in relation to good husbandry, and in relation to fixed equipment under section 5(2)(b)(ii) of the 1991 Act.
738. Inserted section 14F provides that, where a landlord or tenant considers that an emergency improvement is required, the notice requirements set out in sections 14A(3), and 14D(2), (3) (5) and (6) do not apply. Subsection (2)(a)-(e) outlines which improvements are to be classified as emergency improvements: for instance, improvements which are necessary for preventing the spread of disease among

livestock, as per the requirements of the Animal Health and Welfare (Scotland) Act 2006.

739. Section 119(3) and (4) amends the 2003 Act by inserting new sections 10A to 10F after section 10 of that Act to provide for a formal process of notice and objection when landlords of agricultural holdings intend to carry out certain improvements.
740. Subsection (1) of new section 10A states that the section applies where the landlord of an SLDT, LDT, MLDT or repairing tenancy intends to carry out a relevant improvement. But in respect of repairing tenancies, section 10A does not apply during the repairing period.
741. Subsection (3) of section 10A states that the section applies to a “relevant improvement”, which means an improvement set out in schedule 5 of the 1991 Act which is not intended to be carried out at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following its approval by the Land Court; or as required by the Scottish Ministers.
742. Subsection (4) of section 10A requires the landlord to give written notice (a “landlord improvement notice”) to the tenant before carrying out a relevant improvement, the exception being in the case of an emergency improvement.
743. Subsection (6) of section 10A states that a landlord improvement notice must be dated and contain the following information: the names of the tenant and the landlord, the address of the holding, details of the intended improvement and the landlord’s reasons as to why the improvement is necessary to enable the tenant to farm in accordance with the rules of good husbandry.
744. Inserted section 10B sets out the objection process available to the tenant. The tenant may object to the proposed improvement within two months of receiving the landlord improvement notice, by giving written notice to the landlord. This notice must be dated and state the tenant’s reasons as to why the improvement is not necessary to enable the tenant to farm in accordance with the rules of good husbandry.
745. Inserted section 10C provides that, within two months of receiving the written objection from the tenant, the landlord may apply to the Land Court to approve the proposed improvement. The Land Court may withhold its approval or may approve the improvement unconditionally or with certain terms attached. Before approving a relevant improvement, the Land Court must be satisfied that it is necessary to enable the tenant to farm in accordance with the rules of good husbandry.
746. Inserted section 10D requires the landlord to give written notice to the tenant stating when the landlord intends to carry out the improvement, which, unless the tenant and landlord agree otherwise, should not be earlier than two weeks before the landlord intends to start carrying out the improvement. This notice requirement applies where the landlord is intending to carry out an improvement at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following approval of it by the Land Court; required by the Scottish Ministers; or after the landlord has issued a landlord improvement notice and the tenant has not objected, or the tenant’s objection has been dismissed by the Land Court. Such notice is not required for an emergency improvement.

747. Subsection (4) of section 10D allows the landlord to serve a new notice where the improvement has not already begun to be carried out and there is a good reason for the postponement of the improvement.
748. Subsections (5) and (6) of section 10D state that where the landlord has given notice of an improvement and work has started on the improvement, the landlord may, at any time before the expiry of the date given in the notice, extend the period during which the improvement is carried out by giving notice in writing to the tenant, if the landlord has a good reason for extending this period.
749. Subsection (7) of section 10D indicates the effect of section 10F: that these notice procedures do not apply where the improvement is an emergency one.
750. Inserted section 10E states that where a landlord has carried out an improvement and a notice under section 10A was not given to the tenant (and the improvement was not an emergency improvement), the tenant objected to the improvement and the Land Court has not approved the improvement, or the improvement was in breach of any decision by the Land Court, then any such improvement is to be disregarded in any subsequent rent review and in assessing the tenant's responsibilities in relation to good husbandry, and in relation to fixed equipment under section 16(4)(b) (for SLDTs and LDTs) and section 16A(5)(b)(ii) (for MLDTs) of the 2003 Act.
751. Inserted section 10F provides that, where a landlord or tenant considers that an emergency improvement is required, the notice requirements of sections 10A(4) and 10D(2), (3), (5) and (6) do not apply. Subsection (2)(a)-(e) outlines which improvements are classified as an emergency: for instance, improvements which are necessary for preventing the spread of disease among livestock, as per the requirements of the Animal Health and Welfare (Scotland) Act 2006.

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

752. Section 120(1) to (3) amends section 15 of the 1991 Act by inserting a new subsection (1)(d), which enables a landlord to increase the rent prior to the next rent review for improvements he has undertaken by serving notice on the tenant within six months of the completion of the improvement if, upon receipt of the landlord improvement notice, the tenant does not object to the improvement, or, if the tenant does object, the Land Court approves the improvement.
753. Section 120(4) to (6) amends section 10 of the 2003 Act by inserting a new subsection (1)(d), which enables a landlord to increase the rent prior to the next rent review for improvements he has undertaken by serving notice on the tenant within six months of the completion of the improvement if, upon receipt of the landlord improvement notice, the tenant does not object to the improvement, or, if the tenant does object, the Land Court approves the improvement.

## **CHAPTER 10 – DIVERSIFICATION**

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

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

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

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

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

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



## **CHAPTER 11 – IRRITANCY FOR NON-PAYMENT OF RENT**

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

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

## **PART 11 – SMALL LANDHOLDINGS**

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

759. Section 124 states that Scottish Ministers must review the legislation governing small landholdings and lay a report of that review before the Scottish Parliament no later than 31 March 2017. When conducting the review Scottish Ministers must consult small landholders and any other persons they consider appropriate. Subsection (3) defines “small landholding” for the purposes of the section.

## **PART 12 – GENERAL AND MISCELLANEOUS**

### **Section 125 – General interpretation**

760. This section expands the short references used in the Act, for economy of space, to give their full meanings: “the 1991 Act” for the Agricultural Holdings (Scotland) Act 1991; “the 2003 Act” for the Agricultural Holdings (Scotland) Act 2003; and “Land Court” for the Scottish Land Court.

### **Section 126 – Subordinate legislation**

761. Subsection (1) allows the Scottish Ministers to use powers to make regulations under the Act to make different provision for different purposes and to make incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate.

762. Subsection (2) lists the delegated powers in the Act that are subject to negative procedure.

763. Subsection (3) lists the delegated powers in the Act that are subject to affirmative procedure.

764. Subsection (4) excludes commencement regulations made under section 130(2) from the application of section 126.

### **Section 127 – Ancillary provision**

765. Subsection (1) confers powers on the Scottish Ministers enabling them to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purpose of giving full effect to this Act or any of its provisions.

766. Subsection (2) states that any regulations made under the powers of subsection (1) may modify any enactment (including this Act).

### **Section 128 – Crown application**

767. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Act applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of regulations made under section 39, on right of access to information on persons in control of land. Instead, subsection (2) provides for the Court of Session to declare such an act to be unlawful.

768. Amendments and insertions into the Agricultural Holdings Acts 1991 and 2003 also apply to the Crown in Scotland by virtue of section 79 of the 1991 Act and section 95 of the 2003 Act respectively.

### **Section 129 – Minor and consequential modifications**

769. This section introduces schedule 1, which makes minor and consequential amendments to existing legislation in consequence of Part 5 of the Act. It also introduces schedule 2, which makes minor and consequential amendments to existing legislation in consequence of changes made in Part 10 of the Act to agricultural holdings legislation.

### **Section 130 – Commencement**

770. Subsection (1) provides that sections 125 to 127, 130 and 131 come into effect on the day after Royal Assent and subsection (2) allows for commencement by regulations for the remaining sections.

### **Section 131 – Short title**

771. This section provides for this Act, once enacted, to be referred to as the Land Reform (Scotland) Act 2016.

## **SCHEDULES**

772. Schedules 1 and 2 are introduced by section 129.

773. Schedule 1 contains minor amendments and amendments consequential on Part 5. It amends the Land Reform (Scotland) Act 2003 by changing the period within which a ballotter must notify certain persons of the ballot result in accordance with section 52 of that Act. It also substitutes references to the “Register of Community Rights in Abandoned, Neglected or Detrimental Land” with references to “New Register” in sections 97N and 97V of the Land Reform (Scotland) Act 2003.

774. Schedule 2 contains minor and consequential amendments to existing legislation in consequence of changes made in Part 10 of the Act.

## PARLIAMENTARY HISTORY

775. The table below sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for the Act, the dates on which the proceedings at that stage took place, the reference to the Official Report of those proceedings and the dates on which the committee reports and other papers relating to the Bill were published.

<b>PROCEEDINGS AND REPORTS</b>	<b>REFERENCE</b>
<b>INTRODUCTION</b>	
Land Reform (Scotland) Bill as introduced – 22 June 2015	<a href="#">SB Bill 18 Session 4 (2015)</a>
SPICe Briefing SB 15-49 on Land Reform (Scotland) Bill as introduced – 27 August 2015	<a href="#">SB 15-49</a>
<b>STAGE 1</b>	
<b>(a) Rural Affairs, Climate Change and Environment Committee</b>	
1 <sup>st</sup> Meeting - 2 September 2015	<a href="#">Col 2</a>
2 <sup>nd</sup> Meeting - 16 September 2015	<a href="#">Col 1</a>
3 <sup>rd</sup> Meeting - 30 September 2015	<a href="#">Col 1</a>
4 <sup>th</sup> Meeting - 7 October 2015	<a href="#">Col 3</a>
5 <sup>th</sup> Meeting - 2 November 2015	<a href="#">Col 1</a>
6 <sup>th</sup> Meeting - 4 November 2015	<a href="#">Col 1</a>
7 <sup>th</sup> Meeting - 26 November 2015	Meeting in private
8 <sup>th</sup> Meeting - 2 December 2015	Meeting in private
Stage 1 Report - 10 <sup>th</sup> Report 2015 (Session 4) - 4 December 2015	<a href="#">SP Paper 845</a>
<b>(b) Finance Committee</b>	
1 <sup>st</sup> Meeting - 23 September 2015	<a href="#">Col 48</a>
2 <sup>nd</sup> Meeting - 28 October 2015	Item in private
Report on the Land Reform (Scotland) Bill's Financial Memorandum - 29 October 2015	<a href="#">Report 2015(Session 4)</a>

<b>PROCEEDINGS AND REPORTS</b>	<b>REFERENCE</b>
<b>(c) Delegated Powers and Law Reform Committee</b>	
1 <sup>st</sup> Meeting - 15 September 2015	<a href="#">Col 34</a>
2 <sup>nd</sup> Meeting - 29 September 2015	Item in private
3 <sup>rd</sup> Meeting - 6 October 2015	Item in private
4 <sup>th</sup> Meeting - 1 December 2015	<a href="#">Col 22</a>
Report on Land Reform (Scotland) Bill at Stage 1 - 58 <sup>th</sup> Report, 2015 (Session 4) - 7 October 2015	<a href="#">SP Paper 807</a>
<b>Consideration by Parliament</b>	
Stage 1 Debate – 16 December 2016	<a href="#">Col 60 - 118</a>
<b>STAGE 2</b>	
<b>(a) Rural Affairs, Climate Change and Environment Committee</b>	
1 <sup>st</sup> Meeting - 20 January 2016	<a href="#">Col 9</a>
2 <sup>nd</sup> Meeting - 27 January 2016	<a href="#">Col 38</a>
3 <sup>rd</sup> Meeting - 3 February 2016	<a href="#">Col 1</a>
4 <sup>th</sup> Meeting - 10 February 2016	<a href="#">Col 3</a>
Bill as amended at Stage 2 - 11 February 2016	<a href="#">Land Reform Bill as amended at Stage 2</a>
<b>(b) Delegated Powers and Law Reform Committee</b>	
1 <sup>st</sup> Meeting - 7 February 2016	<a href="#">Col 26</a>
2 <sup>nd</sup> Meeting - 8 March 2016	<a href="#">Col 8</a>
3 <sup>rd</sup> Meeting - 10 March 2016	<a href="#">Col 1</a>
4 <sup>th</sup> Meeting - 15 March 2016	<a href="#">Col 6</a>
<b>STAGE 3</b>	
SPICe Briefing Land Reform (Scotland) Bill: Stage 3 - 7 March 2016	<a href="#">SB 16/24</a>
<b>Consideration by Parliament</b>	

*These Notes relate to the Land Reform (Scotland) Act 2016 (asp 18)  
which received Royal Assent on 22 April 2016*

<b>PROCEEDINGS AND REPORTS</b>	<b>REFERENCE</b>
Parliament Stage 3 Debate - 16 March 2016	<a href="#">Col 45 - 261</a>
Bill as passed - 16 March 2016	<a href="#">Land Reform (Scotland) Bill - as passed</a>
<b>Royal Assent</b>	
22 April 2016	<a href="#">Land Reform (Scotland) Act 2016</a>

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