



GILLESPIE MACANDREW



HUNTERS RESIDENTIAL



A Brief Guide to Land Reform in
Scotland -
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Last year's Land Reform (Scotland) Bill has now been enacted by Holyrood as the Land Reform (Scotland) Act 2016.

About half the Act is about Land Reform, following the 2014 Land Reform Review Report, and half about Farm Tenancies, following the Agricultural Holdings Legislation Review Report in early 2015. Parts 1-9 are about 'Land Reform, and Part 10, the largest, about Agricultural Holdings. The Act includes most of the AHLRG Report with several departures from it but very much less of the Land Reform Report's proposals.

A number of additional rules are still to be produced in the form of regulations, so much of this will not come into force at once.

In broad outline and keeping it simple these are the main points to note:

Land Reform

1. There is to be a **'Land Rights and Responsibilities Statement'**, setting out the Scottish Government's objectives for Land Reform, and a **Scottish Land Commission** to take forward the land reform process. The SLC is to prepare a 'Strategic Plan', which the Scottish Ministers have to approve.
2. There is to be a **Tenant Farming Commissioner** ("TFC") who is also one of the Land Commission. He/she can't be an agricultural landlord or tenant. Their job is to prepare and promote codes of practice about rent review and broadly anything else about farm leases. Although the codes won't supersede the law, the Land Court must 'take into account' the codes in cases before them. The TFC may conduct investigations into alleged breaches of the codes. Reports on investigations are admissible evidence in the Land Court.
3. There are to be **regulations** to require the persons, (whether owners or tenants of registered leases) who actually control land to be identified, and **about who the real owner or controller of land is**, for example of a company holding land title. There is to be a consultation before these come out. The information obtained will, subject to more regulations, appear in the Land Register of Scotland.
4. There is to be a **community 'right to buy for sustainable development'** and with the Scottish Ministers' consent, on such conditions as they decide, allowing the purchase of most types of land and sporting rights, but not crofts or house tenancies. This **covers the whole country** and covers any type of land, actively used or not, unless excluded in regulations to be passed later. It is not dissimilar in concept to the existing crofting community right to buy. There is to be a new Register of Applications to exercise these rights. There are lots of provisions on just what a community body can be, voting, etc. "Sustainable Development" means whatever the Scottish Ministers think will be good for the area and its community. A 'Community' is geographic, defined either by postcodes or as the Scottish Ministers may specify. The 'Community' must act through a recognised Body, either a Company, Scottish Charitable Incorporated Organisation, Community Benefit Society, or as the Scottish Ministers may direct. HOWEVER, the Community Body can apply to the Scottish Ministers to allow a 3rd party purchaser to buy the land instead. Once a 3rd Party body has acquired, there is apparently no further control on what they do with the land. [Read more](#)
5. Rates are to be charged on **Sporting Rights, which are to be re-valued for rates purposes. The general law about rates will then apply, please note that smaller owners are likely to be excluded from paying these rates.**



6. Scottish Natural Heritage is to have further powers to control Deer management.
7. Where **Core Paths** are to be amended, there is new provision for notice and consultation.

Agricultural Holdings - Agricultural leases

Most of the immediate changes to the law are in this area.

1. **Short Limited Duration Tenancies** SLDTs (up to 5 years) are **not abolished**.
2. There is to be a **Modern Limited Duration Tenancy** (MLDT) of at least 10 years duration superseding, but fairly similar to the existing 10+ Year Limited Duration Tenancy. Tenants on an SLDT who remain in possession after its end with the landlords' consent, switch to an MLDT.
3. In MLDTs, termination is by a double notice procedure, one notice at least 2 years before the termination, the other at least one year, similar to LDTs. If the term of the tenancy expires without termination by notice, it continues for a further 7 years. The parties can agree the duration of any extension of an MLDT. The parties can agree their own irritancy clause, but at least 12 months notice of intention to enforce an irritancy must be given, with another confirmatory notice at least 2 months before the irritancy date.
4. Existing 1991 Act traditional tenancies can be converted to an MLDT for 25 years by agreement and subject to any due compensation for improvements being made, at the time. LDTs can also be converted to MLDTs for the remainder of their term but with any improvements entitlement being carried forward. [Read more](#)
5. **"Repairing Tenancies"**- these will allow a fixed term tenancy for 35 years where the Landlord doesn't have to provide the fixed equipment and the Tenant provides it within the first 5 years "repairing period". Thereafter it is very much like an MLDT. The Tenant has considerable protections during the first 5 years.
6. **1991 Act tenants will no longer have to register for their 'right to buy'** and are deemed to have done so. **Exercising any pre-existing option or missives will no longer take priority over a Right to Buy** and the Tenant may buy if such an option is exercised.
7. **If a landlord fails to carry out an obligation** when ordered by the Land Court, the landlord **may be forced to sell**, whether to the tenant or another landlord and notwithstanding any previous option, pre-emption or the like.
8. **Rent review** under 1991 Act tenancies is to be radically **altered to be related to 'productive capacity'** of the land let, to be determined by regulations to follow later. The tenant will pay rent, broadly at open market rates, on 'surplus' cottages and on diversified activities. Rent can be reviewed after notice at any time during the lease [but at at least 3 year intervals] and not just at the term or anniversary dates of the lease. The Land Court may phase in a rent increase over 3 years. [Read more](#)



9. **Rent under an MLDT, LDT or Repairing Tenancy** can be agreed by the parties but there is a new default position determining rent by reference to productive capacity etc. much as for 1991 Act tenancies.

10. **The class of eligible assignees of a tenancy** (1991 Act or LDT/MLDT, or Repairing Tenancy) is **widely extended**, eg includes step children of a tenant's sister-in-law. The grounds of objection are limited to 'character' resources' and 'experience/training (but the potential incoming tenant can go on a course to get the training).

11. **The class of permissible "near relative successors"** to a tenancy (1991 Act, or LDT/MLDT or repairing Tenancy) on a death is **also to be widely expanded**, (but less widely than for assignation). There are apparently only limited constraints on transfer of a 1991 Act tenancy after the tenant's death. [Read more](#)

12. **Relinquishment of Leases**. This was foreshadowed in the 2015 AHLR Report. Broadly a tenant with no likely successor can approach the Landlord to get the farm valued both with and without the tenancy in place. Unless the tenant changes his mind the Landlord can then pay the Tenant (broadly) half the difference plus the value of any improvements and thus terminate the tenancy. If the Landlord decides he doesn't want to pay, the Tenant can then assign the tenancy to an individual who is "a new entrant to, or who is progressing in" farming. Those categories are to be defined in regulations, still to come. [Read more](#)

13. **Undocumented Improvements** to farms; there is to be a **two year amnesty**. The tenant has to give notice and there is a limited appeal to the Land Court [Read more](#)

There are a few other items in both the Land Reform and the Agricultural Holdings sections about landlords imposing improvements on their tenants, common good land and deer management.

A lot of these changes will depend on regulations and the final form of the statutory rules for farm tenancies will not become clear for some time. The Government has said it plans to legislate further on both of the original Reports, which is a further reason why it may be some years before the overall position is clearer.



Mike Blair

Partner

T: 01738 231020

E: mike.blair@gillespiemacandrew.co.uk