

POLICY NOTE

THE LAND REFORM (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 12) REGULATIONS 2020

SSI 2020/428 (C. 40)

The above instrument was made in exercise of the powers conferred by sections 110 and 111 of the Land Reform (Scotland) Act 2016. The instrument is subject to negative procedure.

The purpose of the instrument is to bring into force sections 110 and 111 of the Land Reform (Scotland) Act 2016 on the 28 February 2021. Sections 110 and 111 amend the Agricultural Holdings (Scotland) Act 1991 providing a process for a tenant farmer with a secure 1991 Act agricultural tenancy to be able to relinquish their tenancy to their landlord in exchange for compensation or, if the landlord does not buy them out, they can assign the tenancy to a new entrant or to a person progressing in farming, for value. It also amends the Agricultural Holdings (Scotland) Act 2003 by adding a new section 74A which provides a regulation making power for how certain agricultural tenancies should be treated.

Policy Objectives

These regulations bring into force sections 110 and 111 of Part 10, Chapter 7 of the Land Reform (Scotland) 2016 Act which modify the 1991 Act by adding a new Part 3A, and add a new section 74A to the 2003 Act. Enabling secure 1991 Act tenant farmers without successors to seek to relinquish their tenancy to the landlord for value, or, where their landlord does not want to take the agricultural tenancy arrangement back in hand, to assign that tenancy for value. This allows tenant farmers with no successors to obtain value from their tenancy in order to support them in their retirement. These new provisions enable an eligible tenant farmer to assign their tenancy to a new entrant or a person progressing in agriculture, as defined in the Agricultural Holdings (Relinquishment and Assignment) Regulation 2020.

This SSI is accompanied by two further SSIs: the Agricultural Holdings (Relinquishment and Assignment) Regulation 2020, which sets out the procedure for relinquishment and provides a definition of a new entrant and person progressing in farming; and the Agricultural Holdings (Relinquishment and Assignment) (Application to Relevant Partnerships) Regulation 2021, which modifies the application of Part 3A to Limited Partnership tenancies, allowing eligible tenant farmers to seek to relinquish their tenancy but not assign it. In combination these three SSIs provide a mechanism for eligible tenant farmers who wish to relinquish their secure 1991 Act agricultural tenancy to be recompensed for the value of their tenancy enabling them to move forward into retirement in a more structured manner, and provide them with a return. This policy will also enable secure 1991 Act tenant farmers who do not wish to retire but who wish to relinquish their tenancy for whatever reason, to do so.

These provisions not only enable secure 1991 Act tenant farmers with no assignees or successors to retire from their businesses, but also allow a new entrant or a person progressing in agriculture to take on a secure 1991 Act agricultural tenancy. This approach encourages the continuation of tenant farming in a local area and gives a young person or a person progressing in agriculture an opportunity to farm.

These provisions within the three SSIs apply to secure 1991 Act agricultural tenancies across Scotland, including those located on Scottish islands. During the Agricultural Holdings Legislation Review Group consultation period some tenant farmers identified a lack of agricultural tenancies or agricultural land. Due to the culture and ability to pass a secure 1991 Act agricultural tenancy onto the next generation, this tenancy type does not normally become available on the tenancy market.

Prior to the 2016 Act and the three SSIs, the only way to enable tenant farmers of secure 1991 Act agricultural tenancies without eligible assignees or successors, or with potential assignees willing to take on the tenancy, to bring their tenancy to an end was to revert to the Scottish Land Court or go through way-go process which can be a significantly more lengthy approach.

Through the implementation of the 2016 Act and these accompanying three SSIs, this policy contributes to the Scottish Government vision for a vibrant tenanted agricultural sector, which is dynamic, sustainable and part of our wider Scottish Government economic and land use strategies. This vision recognises the role that tenant farmers and their landlords play in the cultural, economic and social well-being of our rural and island communities.

Consultation

After the Land Reform (Scotland) Act 2016 came into force on 22 April 2016, the Scottish Government started commencement of the provisions relating to tenant farming. In January 2019, officials engaged with national tenant farming stakeholders on sections 110 and 111 within the 2016 Act. Two tenant farming stakeholder meetings were held on 14 and 15 January 2019, consisted of representatives from NFUS, STFA, SLE, SAAVA, RICS, Scottish Land Commission, Central Association of Agricultural Valuers, Forestry Enterprise Scotland and the Tenant Farming Commissioner.

The stakeholder discussion concentrated on four topics: Definition of a new entrant and person progressing in farming; consideration of the European Convention of Human Rights; exploration of the consequences of including a person progressing in farming rather than solely new entrants; and the form and content of notice required, as part of the intention to relinquish and notice of acceptance.

Written consultation was undertaken in July 2019, when views were sought from the stakeholders: on the content of forms; definition of person progressing in agriculture; and timescale for TFC to appoint a valuer. These views were evaluated and incorporated into the development of this set of three SSIs and their accompanying documents. Throughout this process, particular attention was paid to the rights of both tenant farmers and their landlords under the European Convention of Human Rights.

Impact Assessments

The Equality Impact Assessment (EQIA) for the Land Reform Scotland Bill 2015 was published on 30 June 2015, and can be found here:

<https://www.webarchive.org.uk/wayback/en/archive/20170401105358/http://www.gov.scot/Topics/Environment/land-reform/LandReformBill/EQIA>

We have reassessed this EQIA for the purposes of this suite of relinquishment and assignation SSIs to ensure that equality interests are still relevant, this refreshed version was published on 11 December 2020. The document can be found alongside the instrument on www.legislation.gov.uk

Although not yet legally required, an Islands Impact Assessment has been undertaken in the spirit of the forthcoming legal change and was published on 11 December 2020 for this SSI, the Agricultural Holdings (Relinquishment and Assignation) (Scotland) Regulations 2020, and the Agricultural Holdings (Relinquishment and Assignation)(Application to Relevant Partnerships) (Scotland) Regulations 2021 and can be found here: <https://www.gov.scot/isbn/9781800044371>

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was published for the Land Reform (Scotland) Act 2016 at the introduction of the 2015 Bill and can be found here: <https://www.webarchive.org.uk/wayback/archive/3000/https://www.gov.scot/Resource/0048/00481018.pdf>

Subsequently, we have reassessed the BRIA for the purposes of the suite of relinquishment and assignation SSIs to ensure that business impacts have been considered, this refreshed version was published on 11 December 2020 and can be found alongside the instrument on www.legislation.gov.uk. This has shown that there is potential to increase agricultural productivity through new entrant and person progressing in farming.

Scottish Government
Agriculture and Rural Economy Directorate

11 December 2020