LR17 Land Reform (Scotland) Bill [as Passed]: Part 2

The Land Reform (Scotland) Bill was passed by a majority of the Scottish Parliament on 5th November 2025. It is expected to receive Royal Assent before the end of the year but will not be fully implmented for a number of years as secondary legislation and guidance need to be developed first.
Part 1 of the Bill makes changes to the law concerning large landholdings (over 1000ha) in terms of new duties for community engagement, changes to the community right to buy process requiring notification to Ministers of planned sales as well as the potential for enforced lotting before sale.
Part 2 of the Bill makes changes to law relating to leasing of land including small landholdings and agricultural tenancies.
This Briefing provides further information about Part 2 of the Bill only. Information about Part 1 can be found in Briefing Note LR16.

Overview of Part 2

Part 2 of the Bill deals with three aspects of leasing land in Scotland, namely:-

1. **Model Leases** – Ministers are to publish two styles of model lease within 2 or 3 years after Royal Assent respectively:
   - for letting land so it can be used (wholly or partly) for an environmental purpose
   - for letting public land so it can be used for building or occupying huts

   Environmental purpose is defined as use for:-
   (a) for sustainable and regenerative agriculture,
   (b) in a way that contributes towards achieving the net-zero emissions target set by section A1 of the Climate Change (Scotland) Act 2009,
   (c) in a way that contributes towards adaptation to climate change,
   (d) in a way that contributes towards increasing or sustaining biodiversity.

   It remains to be seen how widely the model lease for environmental purposes will be used in cases where part of the land is used for agriculture for a trade or business because it would then fall within the Agricultural Holdings (Scotland) Act 2003 and would default to an SLDT or MLDT depending on the duration.

   It should be noted that the model lease for hutting will only affect public land.

2. **Small Landholdings** – the Bill consolidates a number of old statutes relating to Small Land Holdings and aligns the protections for small landholders to be closer to those of 1991 Act agricultural tenants, including the right to register an interest in buying the holding, right to assign, diversification, compensation for improvements and game damage. It will also be

possible to create new Small Landholdings for the first time since 1911. Small Landholdings are also brought under the remit of the Tenant Farming Commissioner (TFC). A separate information sheet will be produced with further details of the statutory conditions of let and other terms of small landholdings.

3. **Agricultural Holdings** – The Bill contains a number of provisions generally improving the position for tenants in the context of improvements, diversification and environmental land management as well as compensation due on resumption, a standard procedure for waygo and a wider basis for compensation for game damage. There are also changes to the rent review regime amending the fair rent provisions in the Land Reform (Scotland) Act 2016 (which have never been implemented) to allow both productive capacity and market rent to be taken into account as well as the prevailing economic conditions.

   The remainder of this Briefing Note provides further detail on the changes to Agricultural Holdings tenancies.

Pre-emptive right to buy	Regulations may provide for changes to the process for registration of the tenant's interest in acquiring their 1991 Act tenancy. There must first be consultation on such regulations. The Bill also makes some minor changes to the current process:- - Where there is a standard security over the land, the owner must now send a copy of the extract registration to the creditor within 28 days of receiving the extract from the Keeper. - If the tenant's right to buy arises following the owner serving a notice on the tenant that they propose to transfer the land or any part of it, the tenant must serve a notice that they intend to buy the land within 28 days otherwise the right to buy is extinguished. - However, if the right to buy arises because the owner takes action with a view to a transfer but does not serve a notice on the tenant, the tenant must still serve notice on the owner that they intend to buy – but there is no time limit on this. If the tenant does not serve a notice that they intend to buy, the right to buy is extinguished. However, this is of little value as there is no time limit for the tenant to serve the notice. A time limit could be added by later regulations. - If a tenant at any time serves a notice that they do not intend to proceed to buy the land, then the right to buy is extinguished.
Assignation and Succession	There are minor changes to assignation and succession of all types of tenancy, to update terminology and create consistency in time periods. For example, if a landlord wishes to withhold consent to a family assignation, they will have to do so within 28 days beginning when the notice is given by the tenant that they intend to assign the lease, rather than the previous 30

	days. In relation to succession, the 1-month period to object to a legatee or acquirer is similarly changed to 28 days.
Resumption	The Bill makes changes to the process and heads of compensation payable when land is resumed from both 1991 Act and 2003 Act tenancies. It does not affect when resumption is available to a landlord, i.e. it does not apply if the 1991 Act tenancy did not already have a resumption clause nor if the circumstances in the 2003 Act qualifying the landlord for resumption do not apply. In both 1991 Act and 2003 Act tenancies, an additional payment is to be made reflecting the value of the tenant's interest in the lease of the part being resumed which is to be calculated as half the difference between the vacant possession value of the land and the value of the land with the tenant in occupation. This is a similar process to the compensation that can be claimed if the landlord accepts a relinquishment of the whole tenancy, as introduced by the 2016 Act. This payment is in addition to the usual compensation payable for improvements, disturbance, reorganisation and high farming and it is subject to any dilapidations claim. The process is as follows:- - The landlord must give the tenant written notice in a prescribed form at least 1 year before the intended resumption date. - The notice must nominate a suitably qualified valuer. - The tenant has the option to terminate the tenancy on the intended resumption date if they serve notice on the landlord within 6 weeks of the landlord's notice being given. - Except where the tenant has served a notice to terminate, the landlord may withdraw the resumption notice at any time, subject to paying any expenses reasonably incurred by the tenant in the meantime. - If the tenant objects to the valuer nominated by the landlord, they may give a notice of objection within 6 weeks. If the parties cannot agree on an alternative valuer, the landlord may request that the TFC appoints one. The valuer must be appointed or the TFC asked to appoint one within 10 weeks of the original resumption notice otherwise it is deemed to be of no effect. - Where the TFC is asked to appoint a valuer, they must do so within 28 days. If the tenant or landlord objects to the TFC's appointment, they may apply within 14 days to the Land Court to appoint an alternative valuer and they may propose a person to be appointed. The Land Court may appoint that person or some other valuer and the Court's decision is final. - The landlord is responsible for both the valuer's expenses and the TFC's expenses incurred in appointing a valuer. - The valuer must assess the value of the land if sold both with vacant possession and with the tenant in occupation. - In assessing value, the valuer is to have regard to/take account of:-

	- the value likely to be agreed between a willing seller and willing buyer - when the landlord would have been likely to recover possession - the terms and conditions of any lease, affecting the land (other than the lease of the holding) - The valuer is to take no account of: - The existence of any successor/assignee of the tenant - The absence of a period of time for which the land would be marketed - Any factor attributable to the use of the land which is or would be unlawful - Any increase in value due to tenant's improvements - Any increase or reduction in value resulting from use of the land or changes to the land not permitted by the lease - Any reduction in value due to tenant's dilapidations - The valuer must invite the landlord and tenant to make representations about his/her assessment of values and have regard to any representations made. - The valuer must complete the assessment and serve a notice on the parties within 8 weeks of appointment and set out the respective valuations and the calculation of the amount payable (being half the difference in respect of the portion of the land being resumed). - There is an appeal mechanism to the Lands Tribunal within 21 days and the Tribunal can refer a point of law to the Land Court. Where land is resumed for mineral extraction and has subsequently been made suitable for agricultural use again, and the same tenancy is continuing, then the land is to be returned to the tenancy subject to the compensation having been calculated on the basis that the land would be restored. However, there is no allowance in the valuation method to allow for this, so it is not clear how that condition could be met. The Bill also reforms the disturbance payment that can be claimed by a tenant on termination of the lease, including termination of part of the lease by resumption. The tenant will be able to claim compensation for costs incurred in connection with development of the holding, including, for example, the cost of seeking a statutory consent such as a building warrant or planning permission. The disturbance payment is capped at 1 year's rent (or proportion thereof) unless at least 1 month's notice has been given of additional expenses. The assumptions and disregards for valuing vacant possession or tenanted value for resumption from 1991 Act tenancies can be amended by regulations. There is also a reserved power to make provision for compensation following an incontestable notice to quit being served for a 1991 Act tenancy. This may or may not use the same method of valuation as set out in the Bill for resumption.

	Both the process and valuation methodology for 2003 Act tenancies can be changed or clarified by regulations. These may be made before the section containing the new resumption measures for 2003 Act tenancies come into force, meaning that the provisions for 2003 Act tenancies may be changed before they are implemented. This is in recognition of the concerns raised during the passage of the Bill about making changes to fixed term tenancies. The regulation-making powers for compensation following an incontestable notice to quit and to amend or clarify resumption for 2003 Act tenancies are subject to an enhanced parliamentary procedure which requires consultation with affected parties and details of representations to be published along with the draft regulations. The TFC may produce a code of practice about the process for resumption and incontestable notices to quit.
Improvements	The Bill largely moves away from fixed lists of items which can be compensated for in order to allow for flexibility as farming changes in the future. Parts 1 and 2 of Schedule 5 of the 1991 Act will now give examples of the types of works which would require consent or notification, as the case may be, rather than being the only improvements to do so. The Schedule can be updated by regulation. A judgement will therefore have to be made as to what kind of improvement it is. It is foreseeable that there could be disputes as to which category an improvement should fit in, but the Bill does not include any method for resolving these. Detailed guidance will be necessary to help inform tenants whether to apply for consent or give notice for any particular improvement so as to ensure compensation will be payable. • Part 1: improvements requiring Landlord consent. These are improvements that mean land or equipment is unlikely to return to its former use, or which otherwise have a long term or significant impact. The tenant must give the landlord a notice requesting consent containing prescribed information and if the landlord has not responded within 70 days they are deemed to have consented unconditionally. Where consent is refused, the landlord must give reasons including whether the improvement is likely to have a positive effect on the management of the holding and/or whether it will facilitate or enhance sustainable or regenerative agricultural production. There is a list of activity which is to be presumed to meet that objective, for example re-wetting wetlands or renewable energy structures from which the energy is primarily to be used on the holding. A refusal of consent, or where parties are unable to agree the terms of a consent, can be referred to the Land Court and the landlord's decision can be overridden. The Land Court is also to have regard to the same factors mentioned above that the landlord must refer to in their reasons.

	• Part 2: improvements requiring notice. These are improvements that change the land or equipment, but which do not have a long term or significant impact on the holding as a whole. The tenant must give at least 3 months' notice in a prescribed form with details of the proposed improvement. The landlord may object within 1 month to the carrying out of the improvement or the manner in which it is proposed to be carried out. The tenant may then apply to the Land Court which can nevertheless approve the carrying out of the improvement or it can approve unconditionally or impose conditions or withhold approval. The Land Court is to take into consideration the same factors as referred to above in relation to part 1 improvements. There is a long list of examples of Part 2 improvements given in the Bill, including land drainage, construction of silos, erecting structures for processing agricultural products from the holding and works to dwellings. • Part 3: improvements which can be done without consent or notice. There is a fixed list of minor improvements for which no consent or notice is required and this includes control of bracken, forming hedges and creating field margins. As before, where the Land Court approves an improvement, the landlord may within 1 month serve notice that they intend to carry out the work and must do so within a reasonable time, otherwise the tenant may apply to the Land Court to go ahead with the work themselves.
Diversification	Both 1991 Act and 2003 Act tenancies are amended to reform the basis on which a landlord can consent (or object) to a proposed diversification and more emphasis is given to diversifications which will have an environmental benefit. Where the diversification delivers environmental benefit, the tenant must specify how that benefit is to be provided in their notice. If they wish to object, landlords will need to consider whether the proposal would prejudice the use of the whole of the holding for sustainable and regenerative agriculture in future, rather than only the part of the holding where the diversified activity will take place. The test for detriment to sound estate management is raised to "substantially" detrimental. The landlord will have to provide more detailed information and reasons if they object to the proposal or impose conditions on an approval. As before, the landlord must seek approval of the Land Court that an objection is reasonable within 60 days and the Land Court is to weigh up whether the positive environmental benefits outweigh any other negative effects for the landlord. As part of the process, a tenant farmer will also be able to serve an "extension notice" which would pause the approval process for 30 days to encourage the parties to reach agreement, where that is possible. There are no changes to provisions allowing for compensation payable to the landlord where they can show the value of the holding has been

	reduced by the diversified use. Where the value of the holding has increased by the diversified use, the tenant farmer will be able to claim compensation as long as the diversification would not substantially prejudice the whole of the holding to be used for sustainable and regenerative agriculture by an incoming tenant farmer. The compensation is valued based on its value to a hypothetical incoming tenant.
Game damage	The 1991 Act is amended to enable tenants to claim compensation for a wider range of losses caused by game or, importantly, game management. In addition to damage to crops it now includes damage to fodder, grass for livestock, grazing, disease impact on livestock, damage to trees for the purposes of short-rotation cropping, damage to trees which are planted for sustainable and regenerative agriculture, damage to trees planted for non-agricultural purposes and damage to fixed equipment. Damage can also be direct or indirect. There is no de minimus level of the value of damage but the onus will be on the tenant to satisfy the Land Court that the loss is caused by the game or game management. The landlord's liability for game damage only applies if the tenant does not have the right to shoot game (which includes deer) or does not have written permission from the landlord to do so. Under the Deer (Scotland) Act a farmer, as occupier, has a right to shoot deer on improved pasture and enclosed woodland to prevent damage to agricultural land and property. It should be noted that amendments proposed to the Natural Environment (Scotland) Bill would extend occupiers rights to prevent a wider range of damage and on all agricultural land and woodland including moorland. It is not clear how the two pieces of legislation will fit together. If the tenant has the ability to prevent damage occurring by controlling the deer, then there would be no ability to seek compensation from the landlord if they fail to do so.
Standard Claim Procedure	Recognising that the current waygo process can be lengthy and tortuous, Ministers have reserved a power to create a standard claims procedure by regulations and have set out the procedure in the Bill. Regulations may be made for any type of compensation claim under the legislation and those regulations may modify the procedure which has been set out. The procedure outlined in the Bill would require claims to made 9 months before they fall due and paid within 2 months after that date. It also provides for interest to be added to late payments, running from the termination date of the lease to encourage swift settlement and payment of claims. It gives a role to the TFC to appoint a valuer, if requested, where parties do not agree, and timescales for claims to be assessed. It is not clear what penalty there may be for failing to meet the timescales rendering them of limited value in practice. There is a right of appeal to the Lands Tribunal on

	the valuer's assessment and the Tribunal may refer points of law to the Land Court.
Rent Review	The Bill makes changes to the (not yet implemented) rent review processes introduced by the 2016 Act, recognising that parts of that process were too difficult to translate into practice. There are similar provisions for 1991 Act tenancies, Limited Duration Tenancies, Modern Limited Duration Tenancies and repairing tenancies. The new process is intended to provide a more flexible and proportionate system which will enable the parties to provide evidence from a number of different sources. It does not address alternative dispute resolution mechanisms, so the Land Court remains the final word. The statutory procedure now requires the Land Court, in determining a "fair rent" for the holding, to have regard to:- • the productive capacity of the holding; • the open market rent of any fixed equipment provided by the landlord that is used for a non-agricultural purpose; • the open market rent of any land used for a non-agricultural purpose; • the rent payable on comparable holdings; and • prevailing economic conditions in the applicable sectors of agriculture. There are directions to the Land Court to take no account of increase in rental value due to tenant's improvements or reductions in value due to dilapidations or diversification. Open market rent is to be valued on a willing landlord, willing tenant basis. The policy memorandum accompanying the Bill suggests that where parties are unable to reach agreement on the rent payable, they will be able to access TFC mediation which will be supported by TFC guidance, although there is no entitlement to such a service provided in the Bill.
Good Husbandry	The Bill reforms the current rules of good estate management and good husbandry set out in the 1948 Act (the Rules) to place a greater emphasis on sustainable and regenerative agricultural activities. The tenant should maintain "a reasonable standard of efficient, sustainable and regenerative production", rather than just efficient. So, for example, tenant farmers who undertake activities such as leaving uncropped field margins will be considered to stay within the Rules.

Next Steps: Implementation

LR17 Land Reform (Scotland) Bill [as Passed]: Part 2

The Bill requires Royal Assent to become an Act and the only sections which come into force on Royal Assent will be the duty to publish a model lease for environmental purposes within 2 years as well as the regulation-making powers for resumption. Those regulations must be laid within 5 years otherwise the power to make them will expire.

Given the number of consultations and regulations that will be required to give full effect to Part 2, it is anticipated it may be up to 5 years before it will all come into force.

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