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Rural Affairs, Climate Change and Environment Committee

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22 December 2015

Land Reform (Scotland) Bill: proposed Stage 2 amendment to section 79

Dear Nick

I wrote to you on 4 December to inform the RACCE Committee of the Scottish Government's intention to replace the delegated powers at section 79 of the Bill with substantive provisions, and enclosed more detail of the policy underpinning these provisions. Since then we have continued to consult key stakeholders on this policy, and have listened to their comments and suggestions. We have produced an updated note on the policy to reflect those discussions, making clarifications and adjustments in response to feedback we have received so far. This note is being sent today to key stakeholder groups, who may find it helpful in preparing their responses to RACCE's call for evidence. The Committee members may also find it useful to see this additional information ahead of Stage 2.

We continue to welcome stakeholders' input as we finalise provisions, and will keep the Committee updated on any further developments.



STEVE SADLER
Head of Land Reform and Tenancy Unit

Land Reform (Scotland) Bill: updated note on the assignation process to replace section 79

This updated note on the process to replace section 79 in the Land Reform Bill builds on discussions with, and feedback from, stakeholder groups. The Scottish Government continues to welcome stakeholders' input on the policy as amendments are finalised for Stage 2 of the Bill.

Readers should note that the language used here is intended to convey the policy as clearly as possible, and may differ from the actual terms used in the drafting of the legislation.

1. Any tenant of a 1991 Act tenancy may serve a notice on his landlord, letting him know that he intends to relinquish the tenancy.¹ The tenant must send a copy of the notice to the Tenant Farming Commissioner (TFC) at the same time.
2. Once the TFC has received the notice, he must appoint a valuer within 14 days. The valuer must be someone the TFC believes is suitably qualified and independent. The valuer should also have knowledge and experience of valuing:
 - agricultural land both with vacant possession and subject to 1991 Act tenancies; and
 - waygo compensation and dilapidations for 1991 Act tenancies.

The valuer's fees will be met by the tenant who has instigated the process. The tenant will be entitled to object to the valuer proposed for appointment (for example, if he perceives the valuer has a conflict of interest). The TFC will then be required to appoint an alternative valuer. The landlord and the tenant are to co-operate in providing information reasonably requested by the valuer.

3. The valuer has eight weeks² to send the tenant and the landlord his opinion as to:
 - the value of the land if it were sold as a single lot with vacant possession, subject to the land uses permitted under the tenancy agreement;
 - the value of the land if it were sold as a single lot subject to the current lease (including permitted land uses) and with the tenant still in occupation;
 - the sum of the compensation that would be due to the tenant at waygo; and
 - the dilapidations for which the tenant would be liable at waygo.

¹ Note: this process is not open to tenants in circumstances where there are outstanding demands to remedy against the tenant, or notices to quit against or made by the tenant.

² We had originally proposed six weeks. However, stakeholders have raised the point that valuers currently have six weeks to provide an opinion when a tenant is exercising his pre-emptive right to buy. As the valuer in this new process will be conducting a more extensive valuation, we are proposing allowing slightly more time for that.

These values would be estimated as though the tenancy had ended on the date the tenant served his notice to assign the tenancy.

4. The valuation must take into account any investments, improvements, repairs and maintenance in the holding made by both the tenant and landlord, and the condition of the holding on the date the notice of intention to relinquish was given. The valuation must take into account when the landlord would otherwise have been likely to recover vacant possession of the land from the tenant, in line with section 34(2)(c) of the 2003 Act.
5. The landlord and the tenant then have 21 days in which either of them may lodge an appeal against the valuation to the Lands Tribunal, stating their grounds on which the appeal is being made. The cost of appeal is to be met by the party lodging the appeal. However, should the Lands Tribunal find that the valuation figure has been compromised because one party did not provide accurate information in response to reasonable requests from the valuer (see paragraph 2), that party should be liable for the costs arising from the appeal.
6. The tenant may also decide, once he has received the valuation, that he no longer wishes to proceed with ending his tenancy. In that case, he would need to inform his landlord in writing within 35 days of the valuer issuing his determination (the 35 days comprises the 21 days of the appeal window + an additional 14 days after the appeal window has ended). If either party appeals the valuation, the tenant has until 14 days after the Lands Tribunal has issued its judgement to inform his landlord that he no longer wishes to relinquish the tenancy. (In other words, the tenant may inform his landlord during the appeal window; during the appeal itself; or up to 14 days after the Lands Tribunal decision.) Once the tenant has informed the landlord in writing, the process would end and the notice to assign would cease to have effect.
7. If the tenant does not notify his landlord that he wishes to end the process, then once the 35 days (or longer in the event of an appeal; see above) have expired the landlord becomes entitled to buy the tenant's interest in the tenancy. To do this, the landlord would need to pay the tenant at least:
 - the sum of the waygo compensation valuation figure, minus the sum of dilapidations for which the tenant is liable, plus
 - 50% of the difference between the estimated value of the land if sold with vacant possession and the estimated value of the land if sold with the tenant still in occupation.
8. The landlord will have a period of 6 months to exercise this right to buy out the tenant. The payment should be made to the tenant and the title transferred to the landlord within this timeframe.
9. If the landlord does not exercise his right to buy out the tenancy, then the tenant may proceed to assign his lease to a new tenant. However, the tenant may only assign his lease to either a new entrant (someone of any age setting up as head of an agricultural holding for the first time), or a tenant farmer who is progressing in the industry and seeking to establish themselves further. Note that in both cases the assignee must be a natural person. We have received several

suggestions from stakeholders on how to define a 'progressing farmer', which we are considering carefully.

10. To assign his tenancy the tenant must notify the landlord in writing of:
 - The details of the person to whom he proposes to assign the lease;
 - An explanation of how the assignee meets the definition of either a new entrant or a progressing farmer;
 - The terms of the assignment, and
 - The date on which the assignment is to take effect.
11. The landlord has 30 days from receiving this written notice from the tenant in which he may object to the proposed assignee. The grounds for objection are broadly the same as those currently in place for the assignment of 1991 Act tenancies and for the open assignment of LDTs. In other words, the landlord may object on grounds that:
 - He is not satisfied the assignee would have the ability to pay the rent or pay for adequate maintenance of the land.
 - The assignee does not have sufficient training or experience to farm the holding with reasonable efficiency. However, where the assignee is a new entrant to farming, if he has begun (or will begin within 6 months) relevant training, and has made arrangements for the holding to be farmed efficiently until he completes that training, then lack of training or experience will not be grounds for objection.
12. The tenant must write to the landlord detailing a proposed assignee within a fixed period of the date that the landlord's right to buy the tenant out expired. We would welcome any views from stakeholders on what that period of time should be. After the time has elapsed, the notice to assign ceases to have effect, and a new notice would be needed in order to proceed with an assignment.
13. If an assignment goes ahead successfully, then on the date from which it takes effect the assignee assumes the tenancy with its improvements and dilapidations as they stand at the date of the handover. The rent following the assignment will be set at the level determined at the most recent rent review for the holding.