

Islands Community Impact Assessment for Implementation of the Relinquishment and Assignment provisions contained within the Land Reform (Scotland) Act 2016

December 2020

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Introduction

The Scottish Government introduced the Land Reform (Scotland) Act 2016 (the 2016 Act) as part of the Scottish Government's focus on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. The main purpose of the Act is to:

- ensure the development of an effective system of land governance and on-going commitment to land reform in Scotland;
- address barriers to further sustainable development in relation to land and improve the transparency and accountability of land ownership; and
- demonstrate commitment to effectively manage land and rights in land for the common good, through modernising and improving specific aspects of land ownership and rights over land.

Sections 110 and 111 of Part 10, Chapter 7 of the 2016 Act modify the 1991 Act by adding a new Part 3A which enables secure 1991 Act tenant farmers without successors to seek to relinquish their tenancy to the landlord for value, or, to retire with dignity, where their landlord does not want to take the agricultural tenancy arrangement back in hand, to assign that tenancy for value. This allows tenant farmers with no successors to obtain value from their tenancy in order to support them in their retirement. The provisions enable an eligible tenant farmer to assign their tenancy to a new entrant or a person progressing in agriculture, as defined.

Sections 110 and 111 and the new Part 3A will be brought into force by The Land Reform (Scotland) Act 2016 (Commencement No. 12) Regulations 2020; The Agricultural Holdings (Relinquishment and Assignment) Regulations 2020 and The Agricultural Holdings (Relinquishment and Assignment) (Application to Relevant Partnerships) Regulations 2021. The Agricultural Holdings (Relinquishment and Assignment) Regulations 2020 set out the procedure for relinquishment and provide a definition of a new entrant and person progressing in farming. The Agricultural Holdings (Relinquishment and Assignment) (Application to Relevant Partnerships) Regulations 2021 modify the application of Part 3A to Limited Partnership tenancies, allowing those tenants to seek to relinquish their tenancy but not assign.

The provisions provide a mechanism for eligible tenant farmers who wish to relinquish their tenancy to be recompensed for the value of that tenancy enabling them to move forward into retirement in a more structured manner, and provide them with a return. This policy will also enable secure 1991 Act tenant farmers who do not wish to retire but who wish to relinquish their tenancy for whatever reason, to do so.

The 2016 Act provides the timescale and structure for eligible tenant farmers to negotiate a relinquishment value for their secure 1991 Act agricultural tenancy through an independent valuation process.

The provisions within the three SSIs apply to secure 1991 Act agricultural tenancies across Scotland, including those agricultural tenancies located on islands. During the Agricultural Holdings Legislation Review Group consultation period some tenant farmers on certain islands suggested that tenant farmers faced specific difficulties for those wishing to access land on their island due to lack of available tenancies. This issue is not specific to island communities as demand for land and agricultural tenancies outstrips availability on the mainland as well. In particular, due to the culture and ability to pass a secure 1991 Act agricultural tenancy onto the next generation, this tenancy type does not normally become available on the tenancy market.

Prior to the 2016 Act and these three SSIs, there was no way to enable tenant farmers of secure 1991 Act agricultural tenancies who do not have an eligible assignee or successor, or a potential assignee willing to take on the tenancy, to bring their tenancy to an end in a way that provides a structured, time limited approach for the tenant farmer, than reverting to the Scottish Land Court or going through a way-go compensation process for claims to be settled.

Intended outcomes of the 2016 Act and these accompanying SSIs

Through the implementation of the 2016 Act and these accompanying three SSIs, this policy contributes to the Scottish Government's aim of ensuring a vibrant future for the tenanted agricultural sector. This vision is one of dynamism, vibrancy and sustainability, and it is part of the wider Scottish Government economic and land use strategies.

This vision recognises the role that tenant farmers and their landlords play in the cultural and social well-being of our rural island communities and also supports the aims of Scotland's Islands National Plan by: "increasing populations levels"; helping to "improve and promote health and wellbeing" and "improving and promoting sustainable economic development".

The provisions not only enable secure 1991 Act tenant farmers with no assignees or successors to retire from their business, but also allow a new entrant or progressing farmer to take on the secure 1991 Act agricultural tenancy. This approach encourages the continuation of tenant farming in that local area and gives a young person or a person progressing in agriculture an opportunity to farm and stay within their rural or island community.

The policy has potential to have a small positive effect upon island communities where traditionally young people have left the islands to pursue their agricultural careers on mainland Scotland due to a lack of available land. It could also enable a

small number of people progressing in the industry to consolidate their businesses by: expanding their farming land; and supporting the creation of stronger and more sustainable island businesses.

Current Situation

Across Scotland's islands, there are a number of secure 1991 Act agricultural tenancies and Limited Partnership tenancies. However, it is not possible to identify how many tenant farmers may wish to relinquish and assign their tenancy and retire. It is understood that there are a large number of individuals who potentially may be in a position to take advantage of this policy to take on an assignation of a tenancy should the opportunity arise.

The main source of data is the June Agricultural Census which collects data annually from approximately 35,000 farm holdings. In the most recent Census, there were a total of 4,007 secure 1991 Act agricultural tenancies in Scotland, of which 355 are on islands. There are also 294 Limited Partnership tenancies, of which 30 are on islands.

Due to the low numbers of both secure 1991 Act agricultural tenancies and Limited Partnerships on the islands it is not possible to provide a breakdown of data island by island because of General Data Protection Regulation (GDPR). We have instead compared island communities to the mainland.

The recent June 2020 Census data shows the number of farmers of retirement age and over with secure 1991 Act agricultural tenancies is slightly lower at 20% on islands compared to 26% on the mainland, however, as relinquishment and assignation covers both island and mainland situations the effects of these three SSIs will be very similar.

Consultation

Extensive national consultation was undertaken across Scotland and the islands by the Agricultural Holdings Legislation Review Group (AHLRG). This was carried out with key stakeholder organisations: National Farmers Union Scotland (NFUS); Scottish Tenant Farmers Association (STFA); Scottish Land and Estates (SLE); Scottish Agricultural Arbiters & Valuers Association (SAAVA); and Royal Institution of Chartered Surveyors (RICS). The AHLRG initially held over 50 meetings, including open meetings and private sessions with tenant farmers, their landlords and professional intermediaries across the country. Those meetings took place in places such as: Isle of Islay; Perth; Oban; Inverness; St Boswells; Stranraer; Dumfries; Ayr; Turriff; and Isle of Bute. An Interim Report was produced and launched at the Royal Highland Show in 2014. A further 12 public and stakeholder meetings were held in October 2014.

The AHLRG also consulted with numerous agricultural and landowning businesses during their review and the views of those businesses were taken into account when developing the policies contained in the Land Reform (Scotland) Bill. Their Final Report was published in January 2015.

As part of the Scottish firms impact test a telephone interview was carried with a representative from Stòras Uibhist, a 93,000 acre mixed estate in Western Isles. Stòras Uibhist Estate is an estate in community ownership. It is home to over 850 tenant crofters and numerous businesses, operating in the aquaculture, agriculture, fishing, shooting, food processing, construction, tourism and service sectors.

A further consultation involving national stakeholders, including stakeholders with island interests, was carried out by the Agricultural Holdings Policy team on behalf of Scottish Government, that included 2 meetings, in January 2019 and a paper consultation followed in July 2019 on persons progressing in agriculture.

Decision

The three SSIs will apply throughout Scotland. They are unlikely to have a negative impact for island communities, and provide the same opportunities for those eligible island tenant farmers who wish to retire from agriculture as eligible tenant farmers on mainland Scotland.

The implementation of these provisions has the potential to provide a small number of new opportunities for new entrants or those progressing in agriculture across island communities and also may provide an opportunity for supporting the continuation of people and agricultural activities on Scottish islands.

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