

Land Reform (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament’s Standing Orders in relation to the Land Reform (Scotland) Bill (“the Bill”). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 44–EN);
- a Financial Memorandum (SP Bill 44–FM);
- a Policy Memorandum (SP Bill44–PM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 44—LC).

3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Scottish Parliament.

Outline of Bill provisions

4. The Bill covers four principal policy areas:

- Land reform;
- A new Land Management Tenancy (a letting arrangement to support individuals to undertake a range of land use activities in one lease type);
- Agricultural holdings legislation; and
- Small landholdings legislation.

5. On land reform, the Scottish Government is committed to an ongoing programme of land reform, aimed at bringing about “a Scotland with a strong and dynamic relationship between its land and people, where all land contributes to a modern, sustainable and successful country, supports a just transition to net zero, and where

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rights and responsibilities in relation to land and its natural capital are fully recognised and fulfilled”.¹

6. This Bill is intended to help realise this vision by bringing forward legislative requirements in relation to the ongoing management and transfer of large landholdings. These requirements are based on recommendations of the Scottish Land Commission², and are intended to be targeted and proportionate ways of addressing the risks identified by the Land Commission through their work on scale and concentration of land ownership³.

7. The aims of the requirements are to:

- further improve the transparency of land ownership and management in Scotland,
- strengthen the rights of communities in rural areas by giving them greater involvement in decisions about the land on which they live and work,
- improve the sustainable development of communities by increasing opportunities for community bodies to purchase land when it comes up for sale,
- ensure a sufficient and adequate supply of land by enabling Ministers to require that the land is sold in lots if a large landholding is to be transferred where that will help to promote the sustainability of local communities.

8. In relation to agriculture (a policy area with close links to land reform) and other three principal policy areas, the Scottish Government Vision for Agriculture, published in March 2022⁴, outlined its ambition to “become a global leader in sustainable and regenerative agriculture.” This Vision, and those in the Scottish Government’s Programme for Government, are progressed in this Bill through the introduction of measures aimed at:

- supporting the use of land for environmental purposes including sustainable farming by providing a model lease (a ‘land management tenancy’), and
- modernising legislation relating to small landholdings and agricultural holdings.

Rationale for subordinate legislation

9. The Bill contains a number of provisions conferring delegated powers. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has considered the importance of each matter against:

¹ [Scottish Land Rights and Responsibilities Statement 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-land-rights-and-responsibilities-statement-2022/pages/introduction.aspx)

² [Legislative proposals for addressing concentrated landownership \(Land Commission.gov.scot\)](https://www.landcommission.gov.scot/legislative-proposals-for-addressing-concentrated-landownership/)

³ [Report to Ministers Scale and Concentration Land Ownership \(Land Commission.gov.scot\)](https://www.landcommission.gov.scot/report-to-ministers-scale-and-concentration-land-ownership/)

⁴ [Sustainable and regenerative farming - next steps: statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sustainable-and-regenerative-farming-next-steps-statement/pages/introduction.aspx)

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- the need to allow detailed operational arrangements to be set out in secondary legislation, in line with the basic structures and principles set out in the primary legislation;
- the need to ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation;
- the need to ensure proper use of parliamentary time;
- the possible frequency of amendment; and
- the need to anticipate the unexpected, which might otherwise impact on the purpose of the legislation.

10. The relevant provisions are described in detail below. For each provision, this memorandum sets out:

- the person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- the parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

11. Subordinate legislation is required to implement the Scottish Government's policy and some form of parliamentary procedure is appropriate. For the decision on negative or affirmative procedure, the Scottish Government has carefully considered the degree of parliamentary scrutiny that is thought to be required for the instrument, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily. The balance reflects the views of the Government on the importance of the matters being delegated by the Scottish Parliament.

Delegated powers

Part 1 Large Landholdings: Management and Transfer of Ownership

Section 1 of the Bill makes amendments to the Land Reform (Scotland) Act 2016 ("the 2016 Act")

Section 1(4) – inserting section 44A(1) into the 2016 Act – Power to impose obligations by regulations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

12. Section 44A(1) allows the Scottish Ministers to make regulations to impose obligations on the owner of certain land for the purpose of promoting community engagement in relation to that land. Section 44A(2) requires that where the Scottish Ministers use this power then the regulations made must impose the obligations described by sections 44B and 44C. Regulations under this section may impose obligations only in connection with land to which section 44D applies. Regulations made under this section are to be informed by the land rights and responsibilities statement published in accordance with Part 1 of the 2016 Act.

13. Section 44B(1) requires regulations made under section 44A to include provision requiring the owner of land to ensure that there is a publicly available land management plan; that there is engagement with communities on the plan or any significant changes to the plan; and that the plan is reviewed every 5 years from when it was made publicly available.

14. Section 44B(3) requires that the regulations made under section 44A must set out information including but not limited to: details of the land to which the plan relates, the long term vision or objectives of managing the land (including its potential sale); how the owner is complying with or intends to comply with obligations in the regulations, the Scottish Outdoor Access Code, and the code of practice on deer management; or how the owner is managing the land in a way that contributes to net zero, adapting to climate change and increasing or sustaining biodiversity.

15. Section 44C requires that regulations made under section 44A include obligations on the owner of land to consider a community body's request to lease land.

16. Section 44A(5) requires that the Scottish Ministers must consult the Land and Communities Commissioner before making any regulations under section 44A.

Reason for taking power

17. Inserted section 44A confers a power on the Scottish Ministers to enable them to impose obligations on the owner of a holding of land described in inserted section 44D for the purpose of promoting community engagement in relation to the holding.

18. While sections 44B and 44C provide some of the requirements that must be included in the regulations to be made under section 44A they are not exhaustive and could in future require to be supplemented. It is therefore considered appropriate that the regulations to impose such obligations are set out in subordinate legislation.

19. As required in section 44A(5), this approach will also allow the Scottish Ministers to consult with the Land and Communities Commissioner (created by section 6 of the Bill) prior to making regulations under this section. The Scottish Ministers will also conduct further consultation and engagement with stakeholders on appropriate form and content of these regulations.

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Choice of procedure

20. Inserted sections 44B and 44C provide a high level of detail on the face of the Bill as to what the obligations to be imposed on certain land will require. The affirmative procedure is nevertheless considered appropriate so as to allow the Scottish Parliament a high level of scrutiny to the regulations including the full content of obligations regarding community engagement and land management plans and the ways in which the plans will interact with other codes and obligations. As well as the requirement to consult the Land and Communities Commissioner before making these regulations in 44A(5), as outlined in the Policy Memorandum the Scottish Ministers will also conduct further consultation and engagement with stakeholders on the appropriate form and content of these plans.

Section 1(4) – inserting section 44M into the 2016 Act – Powers to modify Chapter 2

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

21. Inserted section 44M confers a regulation-making power on the Scottish Ministers to modify the land in relation to which obligations may be imposed by regulations under section 44A and the list of persons who may report an alleged breach to the Land and Communities Commissioner under section 44E(2).

Reason for taking power

22. Section 44D sets out the land in relation to which obligations may be imposed by the Bill. The power in section 44M provides flexibility should it be prove to be necessary or appropriate to alter the criteria in the future.

23. Section 44E(2) lists those persons who may submit a report of an alleged breach of an obligation imposed by regulations under section 44A to the Land and Communities Commissioner. The power in section 44M provides the flexibility to alter this list in future should the need arise.

24. Given the potential need to modify both section 44D and section 44E(2) in future, it is considered appropriate to make this provision in subordinate legislation.

Choice of procedure

25. The affirmative procedure is considered to be appropriate given this regulation making power enables the modification of provisions in the Bill, particularly as it would allow changes to what land might be within scope of the obligations. The affirmative

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procedure is also considered necessary as the power can be used to amend primary legislation.

Section 2 of the Bill makes amendments to the Land Reform (Scotland) Act 2003 (“the 2003 Act”)

Section 2(4) – inserting section 46C into the 2003 Act – Request by owner, or creditor, to lift prohibition under section 46B

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

26. An owner of land, or a creditor in a standard security with the right to sell land, may make a request to Ministers to lift the prohibition on transfer of land imposed under section 46B(1) so that the land can be transferred. Section 46C(2) provides a power for the Scottish Ministers to make regulations setting the manner of the request. (Section 46C(2) refers to “notice in the prescribed manner” which, when read in the context of the definition of “prescribed” in section 98(1) of the 2003 Act means by notice as prescribed by regulations made by the Scottish Ministers).

Reason for taking power

27. The power allows flexibility when developing the detail of the request notice that is most appropriately provided by regulation. For example, information may include the provision of maps illustrating boundaries of the landholding as well as specifying ownership. It will be important that the request will contain relevant information, and that it is given in an appropriate manner. As the detail of the request notice is developed it may be considered appropriate to include other information. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the information that a decision notice is to contain and also the manner in which a request notice is to be given.

Choice of procedure

28. The information that a request notice is to contain, and the manner in which a request notice is to be given, are largely administrative matters. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

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Section 2(4) – inserting section 46D into the 2003 Act – Procedure following receipt of notice under section 46C or 48

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

29. On receipt of a notice under inserted section 46C or section 48 of the 2003 Act, the Scottish Ministers must publicise the intention to transfer the land (section 46D(2)). Section 46D sets out what the Scottish Ministers must do to comply with this duty. Section 46D(2)(a) allows the Scottish Ministers to make regulations as to the information which they are to make publicly available on a website. Section 46D(2)(b) is a regulation-making power for the Scottish Ministers to set out the information about the land which is possibly to be transferred that must be sent to those persons listed in (i) to (iv) of that subsection.

Reason for taking power

30. The powers in section 46D(2)(a) and (b) allow flexibility when developing the detail of what information is to be provided on the website and given to those persons or bodies listed under subsection (b). This is most appropriately provided for by regulations. It will be important that the information is relevant and given in an appropriate manner. As the detail of the required information is developed it may be considered appropriate to include additional detail. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to what information is provided.

Choice of procedure

31. The information that should be provided here is also largely administrative in nature. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 2(4) – inserting section 46F(3)(b) into the 2003 Act – Further prohibition on transfer to allow for invited application to register an interest

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

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Provision

32. Where an owner of land to which section 46K applies is prohibited from transferring the land, a person can submit a note to the Scottish Ministers expressing an interest in registering a community interest in that land. Section 46F(3)(b) provides a power for the Scottish Ministers to make regulations setting out the information to be included in that note.

Reason for taking power

33. The power allows flexibility to develop the detail of what information is required to express an interest in registering a community interest in land that is most appropriately provided by regulation. For example, this could include details about the person noting the interest, their contact details and what part of the land is the interest in respect of. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to what information is required to be included in the note.

Choice of procedure

34. The information that should be provided here is largely administrative in nature. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 2(4) – inserting section 46L(a) and (b) into the 2003 Act – Powers to modify Chapter

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

35. Inserted section 46L provides the Scottish Ministers with the power to make regulations amending the land to which section 46K applies and the period during which a section 46F prohibition applies.

Reason for taking power

36. Under inserted section 46F(2)(b), the prohibition imposed by the Scottish Ministers on an owner of land and any creditor in a standard security over an interest in the land, from transferring the land, or taking any action with a view to a transfer of the land to allow an application to be made to register an interest in land expires 40 days after it is imposed. The power in 46L provides the flexibility to alter this period in future should the need arise.

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37. Inserted section 46K sets out the land that is, or forms part of, a large holding of land. The provisions in new Chapter 2A apply by reference to large holdings of land. The power in inserted section 46L(b) allows the section to be modified should that prove to be necessary or appropriate in the future.

38. Given the potential need to modify both 46F(2)(b) and 46K in future, it is considered appropriate to make this provision in subordinate legislation.

Choice of procedure

39. The affirmative procedure is considered necessary as the power can be used to amend primary legislation. The affirmative procedure is also considered to be appropriate given this regulation making power has the potential to alter the land that new Chapter 2A applies to and how long a section 46F prohibition will apply.

Section 4 of the Bill makes amendments to the 2003 Act

Section 4(2) – inserting section 67K(2)(b) into the 2003 Act – Ministers’ duty to make lotting decision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

40. Inserted section 67K(1) requires the Scottish Ministers to make a lotting decision in respect of land under section 67M or 67N where they receive a valid application asking them to make one or if a previous lotting decision is quashed following an appeal under section 67V.

41. An application is valid if it complies with the conditions in subsection (2) of inserted section 67K. Subsection (2)(b) provides a power for the Scottish Ministers to make regulations setting the manner of the valid application.

Reason for taking power

42. The power allows flexibility when developing the detail of what is required to make a valid application such as details of the land proposed for sale and any evidence that following this process would lead to undue financial hardship. That flexibility and detail is most appropriately provided by regulations. It will be important that the request contains relevant information and is given in an appropriate manner. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the manner in which a valid application is to be given.

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Choice of procedure

43. The information that a valid application is to contain and the manner in which a valid application is to be given are largely administrative matters. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 4(2) – inserting section 67L(3)(b) into the 2003 Act – Request for Ministers not to make lotting decision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

44. The Scottish Ministers' duty to make a lotting decision in respect of land under inserted section 67K ceases to apply if they receive a valid request asking them not to make a lotting decision in respect of the land.

45. A request is valid if it complies with the conditions in subsection (3) of inserted section 67L. Subsection (3)(b) provides a power for the Scottish Ministers to make regulations setting the manner of the valid request.

Reason for taking power

46. The power allows flexibility when developing the detail of what is required to make a valid request that is most appropriately provided by regulations. This could include details of the land and reasons why a lotting decision is not to be made. It will be important that the request contains relevant information and is given in an appropriate manner. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the manner in which a valid request is to be given.

Choice of procedure

47. The information that a valid request is to contain and the manner in which a valid application is to be given are largely administrative matters. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

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Section 4(2) – inserting section 67M(4)(b) into the 2003 Act – Expedited lotting decision where owner facing hardship

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

48. Ministers' may make a lotting decision stating that land need not be transferred in lots if they are satisfied about certain matters relating to the financial hardship that waiting for a lotting decision to be made under section 67N may cause the owner of land. Such a lotting decision can only be made if a valid request is made by the owner of land. The power in section 67M(4)(b) allows Ministers by regulations to set out the manner in which such a valid request is to be made.

Reason for taking power

49. The power allows flexibility when developing the detail of what is required to make a valid request that is most appropriately provided by regulations. It will be important that the request contains relevant information and is given in an appropriate manner. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the manner in which a valid request is to be given.

Choice of procedure

50. The manner in which a valid request is to be made is largely an administrative matters. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 4(2) – inserting section 67P(3)(b) into the 2003 Act – Ministers' duty to review lotting decision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

51. The Scottish Ministers must review a lotting decision where they receive a valid application asking them to do so (inserted section 67P). Inserted section 67P(3)(b) provides a power for the Scottish Ministers to make regulations setting out the manner of the valid application.

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Reason for taking power

52. The power allows flexibility to develop the detail of what is required to make a valid application that is most appropriately provided by regulation. For example, this could include what steps the owner has taken to transfer the land since the lotting decision took effect. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the manner of a valid application.

Choice of procedure

53. The manner of a valid application is largely an administrative matter. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 4(2) – inserting section 67Q(2)(b) into the 2003 Act – Request for Ministers to stop review

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

54. Ministers' duty to review a lotting decision in respect of land under section 67P ceases to apply if they receive a valid request asking them to stop the review. Section 67Q(2)(b) provides a power for the Scottish Ministers to make regulations setting the manner of such a request.

Reason for taking power

55. The power allows flexibility when developing the detail of what is required to make a valid request that is most appropriately provided by regulation. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the manner of a valid request.

Choice of procedure

56. The manner of a valid request is largely an administrative matter. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

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Section 4(2) – inserting section 67S(6) into the 2003 Act – Offer to buy following review

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

57. Section 67P makes provision for the Scottish Ministers to offer to buy land in certain limited circumstances. Section 67S makes further provision about this including when such an offer can be made, the price to be offered for the land and an appeal process regarding the price to be offered for the land.

58. Inserted section 67S(6) provides a power for The Scottish Ministers by regulations to make further provision about buying land under section 67P(2)(b), including about how land is to be valued for the purpose of section 67S (2).

Reason for taking power

59. While the current provision provides options for how the land can be valued, the regulations enable further detail to be provided in the future such as to the valuation process.

Choice of procedure

60. The basis on which the land can be valued can have an impact on whether an offer to buy land is made or accepted. While it could be seen as an administrative matter, the Scottish Ministers consider that any regulations should be subject to the affirmative procedure to allow a greater level of parliamentary scrutiny to the proposed valuation process.

Section 4(2) – inserting section 67T(1) into the 2003 Act – Specific request that Ministers consider making offer to buy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

61. Section 67T allows an owner of land or a creditor in a standard security with a right to sell the land to make a request that the Scottish Ministers consider buying the land. This can be done during a review of a lotting decision. Section 67T(1) provides a power for the Scottish Ministers to make regulations setting out the manner of such a request.

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Reason for taking power

62. The power allows flexibility when developing the detail of what is required to make a valid request that is most appropriately provided by regulation. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the manner of a valid request.

Choice of procedure

63. The information that a valid request must contain and the manner in which a valid request notice is to be given are largely administrative matters. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 4(2) – inserting section 67V(4) into the 2003 Act – Compensation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

64. An owner of land or a creditor in a standard security having a right to sell land who is entitled to compensation from the Scottish Ministers in certain circumstances (inserted section 67W). The amount, if any, of compensation to be awarded is to be determined by Ministers or the Lands Tribunal on appeal by the person seeking compensation against Ministers' determination of the amount payable. Such an appeal is to be lodged before the expiry of the period of 21 days beginning with the day that the appellant received Ministers' determination of the amount payable.

65. Inserted section 67V(4) provides Ministers a power to make further provision about compensation, including how claims are to be made and how the amount payable is to be determined, by regulations.

Reason for taking power

66. The provisions needed for compensation will include a number of detailed matters. For example, the regulations will need to set out the evidence to be submitted to support the claim for compensation. It is important that these are clearly set out with the appropriate level of detail. Detailed matters relating to payment and procedures and about applications for compensation are considered appropriate matters to be dealt with in regulations.

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Choice of procedure

67. Negative procedure is considered to be appropriate given how the amount of compensation payable is to be determined and the procedure to be followed are essentially administrative matters. Matters relating to the entitlement of compensation are likely to be detailed and administrative in nature and may require to be amended periodically.

Section 4(2) – inserting section 67Y into the 2003 Act – Powers to modify Part

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

68. Inserted section 67Y confers a power on the Scottish Ministers to make regulations modifying certain provisions of the Bill:

- to change what constitutes an exempt transfer for the purposes of the prohibitions on transfer under inserted sections 67C and 67D;
- the land affected by those prohibitions;
- how long lotting decisions have effect; and
- the period after which a review of a lotting decision can be requested under inserted section 67P(3)(c).

Reason for taking power

69. This will ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation.

70. A power to modify what constitutes an exempt transfer is provided to allow the Scottish Ministers to take into account how these measures are operating in practice. For example, should it become apparent that another form of transfer should be exempt or that a form of transfer currently set out as exempt appears to be being used for the purposes of avoidance.

71. A power to amend the land affected by the prohibitions is intended to allow for amendment in the future should monitoring or impact assessment of the provisions suggest that this would be appropriate.

72. The power to amend how long lotting decisions have effect and the period after which a review of a lotting decision can be requested are to allow for amendments should Scotland's land market sufficiently change in such a way that these periods are no longer appropriate.

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Choice of procedure

73. In consideration of the potential impact on proposed sales caused by these provisions, the risk of avoidance and the potential for Scotland's land market to change over time it is thought appropriate to allow Ministers to update these definitions more quickly via regulations. The affirmative procedure is considered necessary as the power will be used to amend primary legislation.

Land Management Tenancy

Section 7: Duty to publish model lease

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

74. Section 7 provides that the Scottish Ministers are to make publicly available a model lease designed for letting land so that it can be used wholly or partly for an environmental purpose including sustainable and regenerative agriculture, the achievement of net zero targets, adaption to climate change, and increasing or sustaining biodiversity. That duty must be fulfilled before the end of the period of 2 years beginning on the day that the Bill receives Royal Assent.

75. Section 7(3) provides that the Scottish Ministers may by regulations change the date by which their duty under this section is to be fulfilled. Section 29(3) has the effect that the regulations are subject to negative procedure.

Reason for taking power

76. It is intended that the model lease, described in the Policy Memorandum as a 'land management tenancy' will involve relevant stakeholders and partner bodies in its design and development. This will help deliver the policy objective of facilitating new types of land use for broadly environmental purposes, including agricultural activities (but not to the extent that any lease would relate to a small landholding or an agricultural holding).

77. It is considered that two years is a sufficient timeframe in which to develop the model lease with meaningful involvement of stakeholders and partner bodies and to make it publicly available. However, the purpose of this power is to allow change to the publication date if the process takes longer than anticipated, for example to respond to any change of circumstances that impacts on the time period necessary without further need for primary legislation.

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Choice of procedure

78. There will be no requirement to use all or any part of the model lease, and changing the date on which it must be made publicly available does not raise any matter of principle or great significance. The Scottish Government considers therefore that the negative procedure is appropriate.

Modernising Small Landholdings Legislation

Schedule, paragraph 7(4)(b): Notice of diversification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

79. Paragraph 7(4)(b) of the schedule allows the Scottish Ministers to prescribe the form that a notice of diversification must be in.

Reason for taking power

80. The power will enable the Scottish Ministers to ensure that notices of diversification are in a consistent form and provide such detail as is necessary to enable a landlord to make an informed decision in respect of a proposal.

Choice of procedure

81. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Schedule, paragraph 7(5): Notice of diversification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

82. Paragraph 7(5) of the schedule allows the Scottish Ministers to make regulations to add or remove information to be included in a small landholder's notice of diversification.

83. Paragraph 7(2) of the schedule requires a notice to contain: what the diverse purpose is; the land that would be used for that purpose (by reference to a map); any

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changes to the land which the landholder proposes to effect for that purpose; and the date on which the landholder proposes to commence using the land for that purpose.

84. Paragraph 7(3) requires that a notice must also specify any environmental benefit that is intended to be provided in using the land for a diverse purpose and how it will be provided; how any proposed changes to the land are to be financed and managed; how any business that is intended to be furthered by the use of the land for that purpose will be financed and managed; and address matters which may constitute a ground of objection.

Reason for taking power

85. The power will enable the Scottish Ministers to ensure, based on experience once diversification requests begin to be made, that the information contained in a notice of diversification is appropriate and contains enough information to support the parties in coming to an agreement about a proposed diversification.

Choice of procedure

86. Affirmative procedure is considered to be appropriate given that the power allows for the amendment of primary legislation, and regulations made under this power could require the small landholder to disclose further information about any proposed diversification.

Schedule, paragraph 9(8)(a): Landlord's agreement or objection to notice of diversification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

87. Paragraph 9(8)(a) of the schedule allows the Scottish Ministers to add or remove a ground for objection to a diversification proposal from the grounds which are set out in paragraph 9(3).

88. Paragraph 9(3) allows the landlord to object to the proposal only if the landlord reasonably considers that the proposal would: lessen significantly the amenity of the land or the surrounding area; substantially prejudice the use of the whole of the land comprising the small landholding for cultivation in the future; be substantially detrimental to the sound management of the estate; or cause the landlord to suffer undue hardship. The landlord may also object where the landlord reasonably considers that the notice fails to demonstrate that the proposed changes/business are viable; or where the small landholder has failed to comply with the requirement to provide information under paragraph 8(3).

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Reason for taking power

89. As set out in the Policy Memorandum, the aim of introducing provisions on diversification is to provide small landholders with greater opportunity to diversify their business, to support profitability and enable them to take action to help address the twin crises of climate change and biodiversity loss.

90. The Scottish Ministers consider that landlords should only be able to object to a diversification where doing so is appropriate having regard to the impact of the intended non-cultivation activity on their interests. The power will provide Ministers with flexibility to ensure that the objective of providing small landholders with greater opportunities to diversify their holding is met, particularly as understanding and practices of non-cultivation activities develop over time.

Choice of procedure

91. The Scottish Ministers consider that the ability of landlords to object to a proposed diversification directly engages their interests and should therefore be subject to a high level of scrutiny. Accordingly, the affirmative procedure is considered to be appropriate.

Schedule, paragraph 9(8)(b): Landlord's agreement or objection to notice of diversification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

92. Paragraph 9(8)(b) of the schedule allows the Scottish Ministers to make regulations on the information which is to be included in a notice given under subparagraph (2)(b) in relation to each ground for objection and the manner in which that information is to be provided.

Reason for taking power

93. The power will enable Ministers to ensure that a landlord's notice of objection contains relevant information in relation to any ground of objection sought to be relied upon, and is set out in a consistent format. The intention is to use this power if evidence comes to light that landlords are not providing enough information in their objection notice to allow small landholders to understand the reasoning behind their landlord's decision. This is considered to be important to provide a small landholder with the opportunity to amend their proposal to try to reach an agreement or to seek to negotiate with their landlord.

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Choice of procedure

94. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Schedule, paragraph 36(3): Application to Tenant Farming Commissioner

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

95. Paragraph 36(3) of the schedule allows the Scottish Ministers to make regulations prescribing the form and content of an application to the Tenant Farming Commissioner for an assessment of the amount of compensation due to or by a person in respect of a small landholding.

Reason for taking power

96. The power will enable the Scottish Ministers to ensure that applications contain sufficient and appropriate information to enable the Tenant Farming Commissioner to proceed with appointing a valuer under paragraph 37 of the schedule.

Choice of procedure

97. Negative procedure is considered to be appropriate given that the form and content of an application is an administrative matter and that it is appropriate that the detail should be set out in secondary legislation.

Schedule, paragraph 37(6): Appointment of valuer by Tenant Farming Commissioner

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

98. Paragraph 37(6) of the schedule allows the Scottish Ministers to make regulations to modify the period within which a valuer must be appointed by the Tenant Farming Commissioner under paragraph 37 of the schedule. Sub-paragraph (4) provides that a valuer must be appointed by the Tenant Farming Commissioner within 28 days of receipt of the application.

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Reason for taking power

99. The power will enable Ministers to adapt the period of 28 days to allow, if required following on from experience, the Tenant Farming Commissioner to be given a longer or shorter period to appoint a person to carry out the valuation assessment.

Choice of procedure

100. The regulations will make provision of a largely administrative character, and the Scottish Ministers therefore consider that negative procedure is appropriate. Because the provision is freestanding (rather than being inserted into an existing Act which already has a similar process in place), the Bill takes the more modern approach of allowing the Act to be modified. This is done for accessibility and transparency, to avoid users of the legislation being misled by the period stated on the face of the Act being countermanded by regulations which have to be found elsewhere. Although modifications to primary legislation are most commonly subject to the affirmative procedure, it is considered that the negative procedure remains appropriate here due to the low-level nature of the change and the fact that, in drafting terms, it will only take the form of the substitution of one figure for another. This approach is in line with, for example, the use of the negative procedure for the power to update figures found in section 41 of the Redress for Survivors (Historical Child Abuse in Care (Scotland) Act 2021 (see section 107(3)(a) of that Act).

Schedule, paragraph 40(4): Assessment of compensation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

101. Paragraph 40 of the schedule deals with the assessment of compensation by a valuer appointed by the Tenant Farming Commissioner. Paragraph 40(4) of the schedule allows the Scottish Ministers to modify paragraph 40 so as to specify the basis upon which the valuer is to assess the compensation payable and the consideration that is to be given to certain factors.

Reason for taking power

102. Assessment of compensation can involve a number of factors and the regulations are intended to provide further detail on the way in which compensation is to be calculated for the purposes of paragraph 40. It is important that these are clearly set out, and it is considered appropriate to set out that level of detail in secondary legislation. The power provides Ministers with flexibility to adapt the way in which compensation is calculated if new considerations become relevant. The power could also be used to remove factors that are no longer necessary in a valuer's assessment.

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Choice of procedure

103. Affirmative procedure is considered appropriate in respect of paragraph 40(4), as an exercise of this power could be significant in altering how compensation is to be valued and what factors are required to be taken into account in any assessment. It is therefore appropriate that the Scottish Parliament is given the opportunity to fully scrutinise any regulations under this power and to consider stakeholder views.

Schedule, paragraph 45(2): Registration of small landholder's interest in buying land

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

104. Paragraph 45(2)(a) of the schedule allows the Scottish Ministers to make regulations to prescribe the form of a small landholder's notice of interest in buying their small landholding.

105. Paragraph 46(2)(b) of the schedule provides that a notice must specify the particulars of the landholder and owner of the land, the location and boundaries of land (by reference to a map or drawing), and any interest or rights comprised in the land. Paragraph 45(2)(b)(iv) of the schedule allows the Scottish Ministers to prescribe what other information the small landholder should include in their notice.

Reason for taking power

106. The power will enable the Scottish Ministers to ensure that notices of interest are in a consistent form and contain relevant and appropriate detail to enable a landowner and an eligible creditor to be clear what the notice is referring to, and to enable the Keeper to proceed with registering the interest.

Choice of procedure

107. Negative procedure is considered to be appropriate, given that the form of the application and related information are administrative matters relating to the documents that are needed as part of the process of making an application to register an interest.

Schedule, paragraph 45(6): Registration of small landholder's interest in buying land

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

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Provision

108. Paragraph 45(6) of the schedule allows the Scottish Ministers to specify a reasonable fee that the Keeper may charge for registering landholders' interests in buying land and providing extracts, and copy extracts, of registration.

Reason for taking power

109. The power will enable the Scottish Ministers to keep the level of fee under review and to amend it, if appropriate, in light of economic conditions.

Choice of procedure

110. It is considered that the negative procedure is appropriate for regulations made under paragraph 45(6) given that setting a reasonable fee is an administrative matter and the fee to be levied will be relatively small.

Schedule, paragraph 48(4)(b): Notice of proposal to transfer land

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

111. Paragraph 48(4)(b) of the schedule allows the Scottish Ministers to prescribe the form and any additional requirements that are to be included in a notice of a proposal to transfer land.

Reason for taking power

112. The power will enable the Scottish Ministers to ensure that notices of a proposal to transfer land are in a consistent form, and include sufficient and appropriate detail for the small landholder and the Keeper to be clear what the notice is referring to.

Choice of procedure

113. Negative procedure is considered to be appropriate given that the form of the notice and any additional requirements are administrative matters.

Schedule, paragraph 49(5): Transfers not requiring notice

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

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Provision

114. Paragraph 49(5) of the schedule allows the Scottish Ministers to make regulations to modify sub-paragraphs (1) to (4). These sub-paragraphs set out which transfers do not require notice to be given to a small landholder of a proposed transfer (and therefore do not trigger the right to buy).

Reason for taking power

115. As set out in the Policy Memorandum, the pre-emptive right to buy provision aims to provide small landholders with the opportunity to purchase the land comprised in their small landholding, should the landlord or an eligible creditor decide to transfer the land. This power will enable the Scottish Ministers to review and amend the list of exempt transfers to ensure it is proportionate to the above aim and update it if necessary. This power would only be used if evidence comes to light from stakeholders that an amendment is considered necessary.

Choice of procedure

116. Affirmative procedure is considered appropriate given that the power allows for the amendment of primary legislation and given that any regulations would have an impact on the types of transfer which require to be notified and which trigger the right to buy, directly engaging landlords' interests. It is therefore appropriate that the Scottish Parliament be given the opportunity to fully scrutinise any regulations made under the power and to consider stakeholder views.

Schedule, paragraph 50(7): Right to Buy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

117. Paragraph 50(7) of the schedule allows the Scottish Ministers to make regulations modifying sub-paragraphs (3) and (4).

118. Paragraphs 50(3) and 50(4) set out what amounts to an owner or eligible creditor taking steps with a view to the transfer of land for the purposes of triggering the right to buy.

119. Paragraph 50(3) provides that an owner or eligible creditor takes steps with a view to a transfer of land when: the land is advertised or exposed for sale; the owner or creditor enters into negotiations with another person with a view to transfer the land; or if the owner or creditor proceeds with a proposed transfer of land which was initiated prior to the date on which the landholder's interest in buying the land was registered.

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120. Paragraph 50(4) of the schedule provides that references in sub-paragraph (3) to the owner of land include references to a person in whom the land has vested for the purposes of any engagement mentioned in paragraph 49(1)(f)(vii). These are any enactment relating to sequestration, bankruptcy, winding up or incapacity, or to the purposes for which judicial factors may be appointed.

Reason for taking power

121. The power will enable the Scottish Ministers to amend what actions amount to an owner or eligible creditor taking steps with a view to a transfer of land triggering a small landholder's right to buy. This power would be used should evidence come to light that further actions require to be included or current ones removed or changed.

Choice of procedure

122. Affirmative procedure is considered appropriate in respect of sub-paragraph (7), given that regulations made under this power will change the circumstances in which a pre-emptive right to buy is triggered and, accordingly, directly engage the interests of landlords and eligible creditors. It is therefore appropriate that the Scottish Parliament be given the opportunity to fully scrutinise any such regulations and consider stakeholder views.

Schedule, paragraph 55(7): Valuation of the land

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: not applicable

Provision

123. Paragraph 55(7) of the schedule allows the Scottish Ministers to issue guidance generally or in respect of a particular description of case for the purposes of valuation under paragraph 55.

Reason for taking power

124. Paragraph 55 of the schedule sets out how a valuation is to be assessed, including what factors a valuer is, and is not, to take into account. Assessing the value of land can be a complicated process and, accordingly the ability of the Scottish Ministers to issue guidance is intended to promote consistency of approach in respect of those aspects where prescribing matters in the paragraph would be inappropriate or disproportionate. Guidance could, for instance, set out examples of particular cases and how these should be valued. The intention where appropriate would be to publish this guidance.

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Choice of procedure

125. The guidance is intended to complement paragraph 55 and support consistency in approach. Given the guidance does not have the force of law, requiring the Scottish Parliament to scrutinise such guidance would not be the best use of parliamentary time.

Schedule, paragraph 56(8): Valuation etc.: further provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

126. Paragraph 56 of the schedule allows the Scottish Ministers to make regulations for, or in connection with, that paragraph and paragraphs 54 and 55. Paragraph 54 relates to the appointment of a valuer and paragraph 55 relates to the valuation of land.

Reason for taking power

127. The power will enable the Scottish Ministers to respond to any evidence that indicates that the procedure by which a valuer is appointed or how the land is valued needs to be amended.

Choice of procedure

128. Affirmative procedure is considered appropriate in respect of sub-paragraph (8), given that any exercise of this regulation making power could be significant in setting out how a valuer is appointed and how they are required to value the land. It is therefore appropriate that the Scottish Parliament be given the opportunity to debate their contents and consider stakeholder views before regulations under this power are made.

Schedule, paragraph 59: Registration of small landholder's interest: power to modify provisions

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

129. Paragraph 59 of the schedule allows the Scottish Ministers to make regulations for or in connection with the registration by small landholders of their interest in acquiring the land comprised in their leases. Registration of that interest is necessary if a small landholder is to exercise their pre-emptive right to buy the land under Part 5 of the schedule.

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130. Under paragraph 59(2), the Scottish Ministers may, in particular, make regulations about the manner in which a landholder notifies the owner of the land of the landholder's interest in buying the land; the procedure by which to register their interest; how to challenge a registration; the effect of registration; the Keeper's functions in relation to registration, updating or correction of entries in the Register; the consequence of registration or inaccurate registration; and the expiry or cancellation of an entry in the register.

131. The power further permits the Scottish Ministers to modify paragraphs 44 to 50 of the schedule which relate to: the Register of Community Interests in Land; registration of a small landholder's interest in buying land; owner's challenge to registration; duration of registration; notice of proposal to transfer land; transfers not requiring notice; and the right to buy.

132. Paragraph 59(2)(c) also allows the Scottish Ministers, if considered necessary or expedient, to make consequential provision which modifies other provisions in Part 5.

133. Paragraph 59(3) of the schedule provides that before making any regulations under paragraph 59(1), the Scottish Ministers must consult the Keeper and any other persons that are likely to have an interest in the registration of interests to buy land under Part 5.

Reason for taking power

134. As set out in the Policy Memorandum, the process of registering an interest in land should not be unduly burdensome for the small landholder, but it should still provide fair notice of that interest to the landlord and to third parties who might transact with the land.

135. The Scottish Ministers consider that this objective is best achieved by working in a flexible way with stakeholders to co-develop an improved registration process. The power in paragraph 59 of the schedule will enable Ministers to give effect to any changes that are considered appropriate following that process.

Choice of procedure

136. The exercise of a right to buy has a direct effect on the rights and interests of both the landlord and any third party who might otherwise have acquired the land.

137. The right to buy can only be exercised if an interest is registered, and changes to or in respect of the registration process will impact on the exercise of that right. The Scottish Ministers consider therefore that any regulations of the nature envisaged by paragraph 59 should be subject to affirmative procedure.

Agricultural Holdings

Section 10: Registration of interest and right to buy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

138. Section 10 of the Bill inserts new section 31A (power to modify: registration of tenant's interest) into the 2003 Act.

139. Section 31A(1) allows Scottish Ministers to make regulations for or in connection with the registration by tenants of 1991 Act tenancies of their interest in acquiring the land comprised in their leases. Registration of that interest is necessary if a tenant is to exercise their pre-emptive right to buy the land under Part 2 of the 2003 Act.

140. The Scottish Ministers may in particular make provision about the matters specified in section 31A(2), which include modifications of sections 24 to 28 of the 2003 Act which make provision in respect of the registration of interests in land by the Keeper of the Registers in the Register of Community Interests in Land.

141. Section 10(3) of the Bill modifies section 91 of the 2003 Act, with the effect that the regulations are subject to affirmative procedure.

142. The Scottish Ministers must before laying a draft of any regulations under section 31A consult the Keeper and such other persons as they consider are likely to have an interest in the registration of interests to acquire land.

Reason for taking power

143. As set out in the Policy Memorandum, the process of registering an interest in land should not be unduly burdensome for the tenant, but still providing fair notice of that interest to the landlord and to third parties who might transact with the land.

144. The Scottish Ministers consider that this objective is best achieved, by working in a flexible way with stakeholders to co-develop an improved registration process. The power in section 31A of the 2003 Act will enable Ministers to give effect to any changes that are considered appropriate following that process.

Choice of procedure

145. The exercise of a right to buy under Part 2 of the 2003 Act has a direct effect on the rights and interests of both the landlord and any third party who might otherwise have acquired the land.

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146. The right to buy can only be exercised if an interest is registered, and changes to or in respect of the registration process will impact on the exercise of that right. The Scottish Ministers consider therefore any regulations should be subject to affirmative procedure.

Section 11: Resumption

Section 32ZA of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

147. Section 11(2) inserts new section 32ZB into the 1991 Act, which provides for the landlord to give the tenant written notice of the landlord's intention to resume possession of an agricultural holding or part of it.

148. Section 32ZB(3)(a) provides that the notice must be in such form and contain such information as may be prescribed.

149. Section 85(1) of the 1991 Act defines 'prescribed', with the effect that the information is to be prescribed in regulations made by the Scottish Ministers, and that any regulations are subject to negative procedure.

Reason for taking power

150. The power will enable Scottish Ministers to ensure that a notice of intention to resume possession will provide such information, and be in such form, as is necessary to ensure that a tenant understands what is proposed, and their rights in that respect. It will also ensure that the form can be adapted to take account of any change of circumstances.

Choice of procedure

151. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Section 11: Resumption in relation to 1991 Act tenancies

Paragraph 1(3)(b), schedule 2A to the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

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Provision

152. Section 11 of the Bill inserts new schedule 2A into the 1991 Act, which provides for the determination of compensation for the value of resumed land.

153. Paragraph 1 of schedule 2A provides for the Tenant Farming Commissioner to appoint a valuer within the period beginning with the date that a notice of resumption is served on the Commissioner. Paragraph 1(3)(b) provides as an alternative for the valuer to be appointed before the end of such other period as the Scottish Ministers may prescribe.

154. Section 85(1) of the 1991 Act defines 'prescribed', with the effect that any period is to be prescribed in regulations made by the Scottish Ministers, and that any regulations are subject to negative procedure.

Reason for taking power

155. The power will enable Ministers to ensure that the Commissioner has the necessary time in which to select and appoint a valuer, should the 28 day period prove in practice to be either too long or too short.

Choice of procedure

156. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Section 11: Resumption in relation to 1991 Act tenancies

Paragraph 4(5), schedule 2A to the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

157. Section 11 of the Bill inserts new schedule 2A into the 1991 Act, which provides for the determination of compensation for the value of resumed land.

158. Paragraph 4 of schedule 2A provides for the basis on which the valuer is to assess the value of the land being resumed. Paragraph 4(2) specifies matters to which the valuer is for that purpose to have regard, or to take into account, or to take no account of.

159. In particular, paragraph 4(2)(c)(iv) provides that the valuer is to take no account of any increase in the value of the land resulting from improvements in relation to which

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the tenant would be entitled to compensation. Paragraph 4(3) makes further provision in that respect, so that whether or not there is an improvement is to be construed by reference to schedule 5 to the 1991 Act, and that 'high farming' is to be treated as an improvement executed at the tenant's expense.

160. Paragraph 4(5) provides for the Scottish Ministers to be able by regulations to add, remove, or vary the description of what a valuer must have regard to, take account of, or take no account of in assessing the value of land. Paragraph 4(6) provides that regulations under that paragraph are subject to affirmative procedure.

Reason for taking power

161. The basis on which the valuer is to assess the value of the land being resumed is a key part of the resumption measures in the Bill. The power is considered necessary in order to ensure that the valuation process can take account of changing circumstances over time, and in that way to continue to be fair to both the landlord and the tenant.

Choice of procedure

162. The basis on which the valuer is to assess the value of the land being resumed bears directly on the interests of the parties to the lease, and can be expected to affect the amount of compensation payable. The Scottish Ministers consider therefore any regulations should be subject to affirmative procedure.

Section 12: Resumption in respect of limited duration tenancies and repairing tenancies

Paragraph 1(3)(b), schedule 2 to the 2003 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

163. Section 12 of the Bill inserts new schedule 2 into the 2003 Act, which provides for the determination of compensation for the value of resumed land.

164. Paragraph 1 of schedule 2 provides for the Tenant Farming Commissioner to appoint a valuer within the period beginning with the date that a notice of resumption is served on the Commissioner. Paragraph 1(3)(b) provides as an alternative for the valuer to be appointed before the end of such other period as the Scottish Ministers may specify by regulations.

165. Section 12(3)(a) of the Bill modifies section 91(3)(b) of the 2003 Act, with the effect that any regulations under this power are subject to negative procedure.

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Reason for taking power

166. The power will enable Ministers to ensure that the Commissioner has the necessary time in which to select and appoint a valuer, should the 28 day period prove in practice to be either too long or too short.

Choice of procedure

167. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Section 12: Resumption in respect of limited duration tenancies and repairing tenancies

Paragraph 4(5), schedule 2 to the 2003 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

168. Section 12 of the Bill inserts new schedule 2 into the 1991 Act, which provides for the determination of compensation for the value of resumed land.

169. Paragraph 4 of schedule 2A provides for the basis on which the valuer is to assess the value of the land being resumed. Paragraph 4(2) specifies matters to which the valuer is for that purpose to have regard, or to take into account, or to take no account of.

170. In particular, paragraph 4(2)(c)(iv) provides that the valuer is to take no account of any increase in the value of the land resulting from improvements in relation to which the tenant would be entitled to compensation. Paragraph 4(3) makes further provision in that respect, so that whether or not there is an improvement is to be construed by reference to schedule 5 to the 1991 Act, and that 'high farming' is to be treated as an improvement executed at the tenant's expense.

171. Paragraph 4(5) provides for the Scottish Ministers to be able by regulations to add, remove, or vary the description of what a valuer must have regard to, take account of, or take no account of in assessing the value of land.

172. Section 12(3)(b) of the Bill modifies section 91(4)(b) of the 2003 Act, with the effect that any regulations under this power are subject to affirmative procedure.

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Reason for taking power

173. The basis on which the valuer is to assess the value of the land being resumed is a key part of the resumption measures in the Bill. The power is considered necessary in order to ensure that the valuation process can take account of changing circumstances over time, and in that way to continue to be fair to both the landlord and the tenant.

Choice of procedure

174. The basis on which the valuer is to assess the value of the land being resumed bears directly on the interests of the parties to the lease and can be expected to affect the amount of compensation payable. The Scottish Ministers consider therefore any regulations should be subject to affirmative procedure.

Section 14: Compensation for improvements

Section 37(1B) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

175. Section 14(5) of the Bill inserts new subsections (1A) to (1G) into section 37 of the 1991 Act.

176. Section 37 provides for where consent by the landlord is necessary for certain improvements to the holding that are proposed by the tenant. Section 37(1B) provides for the tenant to give notice to the landlord requesting consent to be in such form as may be prescribed, and to provide any prescribed information about the proposed improvement.

177. Section 85(1) of the 1991 Act defines 'prescribed', with the effect that any such form or information is to be prescribed in negative procedure regulations made by the Scottish Ministers.

Reason for taking power

178. The power will enable Ministers to ensure that notice of a proposed improvement that requires consent to be in such form and provide such information, as is necessary to ensure that a landlord is able to make an informed decision in respect of the improvement. It will also ensure that the form of the notice can be adapted to take account of any change of circumstances.

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Choice of procedure

179. The regulations will make provision of a largely administrative character and the Scottish Ministers consider therefore that negative procedure is appropriate.

Section 14: Compensation for improvements

Section 38(3A) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

180. Section 14(6)(b) of the Bill inserts new subsection (3A) into section 38 of the 1991 Act.

181. Section 38 provides for where the tenant must give notice to the landlord of improvements that are proposed to be made to the holding. Section 38(3A) provides for that notice to be in such form as may be prescribed, and to contain or be accompanied by any prescribed information about the proposed improvement.

182. Section 85(1) of the 1991 Act defines 'prescribed', with the effect that any such form or information is to be prescribed in negative procedure regulations made by the Scottish Ministers.

Reason for taking power

183. The power will enable Ministers to ensure that notice of a proposed improvement is in such form, and provides or is accompanied by such information, as is necessary to ensure that a landlord is able to make an informed decision in respect of the improvement. It will also ensure that the form of the notice can be adapted to take account of any change of circumstances.

Choice of procedure

184. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Section 14: Compensation for improvements

Section 73(1A) and (3A) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

This document relates to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 13 March 2024

Parliamentary procedure: Negative

Provision

185. Section 14(8)(a) inserts new subsections (A1) and (A3) into section 73 of the 1991 Act.

186. Section 73(A1) provides that the Scottish Ministers may by regulations modify paragraphs 2, 4, 5 and 6 of Schedule 5 to add, amend or remove an improvement.

187. Schedule 5 of the 1991 Act currently specifies a list of improvements for which consent is required (part 1), a list of improvements for which notice is needed (part 2) and a list of improvements which need neither consent nor notice (part 3).

188. Section 14(9) of the Bill substitutes a new version of Schedule 5.

189. Paragraph 1 of the new Schedule has the effect that an improvement that makes a change to the land or fixed equipment will require the consent of the landlord if it means that the land or equipment affected by the change either cannot or is unlikely to return to its former agricultural use, or the improvement has a long term or significant impact on the management of the holding as a whole. Paragraph 2 is an illustrative list of improvements of that type.

190. Paragraph 3 of the new Schedule has the effect that notice is required for an improvement that does not have a long term or significant impact on the management of the holding. Paragraph 4 is an illustrative list of improvements of that type.

191. Paragraph 5 is a fixed list of improvements for which no consent or notice is required.

192. Section 38 of the 1991 Act provides that compensation shall not be payable for certain improvements unless notice is given. Section 39 of that Act has the effect that compensation will not be payable if the landlord, having received notice, objects to the carrying out of the improvement or to the manner in which the tenant proposes to carry it out. The tenant may then apply to the Land Court under section 39(2) for approval.

193. Section 14(7) of Bill inserts new subsections (2A) and (2B) into section 39. The effect is that the Land Court is amongst other things to consider when deciding whether or not to grant approval to consider if the improvement is likely to facilitate or enhance sustainable or regenerative agricultural production on the holding. Paragraph 6 of the new Schedule lists improvements which unless the contrary is shown are presumed to have that effect.

194. Section 73(A3) provides that regulations under this power are subject to negative procedure.

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Reason for taking power

195. As set out in the Policy Memorandum, the Bill seeks to take a 'principles' based approach when determining whether an improvement requires consent (paragraph 1 of the new Schedule) or notice (paragraph 3 of the new Schedule).

196. In addition, the Land Court is to consider, when deciding whether to approve an improvement to which the landlord has objected following notice, if the improvement is likely to facilitate or enhance sustainable or regenerative agriculture.

197. The Scottish Ministers consider that it is necessary for them to be able to modify the illustrative lists in paragraphs 2, 4 and 6, and the fixed list in paragraph 5, in order to ensure that those lists properly reflect changes in understanding and in agricultural practice over time.

198. Ministers expect that the power would be used when engagement with stakeholders and other evidence demonstrates that it would be helpful to include a particular type of improvement on one of the lists. They will in that way aid the proper understanding and application of the new approach.

199. That will help ensure that improvements are made where doing so is necessary or desirable for the purposes of the efficient management of the holding, and will where appropriate facilitate on-farm investments and activities aimed at mitigating the adverse impacts of climate change and nature loss.

Choice of procedure

200. The lists are either illustrative, or specify improvements with a minimal or modest effect that can be carried out 'as of right', and the exercise of the power is not therefore expected to raise any issue of particular importance. The power would be used to add 'examples' of activities to a non-exhaustive list, or add activities to Part 3 of schedule 5 of the 1991 Act which provides for improvements with modest impact that do not require notice or consent). The Scottish Ministers consider therefore that the negative procedure is appropriate.

Section 15: Notice of and objection to diversification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

201. Section 15(2)(f) of the Bill inserts new subsection (15) into section 40 of the 2003 Act.

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202. Section 40 has the effect that a tenant who intends to use the land for a non-agricultural purpose must send a 'notice of diversification' to the landlord. This requirement applies to 1991 Act tenancies, limited duration tenancies (including modern limited duration tenancies), and repairing tenancies.

203. Section 40(2) provides that the notice of diversification must specify what the non-agricultural purpose is, the land that would be used for that purpose, any changes to the land which the tenant proposes to effect for that purpose, and the date on which the tenant proposes to commence using the land for that purpose. The notice must also address such matters as may constitute specified grounds of objection to the proposed diversification under section 40(9).

204. The Bill amends section 40(2) with the effect that the notice of diversification will in addition require to specify any environmental benefit that is intended to be provided in using the land for that purpose.

205. Section 40(9) provides that the landlord may object to a notice of diversification if (and only if) it relates to matters specified there. That includes matters that must be addressed in the notice as set out in paragraph 203 above. For that purpose, the landlord must reasonably consider that the intended use of the land would lessen significantly the amenity of the land or the surrounding area, substantially prejudice the use of the land for agricultural purposes in the future, be detrimental to the sound management of the estate of which the land consists or forms part, or cause the landlord to suffer undue hardship.

206. The Bill modifies the requirements of section 40(9) with the effect that the landlord must reasonably consider that the intended use would substantially prejudice the use of the whole of the land comprised in the lease for the purpose of sustainable and regenerative agriculture, or that there is substantial detriment to the sound management of the estate.

207. New section 40(15) of the 2003 Act provides that the Scottish Ministers may by regulations modify subsection (2) of that section so as to add or remove a matter which is to be specified in a notice of diversification, and may modify subsection (9) of that section so as to add or remove a ground of objection to a notice of diversification.

208. Section 15(3) of the Bill amends section 91 of the 2003 Act, with the effect that regulations under this power are subject to affirmative procedure.

Reason for taking power

209. The Scottish Ministers consider that it is important to be able to ensure that information contained in notice of diversification remains current as farming develops over time, and is apt to help the parties focus on the key issues around a proposed diversification.

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210. They consider that this will help the parties to reach agreement, and make it more likely both that farm businesses are successful, and that on-farm activities contribute to mitigating the adverse effects of climate change and nature loss.

211. In the same way, they consider that it is important that landlords should be able to object to a diversification only where doing so is appropriate having regard to the impact of the intended non-agricultural activity on their interests. The intended power will enable Ministers to ensure that this objective is met as understanding and practices develop over time.

Choice of procedure

212. The Scottish Ministers consider that the ability of landlords to object to a proposed diversification directly engages their interests, and therefore that regulations that might restrict their ability to object should be subject to affirmative procedure.

Section 20: Compensation for damage by game etc.

Section 52(3)(a) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

213. Section 20(2) of the Bill substitutes a new version of 52 (compensation for damage by game) of the 1991 Act

214. Subsection (3) of new section 52(3) provides that compensation for game damage is not payable unless the requirements specified in that subsection are met. Those requirements include that the tenant should give notice in writing to the landlord in such manner and form as may be prescribed as soon as reasonably practicable after relevant damage or injury is first observed by the tenant.

215. Section 85(1) of the 1991 Act defines 'prescribed', with the effect that any such form or information is to be prescribed in negative procedure regulations made by the Scottish Ministers.

Reason for taking power

216. The power will enable Ministers to ensure that notice of damage or injury is in such form and provides or is accompanied by such information, as is necessary to ensure that a landlord is given fair notice of a potential claim. It will also ensure that the form of the notice can be adapted to take account of any change of circumstances.

This document relates to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 13 March 2024

Choice of procedure

217. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Section 20: Compensation for damage by game etc.

Section 52(3)(c) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

218. Section 20(2) of the Bill substitutes a new version of section 52 (compensation for damage by game) of the 1991 Act

219. Subsection (3) of new section 52(3) provides that compensation for game damage is not payable unless the requirements specified in that subsection are met. Those requirements include that the tenant should give notice in writing to the landlord of the claim in such manner and form as may be prescribed within 6 months after notice of damage or injury is given under new section 52(3)(a).

220. Section 85(1) of the 1991 Act defines 'prescribed', with the effect that any such form or information is to be prescribed in negative procedure regulations made by the Scottish Ministers.

Reason for taking power

221. The power will enable Ministers to ensure that the notice of claim is in such form, and provides or is accompanied by such information, as is necessary to ensure that a landlord is given fair notice of the claim. It will also ensure that the form of the notice can be adapted to take account of any change of circumstances.

Choice of procedure

222. The regulations will make provision of a largely administrative character, and the Scottish Ministers consider therefore that negative procedure is appropriate.

Section 22: Standard claim procedure

Section 59B(1) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

This document relates to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 13 March 2024

Parliamentary procedure: Affirmative

Provision

223. Section 21(2) inserts new section 59B into the 2003 Act.

224. Subsection (1) of new section 59B provides for the Scottish Ministers to be able to make regulations applying the standard claim procedure to any relevant type of compensation as specified in subsection (3) of that section.

225. The standard claim procedure is as set out new schedule 3 to the 1991 Act, as introduced by section 20(4) of the Bill

226. Section 21(3) of the Bill has the effect that any regulations made under this power are subject to affirmative procedure.

Reason for taking power

227. There are number of potential claims for compensation that can be made by the tenant and the landlord. Claims are assessed under different provisions of agricultural holdings legislation, in particular at the termination of the tenancy (these are generally known as 'waygo' claims).

228. For example, claims can be made in respect of improvements, deterioration, and diversification. Each claim proceeds on a different basis and often to a different timescale. The making, assessing and payment of claims can be delayed or obstructed.

229. The Scottish Ministers consider therefore that there should as far as possible be a standard claims procedure, that can be adapted and updated to ensure that it operates effectively for each type of claim that it applies to. This will in their view ensure that claims are assessed and settled quickly and effectively, with corresponding benefits for all parties.

230. The Scottish Ministers consider that it is neither practicable nor desirable to provide in the Bill for each type of claim that might be covered by the new standard procedure, and therefor that it is appropriate to take a power to apply the procedure with such modifications as may be appropriate.

231. They also consider that it should be possible when doing so to modify the legislation that provides for a particular type of claim, where that is either necessary or expedient for the purpose of ensuring that the standard claims procedure can be effective in respect of that claim.

This document relates to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 13 March 2024

Choice of procedure

232. A claim may have significant value for a party to the lease of a holding.

233. In addition, the power will enable the modification of primary legislation, if for a specific and limited purpose connected to a statutory procedure provided for by the Bill.

234. The Scottish Ministers therefore consider that it is appropriate for any regulations made under this power to be subject to affirmative procedure.

Section 22: Standard claim procedure

Section 59B(4) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

235. Section 21(2) inserts new section 59B into the 2003 Act.

236. Subsection (1) of new section 59B provides for the Scottish Ministers to be able to make regulations applying the standard claim procedure to any relevant type of compensation as specified in subsection (3) of that section.

237. The standard claim procedure is as set out new schedule 3 to the 1991 Act, as introduced by section 20(4) of the Bill.

238. Subsection (4) of new section 59B provides for the Scottish Ministers to be able by regulations to modify the standard claims procedure.

239. Section 21(3) of the Bill has the effect that any regulations made under this power are subject to affirmative procedure.

Reason for taking power

240. The new standard claims procedure is capable of being applied to multiple types of claim.

241. The Scottish Ministers consider that it may be necessary or expedient to modify the standard claims procedure to ensure that it is fit for purpose. It might be, for example, that there will in due course be evidence that a particular time period is either too long or too short, that an additional process is required or indeed that the procedure can be simplified.

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Choice of procedure

242. The power will enable the modification of primary legislation, if for a specific and limited purpose directly connected to a statutory procedure provided for by the Bill. The Scottish Ministers therefore consider that it is appropriate for any regulations made under this power to be subject to affirmative procedure.

Section 23: Rent review: 1991 Act tenancies

Paragraph 9 of schedule 1A to the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

243. Section 23 of the Bill amends schedule 1A to the 1991 Act.

244. Subsection (2)(a) of the bill modifies paragraph 7 of that schedule, and provides in new paragraph 7(4)(a) to (e) for the factors to which the Land Court must have regard if asked to determine a fair rent for the holding.

245. It removes the requirement to have regard to the open market, rent of any surplus residential accommodation, and adds requirements to have regard to rent payable on similar holdings and the prevailing economic conditions in the relevant agricultural sector. The current requirement to have regard in particular to the productive capacity of the holding continues to apply.

246. Subsection (2)(b) also substitutes paragraph 9 of that schedule. The new paragraph 9 provides for the Scottish Ministers to be able by regulations to make further provision for the purposes of new paragraph 7(4)(a) to (e) of that schedule.

247. New paragraph 9 of that schedule provides for the Scottish Ministers to consult such persons as they consider appropriate before making any such regulations, and for the regulations to be subject to affirmative procedure.

Reason for taking power

248. The changes made by the Bill have been developed in close consultation with the affected interests, and will help ensure that any rent that is determined by the Land Court is indeed the fair rent for the holding.

249. The Scottish Ministers intend to continue to work with the industry to encourage the reaching of a consensus around the particular factors that should be considered when determining for instance the prevailing economic conditions in the sector. They

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consider that it may either necessary or expedient to make further provision in respect of the rent 'factors'. Such provision might for example be considered appropriate for the purpose of establishing a particular baseline in respect of a matter, or to give legal effect to a consensus that has been established in the industry.

Choice of procedure

250. Provision in regulations made using this power could bear significant weight in the resolution of any disagreement on the amount of an applicable fair rent, with a corresponding effect on the interest of the landlord or the tenant of a holding.

251. The Scottish Ministers note that the power in the version of paragraph 9 that is substituted by the Bill was subject to affirmative procedure.

252. The Scottish Ministers therefore consider that any regulations made under this power should be subject to affirmative procedure.

Section 24: Rent review: limited duration tenancies

Section 9BA of the 2003 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

253. Section 24 of the Bill inserts new sections 9B and 9BA into the 2003 Act.

254. New sections 9B and 9BA make the equivalent provision for limited duration tenancies as is made by section 23 of the Bill in the amendments of schedule 1A of the 1991 Act.

255. New section 9BA provides for the Scottish Ministers to consult such persons as they consider appropriate before making any regulations under that section and for the regulations to be subject to affirmative procedure.

Reason for taking power

256. The reason for taking the power is the same as in the case of the power in new paragraph 9 of schedule 1A to the 1991 Act, as considered above.

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Choice of procedure

257. Provision in regulations made using this power could bear significant weight in the resolution of any disagreement on the amount of an applicable fair rent, with a corresponding effect on the interest of the landlord or the tenant of a holding.

258. The Scottish Ministers therefore consider that any regulations made under this power should be subject to affirmative procedure.

Section 27: Rules of good husbandry

Section 85(2C) of the 1991 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

259. Section 27(4) of the Bill inserts subsection (2C) into section 85 of the 1991 Act.

260. Section 85(2A) of the 1991 Act provides that conservation activities are to be treated as being in accordance with the rules of good husbandry if they are carried out in accordance an agreement entered into under any enactment, or the conditions of a grant for such activities that is paid out of the Scottish Consolidated Fund (or such other grant as may be prescribed).

261. New subsection (2C) provides for the Scottish Ministers to be able by regulations to prescribe activities or description of activities which are to be treated as conservation activities.

262. Section 85(1) of the 1991 Act defines 'prescribed', with the effect that any regulations made under this power are subject to the negative procedure.

Reason for taking power

263. The Scottish Ministers already have the power to make provision in respect of activities carried out for the purposes of grants of a public nature.

264. There may however be activities which are not grant funded, but which should be treated as conservation activities for the purposes of the compliance with the rules on good husbandry.

265. The Scottish Ministers consider that it is appropriate to take a power to specify activities of that kind, as that will help ensure that on-farm activities help mitigate the adverse impacts of climate change and nature loss.

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Choice of procedure

266. The Scottish Government considers that regulations prescribing conservation activities do not raise any issue of particular significance. In most cases a conservation activity will be an activity carried out for the purposes of a grant of a public nature, and therefore already consistent with the rules of good husbandry. It is therefore expected that the power will only be used to provide clarification in the case of conservation activities with a modest overall impact. The Scottish Ministers consider therefore that it is appropriate that this power is subject to the negative procedure.

Part 3 Final Provisions

Section 28: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if amending primary legislation,
otherwise negative

Provision

267. This provision enables the Scottish Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of or in connection with the Bill, or for giving full effect to it. The regulations may make different provision for different purposes and modify any enactment.

Reason for taking power

268. As with any new body of law, the Bill may give rise to a need for a range of ancillary provisions. The power is needed to ensure that the policy intentions of the Bill are achieved if further changes are found to be necessary as a result of provisions in the Bill. Such provision is common in Bills to provide flexibility to make any adjustments that may arise in light of experience in relation to the operation of the Act as timeously as possible.

269. The power will also allow the Scottish Ministers to make further changes should there be any unforeseen issues with the operation of the new legislation. Without the power, it may be necessary to make further primary legislation to deal with a technical, operational or implementation matter which is clearly within the scope and policy intentions of the Bill. The Scottish Government considers that this would not be an effective use of resources by the Scottish Parliament or the Scottish Government.

270. The Scottish Government recognises the potentially broad application of this power, which includes the power to modify primary legislation, and to alter the provisions of the Bill. However, it is limited to the extent that it can only be exercised by

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the Scottish Ministers for the purposes of, in connection with, or for giving full effect to any provisions of the Bill.

Choice of procedure

271. Section 29(3) requires regulations made under section 6(2) to be subject to negative procedure. Section 29(4) requires that regulations under section 29 are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act but otherwise are subject to negative procedure. These procedures are typical for ancillary powers.

Section 30: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

272. Section 30 allows the Scottish Ministers to commence provisions in this Bill (other than sections 7 (duty to publish model lease), 28 (ancillary provision), 29 (regulation-making powers), 30 (commencement) and 31 (short title) which come into force on the day after Royal Assent) on such day as they may appoint by regulations. The regulations may include transitional, transitory or saving provision and may make different provision for different purposes.

Reason for taking power

273. It is standard practice for the Scottish Ministers to have control over the commencement of a Bill so that it can be brought into force at a suitable time. For example, it will be necessary to ensure that the appropriate and guidance for applicants in relation to the licences to be granted under the Bill are in place before those provisions are brought into force.

Choice of procedure

274. As is usual for commencement regulations, the default laying requirement applies (as provided for by section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.

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Land Reform (Scotland) Bill

Delegated Powers Memorandum

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