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The path to energy efficient rural properties: Does one legal size fit all?

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Existing position – All Properties (Agricultural Holdings and Residential)

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Tolerable standard

- Sections 85 and 86 of Housing (Scotland) Act 1987

Standard all houses must meet enforceable by the Local Authority

Includes smoke/heat and carbon monoxide alarms, electrical compliance and minimum thermal standards



Existing position – Agricultural Holdings

Houses let as part of Agricultural Tenancies

- Section 5 of the Agricultural Holdings (Sc) Act 1991

Houses are fixed equipment

***Landlord** puts in thorough state of repair when tenancy commences*

***Tenant** maintains*

***Landlord** renews/replaces*

Sub-Letting of Agricultural Tenancies

Often permitted despite lease terms/common law prohibitions as in the interest of both parties

Rent review

- Section 13 of the Agricultural Holdings (Sc) Act 1991

Despite proposals for reform introduced by the 2016 Land Reform (Sc) Act – essentially unchanged

Existing position – Residential Lets

Long Term Residential Lets

- Land Tenure Reform (Act 1974 Sc) and Long Leases (Scotland) Acts 1954 and 2012
- No well developed concept of leasehold ownership in Scotland*

Private Residential Tenancy (PRT)

- Private Housing (Tenancies) (Scotland) Act 2016
- Survive end of a head lease if established as a sub-tenancy*

Repairing Standard (also includes the Tolerable Standard)

- Housing (Scotland) Act 2006
- Minimum standard for let houses BUT houses let as part of agricultural tenancies currently exempt – landlord responsible throughout.*
- Sub-tenancies not properly contemplated*

Future Proposals

Removal of Agricultural Holdings exemption in relation to repairing standard by 2027

- Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019

“Housing to 2040: vision and principles” and the consultation document “A New Deal for Tenants”

- This finished in mid-April and contemplated a new “housing standard” for all homes potentially superseding existing standards

What could removal of Repairing Standard exemption/intro new “Housing Standard” mean for Landlords of Agricultural Holdings?

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- Exacerbate mis-match between Agricultural Holdings requirement and housing standards requirement
- Compliance may require substantial remedial works
- Works unlikely to be reflected in improved rent
- Implications for sub-let cottages – stricter enforcement and/or resumption
- Increase in disposal of unprofitable housing stock



Actions/options

- Vital to ensure Government fulfils mapping exercise to understand the mis-match
- Need to address the mismatch either through one or more of:
 - (i) continued exemption
 - (ii) amended Ag Holdings legislation
 - (iii) suitable funding or tax benefits



Thank you

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