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## **Rural Economy and Connectivity Committee Comataidh Eaconomaidh Dùthchail is Co- cheangailteachd**

# **Subordinate legislation considered by the Rural Economy and Connectivity Committee on 1 November 2017**



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# Rural Economy and Connectivity Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Economy and Connectivity.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/rural-committee.aspx>



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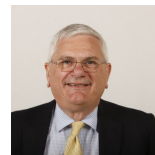
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# Executive summary

1. This report details the Rural Economy and Connectivity Committee's consideration of the following instruments:

## Affirmative

- The Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017

The Committee agreed to recommend to the Parliament that it should approve this instrument.

## Negative

- Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 (SSI 2017/300)

The Committee agreed to make no recommendations in relation to this instrument. It welcomes the Scottish Government's reassurance on questions raised.

2. The Committee noted that the policy notes for both these instruments were not as clear or accessible as it would have wished. The Convener intends to raise this issue with the Conveners Group.

# The Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017

The Committee reports to the Parliament as follows—

3. The Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017 was laid before the Parliament on 19 September 2017. The instrument is subject to the affirmative resolution procedure.

## Purpose of the instrument

4. These Regulations make provision for modifications of certain enactments in consequence of the Land Reform (Scotland) Act 2016 (“the 2016 Act”). They also make supplementary, transitory and savings provision. This is necessary due to coming into force of the provisions of the 2016 Act relating to Modern Limited Duration Tenancies (“MLDT”) on 30 November 2017 by SSI 2017/299.
5. The overall policy objective of Part 10 of the 2016 Act is to modernise legislation relating to agricultural tenancies. The 2016 Act creates two new types of agricultural tenancy : the MLDT and the Repairing Tenancy (“RT”). The relevant provisions of the 2016 Act which provide for the creation of RTs are not yet in force.

## Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 26 September 2017 and agreed not to draw the Parliament’s attention to the instrument on any grounds within its remit. The DPLR Committee’s report can be found [here](#).

## Rural Economy and Connectivity Committee consideration

7. At its 30th meeting of 2017, held on 1 November, the Rural Economy and Connectivity Committee took evidence on this instrument from Fergus Ewing, Cabinet Secretary for the Rural Economy and Connectivity, and his officials.
8. The Minister subsequently moved the following motion in his name—

S5M-07896—That the Rural Economy and Connectivity Committee recommends that the Land Reform (Scotland) Act 2016 (Supplementary,

Consequential, Transitory and Saving Provisions) Regulations 2017 [draft] be approved.

9. The Committee agreed the motion without division.
10. The Official Report of the meeting is available [here](#).

## Recommendation

The Rural Economy and Connectivity Committee recommends to the Parliament that it approves the following draft instrument—

- Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017



# **Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 (SSI 2017/300)**

The Committee reports to the Parliament as follows—

11. On 19 September 2017 the Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 was laid in Parliament and was subject to negative parliamentary procedure.

## **Purpose of the instrument**

12. A main purpose of these Regulations is to make provision to determine who is a “new entrant” to farming and whether or not that person’s lease of a Modern Limited Duration Tenancy (“MLDT”), under the Land Reform (Scotland) Act 2016 (“the 2016 Act”), can contain a break clause. The policy intention of the MLDT is to offer increased flexibility to landlords and tenants to negotiate lease provisions in relation to fixed equipment and rent to meet their needs. It also aims to encourage new entrants to take up farming and for landlords to let to them.
13. The Regulations provide that a tenant under a lease constituting an MLDT is a new entrant to farming, unless they are excluded by the Regulations. The Regulations set out the circumstances in which a tenant is excluded. The instrument also contains some technical, consequential modifications of pieces of secondary legislation in schedule 1, and transitory and saving provisions in schedule 2.
14. As well as providing for the creation of MLDTs, the 2016 Act also provides for the creation of a further type of agricultural tenancy, the Repairing Tenancy (“RT”). The relevant provisions of the 2016 Act which provide for the creation of RTs are not yet in force.

## **Delegated Powers and Law Reform Committee consideration**

15. At its meeting on 3 October 2017, the Delegated Powers and Law Reform Committee considered this instrument and drew the Regulations to the attention of the Parliament on ground of clarity (reporting ground H). The Committee's report can be found [here](#).
16. It found that the various transitory provisions in the instrument could be clearer. This applies to paragraphs 2, 3, 5 and 6 of schedule 2 of the Regulations. The DPLR Committee called on the Scottish Government to consider laying an amending instrument to clarify the drafting of the provisions.

## **Rural Economy and Connectivity Committee consideration**

17. At its 30th meeting of 2017, held on 1 November, the Rural Economy and Connectivity Committee considered the instrument.
18. As this instrument was considered in tandem with the Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017, Fergus Ewing, Cabinet Secretary for the Rural Economy and Connectivity, and his officials, were present to give evidence.
19. The Committee questioned the Scottish Government on some of the different circumstances in which a person could be defined as a new tenant for the purposes of this instrument. The Committee also sought clarity regarding some of the terminology used in the instrument. Members found the responses from the Cabinet Secretary and his officials to be helpful.
20. The Committee notes that the Scottish Government has responded to the points raised by the Delegated Powers and Law Reform Committee by laying an amending instrument as requested, which aims to resolve these issues. This instrument (the Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) (Modern Limited Duration Tenancies) Miscellaneous Amendments Regulations 2017) was laid on 1 November 2017, and the Committee expects to consider it at a later date.
21. The Official Report of the meeting is available [here](#).

## **Recommendation**

The Committee agreed to make no recommendations to Parliament in relation to the Regulations.

## **Clarity and accessibility of policy notes**

22. The Committee noted that the policy notes for both these instruments were not as clear or accessible as it would have wished. As this appears to be a common occurrence in relation to subordinate legislation laid in the Parliament, the Convener intends to raise this issue with the Conveners Group.

