

# **LAND REFORM (SCOTLAND) BILL**

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## **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

### **INTRODUCTION**

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Land Reform (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended or inserted at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

### **PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2**

2. The amended or new delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

### **DELEGATED POWERS**

#### **PART 3: INFORMATION ABOUT CONTROL OF LAND ETC.**

##### **Section 35A(2)(b) – Land Register of Scotland: information to be included in title sheet**

**New section 7(4) of the Land Registration (Scotland) Act 2012 – meaning of “a person of significant control”**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

#### ***Provision***

3. Section 35A amends section 7 of the Land Registration (Scotland) Act 2012 (the “2012 Act”) to provide that where there is a person of significant control in relation to a certain type of proprietor then the Keeper must enter the name and designation of the person of significant control in the proprietorship section of the title sheet. The proprietors who this will apply in relation to are set out in inserted section 7(1)(aa) and are legal entities (with some exceptions) and persons who own the land in a special capacity and not in their own name.

4. Inserted section 7(4) of the 2012 Act provides that the Scottish Ministers may by regulations define what is meant by “a person of significant control” in relation to a proprietor. It is intended that regulations would provide that a person of significant control in relation to a proprietor will be a person who is not the proprietor but who has a significant influence or control over the proprietor. For example, in case of a company that is a proprietor, a person of significant control could be an individual that has a significant shareholding in the company, or in the case of a trustee that is a proprietor, a person of significant control could be an individual who has the ability to appoint and dismiss trustees.

#### ***Reason for taking power***

5. Enabling the Scottish Ministers to define a person of significant control in regulations will allow Ministers to consult on the definition and develop a clear definition. This will assist the Keeper and proprietors in understanding when there is a person of significant control in relation to a proprietor. It will also enable the definition to be amended over time to ensure that it can adapt to changes in the nature of control of applicable legal entities.

#### ***Choice of procedure***

6. The definition of a person of significant control, as provided for in inserted section 7(4) of the 2012 Act, is the key element of this policy in section 35A as it defines the persons about whom information has to be disclosed in the Land Register. The disclosure of information in the Land Register about a person of significant control may have a significant impact on that person as this information may not have been in the public domain previously. As such it is important that the definition of a person of significant control is subject to the level of parliamentary scrutiny that the affirmative procedure provides. This will ensure that the Parliament can scrutinise whether the proposed regulations provide a clear definition of a person of significant control and consider the effect that disclosure of information about such persons may have on those persons.

#### **Section 35A(2)(b) – Land Register of Scotland: information to be included in title sheet**

#### **New section 7(5) of the 2012 Act – exceptional circumstances where information not to be included in title sheet**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

#### ***Provision***

7. Section 35A provides that the 2012 Act is amended to provide that the proprietorship section of the title sheet must include information about a person of significant control in relation to a certain type of proprietor. Inserted section 7(5) of the 2012 Act provides that the Scottish Ministers may by regulations specify exceptional circumstances when the Keeper need not enter information about a person of significant control in the proprietorship section of the title sheet, or otherwise make this information publically available.

***Reason for taking power***

8. The power in inserted section 7(5) of the 2012 Act will in effect ensure that the name of a person with significant control can be kept from public view. The ability to make exceptions may be required, for example, for individuals who may come under threat of physical violence or intimidation if their names were placed in the public domain. Taking a regulation-making power will enable the necessary consultation to be undertaken on this policy to establish where exceptions should be made. In addition, as the circumstances where this information should not be disclosed may change over time it is essential that flexibility is retained to allow the circumstances to be amended over time.

***Choice of procedure***

9. It is necessary in particular circumstances, such as where an individual may under threat of physical violence if their name is placed in the public domain, that information regarding persons of significant control should not be made publically available. It is essential that the Parliament has the ability to scrutinise the regulations effectively to ensure that only exceptional circumstances are provided for in regulations in order that the overall policy aim of improving transparency of landownership is achieved. Therefore the affirmative procedure has been provided for.

**Section 35A(2)(b) – Land Register of Scotland: information to be included in title sheet**

**New section 7(8) of the 2012 Act – time period for notification of name and designation of a person of significant control**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

***Provision***

10. Section 35A provides that the 2012 Act is amended to provide that the proprietorship section of the title sheet must include information about a person of significant control in relation to a certain type of proprietor. Inserted section 7(8) of the 2012 Act, read with subsections (6) and (7), makes provision requiring a proprietor to notify the Keeper of the name and designation of a person of significant control in relation to the proprietor. Subsection (8) provides that the Scottish Ministers may by regulation specify the period of time by which a proprietor must make such a notification to the Keeper.

***Reason for taking power***

11. It is essential the time period specified in the regulations provides the necessary balance between ensuring the information is provided and updated timeously, and providing a reasonable period for proprietors to comply with the requirements. This duty to provide information will apply to existing proprietors once the section comes into force. Specifying a time period for information to be provided will ensure that the information can be submitted to the Keeper over a period of time rather than having to be provided on a specific date. Allowing the time period

to be set out in regulations will also ensure that flexibility is retained to ensure the right balance is struck and that the time period can be changed if it is not proving workable in practice.

### ***Choice of procedure***

12. Inserted section 7(8) of the 2012 Act provides that regulations can specify a period of time for notifications and updates of information about a person of significant control. The setting of a time period will have a significant bearing on the workability of the scheme and the accuracy of the information. Where the person of significant control changes it is essential that the information on the register is updated as to ensure the entry in the register is accurate. The affirmative procedure is appropriate so that the Parliament can scrutinise whether the time period specified in regulations will provide adequate time to enable the policy objective to be met whilst simultaneously being reasonable for proprietors.

### **Section 35A(2)(b) – Land Register of Scotland: information to be included in title sheet**

#### **New section 7(10) of the 2012 Act – time period for notification of changed name and designation of a person of significant control**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

### ***Provision***

13. Section 35A provides that the 2012 Act is amended to provide that the proprietorship section of the title sheet must include information about a person of significant control in relation to a certain type proprietor. Inserted section 7(10) of the 2012 Act provides that where there is a change in the name or the designation of the person of significant control in relation to the proprietor, the proprietor must within a specified period of time notify the Keeper of that change. Regulations made under subsection (10) can specify the time period under which the notification must be given.

### ***Reason for taking power***

14. Inserted section 7(10) of the 2012 Act provides that proprietors must update the Keeper about changes in the name or designation of a person of significant control. This will enable the information in the Land Register to be kept up to date. The power in subsection (10) enables the Scottish Ministers to specify in regulations a period of time that proprietors will have to comply with the requirement to providing updates to the Keeper.

15. It is essential the time periods specified in regulations provide the necessary balance between ensuring the information is provided timeously and providing a reasonable period for proprietors to comply with the duty. Allowing the time period to be defined in regulations will ensure that flexibility can be retained to ensure the right balance is struck and that the time period can be changed if it proves to not be workable in practice. It will also ensure that the Scottish Ministers can consult on what the appropriate time period should be.

### ***Choice of procedure***

16. The setting of a period time for providing information about persons of significant control will have a bearing on the workability of the scheme and the accuracy of the information within the Land Register. The details of a person of significant control will change as result of events that happen outside of the Land Register. The accuracy of the Land Register will depend on the register being updated as soon as practicable, after there has been a change in the circumstances of the person of significant control. The affirmative procedure is appropriate to provide that the Parliament can scrutinise whether the time period specified in regulations will provide an adequate period of time to enable the policy objective to be met and is reasonable for proprietors to comply with.

### **Section 36(2) – Power of Keeper to request information relating to proprietors of land etc.**

#### **New section 48A of the 2012 Act – power to request information relating to proprietors**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>revised</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

### ***Provision***

17. Section 36 amends the 2012 Act to insert a new section 48A. The inserted section 48A(1) gives the Scottish Ministers a power to make regulations enabling the Keeper to request information relating to certain proprietors of land and leases. Section 48A(2) sets out matters that may be included in the regulations made under section 48A(1) including that information may be requested about the category of person or body that a proprietor is and about individuals that have a controlling interest in a proprietor. On introduction the Bill provided that the regulations made under inserted section 48A(1) would be subject to the affirmative procedure on the first use and where the regulations amended an Act, with other uses being subject to the negative procedure.

### ***Reason for taking power***

18. The regulations made under section 48A will allow information about the category of person or body that a proprietor falls under and information about individuals having controlling interests in proprietors to be requested by the Keeper and be entered in the register. Defining what is meant by these terms in regulations will allow the Scottish Ministers to retain the ability to amend the definitions where this is appropriate.

19. Taking a power will enable the Scottish Ministers to have flexibility to amend the regulations to take account of relevant changes. For example changes to the category of person or body that a proprietor may fall into or changes to corporate structures which may affect the definition of a person having a controlling interest in a proprietor of land.

20. Providing for definitions to be set out in regulations will provide that the views of stakeholders can be taken into account before any regulations are made.

### ***Choice of procedure***

21. In the Bill as introduced, section 36 provided that the first regulations under section 48A(1), were subject to affirmative procedure, as well as where the regulations amended primary legislation; but other uses of the power would be subject to negative procedure. The Delegated Powers and Law Reform Committee commented that subsequent uses of the power could make substantive changes to the regulations and should be subject to higher degree of parliamentary scrutiny. The Scottish Government recognises the concerns raised by the Committee and agrees that the affirmative procedure should apply for all uses of the power.

## **PART 10: AGRICULTURAL HOLDINGS**

### **Section 79H(2) – Repairing tenancies: compensation**

#### **New section 59A of the 2003 Act – Compensation under repairing tenancies**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new power</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

### ***Provision***

22. New section 59A of the Agricultural Holdings (Scotland) Act 2003 (the “2003 Act”) provides the Scottish Ministers with a power to make regulations that would allow Part 4 of that Act (‘Compensation under agricultural tenancies’) to apply to repairing tenancies with any modifications specified in the regulations, enabling parties with a repairing tenancy to be entitled to similar rights to compensation – for improvements to the holding, as well as for disturbance, diversification and other matters – as with other types of tenancy.

### ***Reason for taking power***

23. Repairing leases are an entirely new tenancy type, with key features that distinguish them from established types of tenancy. Most notably, a repairing tenancy begins with a “repairing period”, during which time the tenant is expected to bring the holding up to a standard that will enable it to be farmed in accordance with the rules of good husbandry. During the repairing period, the obligations the parties are under differ from obligations under other tenancy types: for example, the tenant is not liable to maintain the land in accordance with the rules of good husbandry (because the land may not yet be capable of being farmed in accordance with them), and by default it will be the tenant’s responsibility to provide and maintain fixed equipment.

24. Given the new features of repairing tenancies, and their potentially complex interaction with compensation rights, it is felt to be prudent to provide for greater flexibility as regards the application of the standard compensation provisions to repairing tenancies.

### ***Choice of procedure***

25. Affirmative procedure is considered to be appropriate because regulations made using this power would have a significant impact on individual tenancies and would also apply and modify primary legislation.

**Section 81(2) – Sale to tenant or third party where landlord in breach of order or award**

**New section 38N(5)(za) of the 2003 Act – Payment to former landlord where early resale**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Revised or new power:** revised  
**Parliamentary procedure:** affirmative

***Provision***

26. On introduction, section 38N(4) of the Bill contained a power to enable the Scottish Ministers to make regulations about the payment that the original buyer must make to the original seller if the land is subsequently resold within ten years. Following a Stage 2 amendment, this power has been modified. New paragraph (za) of section 38N(5) expands the power so that regulations can be made to exclude increases in the price of the land that are due to specified factors (explicitly including tenants' improvements) from the payment the original seller receives.

***Reason for taking power***

27. The extension of the power will enable Scottish Ministers to consider which factors it would not be appropriate for the original seller to profit from, so that these can be excluded from any payment made to the original seller in the event of an early resale. That will include considering which kinds of improvements made by the tenant – that have increased the value of the land – should be excluded.

28. Without this extension of the power, in the event of an early resale the original seller would automatically profit both from the value of any improvements which existed at the time of the original sale (because the value of improvements is specifically excluded from the calculation of the original forced sale price, but would be reflected in the resale price), and from the value of any improvements that had been carried out since the original sale.

***Choice of procedure***

29. The regulations remain subject to the affirmative procedure, as they were on introduction. Affirmative procedure was chosen because aspects of the procedure for onward sale will affect the impact of the overall proposals on parties' rights.

**Section 82(3) – Agricultural Holdings (Scotland) 1991 Act tenancies: rent review**

**New Schedule 1A of the Agricultural Holdings (Scotland) 1991 Act – paragraph 8 – Productive capacity**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Revised or new power:** revised  
**Parliamentary procedure:** affirmative

***Provision***

30. On introduction, paragraph 8 of the new Schedule 1A of the Agricultural Holdings (Scotland) 1991 Act (the “1991 Act”) provided the Scottish Ministers with a power to make regulations on how the productive capacity of an agricultural holding with a secure 1991 Act tenancy is to be determined for the purposes of calculating the rent, and the information which is to be provided to the Land Court by the landlord and tenant to enable the Court to have regard to the productive capacity of that holding. These regulations were subject to the negative procedure, on the basis that the regulations would be developed following extensive stakeholder engagement, and that they would be technical in nature.

31. However, in response to views expressed by Parliamentary committees during Stage 1 of the significance of these regulations to the new procedure for rent review, itself a key process in agricultural tenancies, amendments were made at Stage 2 so that these regulations are now subject to the affirmative procedure.

***Reason for taking power***

32. The power has been taken to enable the Scottish Ministers to take into account the outcomes of the rent review modelling process, which began in 2015 and will continue in 2016. That process includes assessing which elements of the productive capacity of an agricultural holding should be included as part of a rent review.

***Choice of procedure***

33. The level of Parliamentary scrutiny these regulations are subject to has been strengthened by making them subject to the affirmative procedure. This reflects the fact that setting how productive capacity is to be determined will be central to the new rent review process and will have significant implications on the rental value of the tenancy, while enabling providing the necessary flexibility to enable revisions to the elements within the regulations to be altered within a shorter timescale to reflect global markets.

**Section 82(3) – 1991 Act tenancies: rent review**

**New Schedule 1A of the 1991 Act – paragraph 9 – Standard labour requirement**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>revised</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

***Provision***

34. On introduction, paragraph 9 of the new Schedule 1A of the 1991 Act provided the Scottish Ministers with a power to make regulations on how the standard labour requirement of an agricultural holding with a secure 1991 Act tenancy is to be determined, and the information which is to be provided to the Land Court by the landlord and tenant to enable the Court to determine the standard labour requirement of that holding. These regulations were subject to the negative procedure, on the basis that the regulations would be developed following extensive stakeholder engagement, and that they would be technical in nature.



35. However, in response to views expressed by Parliamentary committees during Stage 1 of the significance of these regulations to the new procedure for rent review, itself a key process in agricultural tenancies, amendments were made at Stage 2 so that these regulations are now subject to the affirmative procedure.

***Reason for taking power***

36. The power has been taken to enable the Scottish Ministers to take into account the outcomes of the rent review modelling process, which began in 2015 and will continue in 2016. It also gives the Scottish Ministers the flexibility to make adjustments to the standard labour requirement once the rent review system is being used in practice.

***Choice of procedure***

37. The level of Parliamentary scrutiny these regulations are subject to has been strengthened by making them subject to the affirmative procedure. This reflects the fact that setting how the standard labour requirement is to be determined will have an important bearing on the new rent review process and may in the future require to be altered to reflect global markets and technological changes that impact labour requirements.

**Section 83(3) – Limited duration tenancies and modern limited duration tenancies: rent review**

**New section 9B(3) of the 2003 Act – Determination of rent**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>revised</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

***Provision***

38. On introduction, new section 9B(3) of the 2003 Act provided a power for the Scottish Ministers to make regulations on how the productive capacity of land subject to a Limited Duration Tenancy (LDT) or Modern Limited Duration Tenancy (MLDT) is to be determined for the purposes of calculating the rent. These regulations were subject to the negative procedure, on the basis that they would be developed following extensive stakeholder engagement, and that they would be technical in nature.

39. However, in response to views expressed by Parliamentary committees during Stage 1 of the significance of these regulations to the new procedure for rent review, itself a key process in agricultural tenancies, amendments were made at Stage 2 so that these regulations are now subject to the affirmative procedure. Following Stage 2 amendments, the power to make regulations under this section is also extended so as to apply in relation to repairing tenancies.

***Reason for taking power***

40. The power has been taken to enable the Scottish Ministers to take into account the outcomes of the rent review modelling process, which began in 2015 and will continue in 2016.

That process includes assessing which elements of the productive capacity of an agricultural holding should be included as part of a rent review.

### ***Choice of procedure***

41. The level of Parliamentary scrutiny these regulations are subject to has been strengthened by making them subject to the affirmative procedure. This reflects the fact that setting how productive capacity is to be determined will be central to the new rent review process and will have significant implications on the rental value of the tenancy, while enabling providing the necessary flexibility to enable revisions to the elements within the regulations to be altered within a shorter timescale to reflect global markets.

### **Section 83(3) – Limited duration tenancies and modern limited duration tenancies: rent review**

#### **New section 9C(6) of the 2003 Act – Standard labour requirement**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>revised</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

### ***Provision***

42. On introduction, new section 9C(6) of the 2003 Act provided a power for the Scottish Ministers to make regulations on how the standard labour requirement of land subject to a Limited Duration Tenancy (LDT) or Modern Limited Duration Tenancy (MLDT) be determined for the purposes of calculating the rent. These regulations were subject to the negative procedure, on the basis that they would be developed following extensive stakeholder engagement, and that they would be technical in nature.

43. However, in response to views expressed by Parliamentary committees during Stage 1 of the significance of these regulations to the new procedure for rent review, itself a key process in agricultural tenancies, amendments were made at Stage 2 so that these regulations are now subject to the affirmative procedure. Following Stage 2 amendments, the power to make regulations under this section is also extended so as to apply in relation to repairing tenancies.

### ***Reason for taking power***

44. The power has been taken to enable the Scottish Ministers to take into account the outcomes of the rent review modelling process, which began in 2015 and will continue in 2016. It also gives the Scottish Ministers the flexibility to make adjustments to the standard labour requirement once the rent review system is being used in practice.

### ***Choice of procedure***

45. The level of Parliamentary scrutiny these regulations are subject to has been strengthened by making them subject to the affirmative procedure. This reflects the fact that setting how the standard labour requirement is to be determined will have an important bearing on the new rent

review process and may in the future require to be altered to reflect global markets and technological changes that impact labour requirements.

### **Section 89A – Tenant’s offer to relinquish 1991 Act tenancy**

#### **New Part 3A of the 1991 Act – section 32B(1) – New entrants to farming and persons progressing in farming**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new power</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

#### ***Provision***

46. Section 89A(2) inserts new Part 3A into the 1991 Act. Part 3A provides for a new process that will enable a 1991 Act tenant to relinquish their tenancy in exchange for payment from the landlord, or, if the landlord does not choose to buy out the tenant’s interest, to assign the tenancy to a new entrant to farming or a person progressing in farming. Section 32B provides for the Scottish Ministers to be able to make regulations to define new entrants and people progressing in farming for the purposes of this process.

#### ***Reason for taking power***

47. One of the key aims of the process introduced by section 89A is to increase opportunities for new and progressing farmers. There is currently a range of different definitions of ‘new entrants’ in use in the sector, and so this power will enable Ministers to ensure that the precise definition used can be targeted as effectively as possible for the purposes of the new Part 3A. Similarly, stakeholder consultation has highlighted that there is a range of opinions on how to most fairly and effectively define progressing farmers for the purposes of the new Part 3A, and so this power will allow Ministers to reach a considered view. It is also anticipated that there may need to be flexibility to amend both definitions over time, to respond to developments in agriculture.

#### ***Choice of procedure***

48. Negative procedure is considered appropriate, as the regulations will not amend primary legislation. Developments in agriculture and external factors mean that it may be advisable to be able to revisit the scope of the definitions of ‘new entrant’ and ‘person progressing in farming’ in the future, and use of the negative procedure will enable Ministers to do so efficiently in response to any such developments. Using the negative procedure is also consistent with the approach taken to the power to define new entrants for the purposes of new section 5B(3) of the 2003 Act (inserted by section 74(3) of the Bill) and the SSI Rural Development (Scotland) Regulations 2015 No 192., which gives effect to the EU Regulations that define new entrants.

## **Section 89A – Tenant’s offer to relinquish 1991 Act tenancy**

### **New Part 3A of the 1991 Act – section 32D(1) - Form and content of notice of intention to relinquish**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new power</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

#### ***Provision***

49. Section 89A(2) inserts new Part 3A into the 1991 Act. Part 3A provides for a new process that will enable a 1991 Act tenant to relinquish their tenancy in exchange for payment from the landlord, or, if the landlord does not choose to buy out the tenant’s interest, to assign the tenancy to a new entrant to farming or a person progressing in farming. To initiate that process, the tenant must serve their landlord with a ‘notice of intention to relinquish’. Section 32D provides that the Scottish Ministers may make regulations to specify the form and content of that notice to relinquish.

#### ***Reason for taking power***

50. Section 32D(2) sets out information that regulations might require to be included on a notice of intention to relinquish. However, as this is a new document being used for a new process, taking a power ensures that there is flexibility to introduce and adjust specific requirements once the process is being used in practice.

#### ***Choice of procedure***

51. Negative procedure is considered appropriate, as the form and content of a notice of intention to relinquish is an administrative matter: it is a minor part of the wider provisions, and does not affect the policy aims of section 89A or any other primary legislation.

## **Section 89A – Tenant’s offer to relinquish 1991 Act tenancy**

### **New Part 3A of the 1991 Act – section 32G(3)(b) - Appointment of valuer by Tenant Farming Commissioner**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new power</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

#### ***Provision***

52. Section 89A(2) inserts new Part 3A into the 1991 Act. Part 3A provides for a new process that will enable a 1991 Act tenant to relinquish their tenancy in exchange for payment from the landlord, or, if the landlord does not choose to buy out the tenant’s interest, to assign the tenancy to a new entrant to farming or a person progressing in farming. As part of that process, section 32G requires the Tenant Farming Commissioner to appoint a suitably qualified and

knowledgeable valuer to assess and calculate the compensation the landlord would need to pay to the tenant in order to buy the interest in the tenancy and take back full control of the land. Section 32G(3)(a) specifies that the Commissioner should appoint the valuer within 14 days of receiving a copy of the tenant's notice of intention to relinquish. However, section 32G(3)(b) also provides for Ministers to specify a different deadline by regulations.

***Reason for taking power***

53. This power allows for flexibility in the event that – once the new process is in operation – it becomes apparent that factors such as the Commissioner's workload or the availability of valuers make the 14 day deadline impractical.

***Choice of procedure***

54. Negative procedure is considered appropriate as the timescale for appointing a valuer is an administrative and minor part of the wider provisions, and does not affect the policy aims of section 89A or any other primary legislation.

**Section 89A – Tenant's offer to relinquish 1991 Act tenancy**

**New Part 3A – section 32P(8) of the 1991 Act - Landlord's acceptance of notice of intention to relinquish**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new power</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

***Provision***

55. Section 89A inserts new Part 3A into the 1991 Act. Part 3A provides for a new process that will enable a 1991 Act tenant to relinquish their tenancy in exchange for payment from the landlord, or, if the landlord does not choose to buy out the tenant's interest, to assign the tenancy to a new entrant to farming or a person progressing in farming. As part of that process, section 32P provides that, if the landlord wishes to proceed with buying out the tenant's interest, they must send the tenant a 'notice of acceptance' within 28 days of the expiry of the tenant's option to withdraw the notice of intention to relinquish. Section 32P(8) provides that the Scottish Ministers may make regulations about the form and content of the landlord's notice of acceptance.

***Reason for taking power***

56. Section 32P(3) sets out the key criteria a notice of acceptance must meet to be valid. However, this is a new document being used for a new process, so the power at 32P(8) ensures that there is flexibility to introduce and adjust specific requirements about the form and content of the notice of acceptance, should that be felt necessary once the process is being used in practice.

### ***Choice of procedure***

57. Negative procedure is considered appropriate, as the form and content of a notice of acceptance is an administrative matter: it is a minor part of the wider provisions, and does not affect the policy aims of section 89A or any other primary legislation.

### **Section 89B(4) – Tenant’s offer to relinquish 1991 Act tenancy: consequential modifications**

#### **New section 74A of the 1991 Act - Application of Part 3A of the 1991 Act**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>new power</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

### ***Provision***

58. Section 89A inserts new Part 3A into the 1991 Act. Part 3A provides for a new process that will enable a 1991 Act tenant to relinquish their tenancy in exchange for payment from the landlord, or, if the landlord does not choose to buy out the tenant’s interest, to assign the tenancy to a new entrant to farming or a person progressing in farming. Section 89B(4) inserts a new subordinate legislation-making power into the 2003 Act to make provision about this new process in relation to partnerships. Specifically, it provides that the Scottish Ministers may make regulations to disapply the new process to tenants in certain types of partnership, such as limited partnerships; to allow general partners in certain types of limited partnership to be treated as if they were a tenant under the new Part 3A process; and to apply that new process to tenants in certain types of partnership with modifications.

### ***Reason for taking power***

59. It is not envisaged that it would be feasible for tenants in certain partnerships to use the process in section 89A to relinquish or assign their tenancies. However, the power in section 74A ensures that there is flexibility to consider the complex issues involved and whether, and if so how, to apply the new Part 3A of the 1991 Act to partnerships. The Agricultural Holdings (Right to Buy Modifications) (Scotland) Regulations 2004 (SSI 2004/557), which apply Part 2 of the 2003 Act with modifications to general partners of tenants who are limited partnerships, provide a previous example of how such regulations might be used. This power would also enable regulations to be made to apply Part 3A to limited partnerships in which the landlord is the limited partner with modifications tailored to ensure that the process worked effectively in those particular circumstances.

### ***Choice of procedure***

60. Regulations made using this power would disapply, or modify the application of, primary legislation. The affirmative procedure will therefore ensure that the Parliament has the fullest opportunity to consider and scrutinise any such regulations.

**PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION  
REMOVED AT STAGE 2**

**Section 35(1) on introduction – Right of access to information on persons in control of land**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** affirmative

***Provision***

61. This power has been removed following amendment of the Bill at Stage 2. The power allowed the Scottish Ministers to make regulations enabling persons who are affected by land to make request to a request authority for information about persons with control of land. Section 35 of the Bill was removed in its entirety from the Bill. This section was removed from the Bill as the inclusion of the section 35A in the Bill removed the need for persons to make requests for information of person that have a control in land on a case by case basis. The amendments made by section 35A would mean that this information would be available through the Land Register.

# **LAND REFORM (SCOTLAND) BILL**

## **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

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