



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 3

USE OF AGRICULTURAL LAND: DIVERSIFICATION

40 Notice of and objection to diversification

- (1) A tenant under a tenancy mentioned in section 39(1) who intends to use the land for a non-agricultural purpose must send a notice (in this section and [F¹in sections 40A and 41] referred to as a “notice of diversification”) to the landlord.
- (2) The notice of diversification must be given in writing not less than 70 days before the date on which the tenant proposes to commence using the land for that purpose and must specify—
 - (a) what the non-agricultural purpose is;
 - (b) the land that would be used for that purpose;
 - (c) any changes to the land the tenant proposes to effect for that purpose; and
 - (d) the date on which the tenant proposes to commence using the land for that purpose,and must address such matters as may constitute any ground of objection mentioned in subsection (9)(a)(i) to (iii).
- (3) Where—
 - (a) the tenant proposes to effect changes to the land for the non-agricultural purpose; or
 - (b) the tenant’s intended use of the land for that purpose is in furtherance of a business,the notice must also specify how the changes are, or, as the case may be, the business is (so far as relating to the land), to be financed and managed.
- (4) Where a notice of diversification is given in accordance with subsections (2) and (3), and the landlord does not object to the notice, the land may be used—
 - (a) for the purpose specified under paragraph (a), and as specified under paragraphs (b) and (c), of subsection (2); and
 - (b) from the appointed date,subject to any conditions imposed under subsection (10).

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- (5) For the purposes of subsection (4)(b), the appointed date is—
- (a) the date specified under subsection (2)(d);
 - [^{F2}(b) where the landlord has made a request for information under subsection (6), the date falling 70 days from the making of the request, if later than the date so specified,]
 - (c) such earlier date as the landlord and tenant may agree to.
- [^{F3}(5A) Where the landlord objects to the notice of diversification, the land may be used for the purpose specified under paragraph (a), and as specified under paragraphs (b) and (c), of subsection (2)—
- (a) only if—
 - (i) the landlord withdraws the objection,
 - (ii) the landlord does not apply under section 40A for a determination in relation to the objection, or
 - (iii) such an application having been made, the Land Court determines under section 41 that the objection is unreasonable,
 - (b) from the relevant date, and
 - (c) subject to any conditions imposed—
 - (i) by the landlord under subsection (14), or
 - (ii) by the Land Court under section 41(2) or (3).
- (5B) For the purposes of subsection (5A)(b), the relevant date is—
- (a) where no application is made under section 40A—
 - (i) the date specified under subsection (2)(d),
 - (ii) if the objection is withdrawn, the date of the withdrawal,
 - (iii) the date the period mentioned in section 40A(3) expires,
 whichever is the later,
 - (b) where an application is made under section 40A, the date fixed by the Land Court under section 41(1)(b)(ii).]

[^{F4}(6) The landlord may, on one occasion within 30 days of the giving of the notice of diversification, request the tenant to provide the landlord with relevant information.]

(7) For the purposes of subsection (6), information is relevant if it—

 - (a) relates to—
 - (i) the intended use of the land for the non-agricultural purpose (including any proposed changes to the land); and
 - (ii) where the intended use of the land is in furtherance of a business, the finance or management of the business; and
 - (b) is necessary for the landlord’s consideration of whether or not there are grounds under subsection (9)(a)(i) to (iii) or (b) for objection to the notice of diversification.

(8) The tenant is to provide any information reasonably requested under subsection (6) within 30 days of the date on which it was requested.

(9) The landlord may object to the notice of diversification if (and only if)—

 - (a) the landlord reasonably considers that the intended use of the land for the non-agricultural purpose (including any proposed changes to the land) would—
 - (i) lessen significantly the amenity of the land or the surrounding area;

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- (ii) substantially prejudice the use of the land for agricultural purposes in the future;
 - (iii) be detrimental to the sound management of the estate of which the land consists or forms part; or
 - (iv) cause the landlord to suffer undue hardship;
 - (b) where the notice specifies a matter mentioned in subsection (3), the landlord reasonably considers that it fails to demonstrate that the proposed changes are, or, as the case may be, the business (so far as relating to the land) is, viable; or
 - (c) the tenant has failed to comply with subsection (8).
- (10) Where the landlord does not object to the notice of diversification, the landlord may impose on the tenant any reasonable conditions in relation to the use of the land for the non-agricultural purpose (including in relation to any proposed changes to the land).
- (11) The landlord is, within the period mentioned in subsection (12), to notify the tenant in writing—
 - (a) of any objection to the notice of diversification (and the grounds for the objection) or, as the case may be, of the fact that the landlord does not object to the notice; and
 - (b) where the landlord does not object to the notice, of any conditions imposed under subsection (10) (and the reasons for imposing them).
- (12) The period is—
 - [^{F5}(a) where the landlord has made a request for information under subsection (6), 60 days from the making of the request,]
 - (b) where the landlord has made no such request, 60 days from the giving of the notice of diversification.
- (13) If no notification is given in accordance with subsections (11) and (12), the landlord is, except where the non-agricultural purpose is the planting and cropping of trees, deemed not to have objected to the notice of diversification nor to have imposed any conditions in relation to use of, or changes to, the land.
- [^{F6}(14) Where the landlord withdraws the objection under subsection (9) before the expiry of the period mentioned in section 40A(3), the landlord—
 - (a) must notify the tenant in writing of the withdrawal, and
 - (b) may impose any conditions as mentioned in subsection (10) and, where such conditions are imposed, must, at the same time as notifying the tenant of the withdrawal of the objection, notify the tenant in writing of the conditions (and the reasons for imposing them).]

Textual Amendments

- F1** Words in s. 40(1) substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 121(2)(a)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)
- F2** S. 40(5)(b) substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 122(2)(a)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)
- F3** S. 40(5A)(5B) inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 121(2)(b)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)
- F4** S. 40(6) substituted (23.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 122(2)(b)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)

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- F5** S. 40(12)(a) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), **ss. 122(2)(c), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)
- F6** S. 40(14) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), **ss. 121(2)(c), 130(1)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)

Commencement Information

- I1** S. 40 in force at 27.11.2003 by S.S.I. 2003/548, **art. 2(c)** (with Sch.)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7C inserted by [2016 asp 18 s. 93\(2\)](#)
- s. 7D inserted by [2016 asp 18 s. 106\(2\)](#)
- s. 8F8G inserted by [2016 asp 18 s. 94\(2\)](#)
- s. 16B inserted by [2016 asp 18 s. 95\(2\)](#)
- s. 17A inserted by [2016 asp 18 s. 96\(2\)](#)
- s. 18B inserted by [2016 asp 18 s. 97\(2\)](#)
- s. 26(1)(1A) substituted for s. 26(1) by [2016 asp 18 s. 99\(4\)\(a\)](#)
- s. 26(3) inserted by [2016 asp 18 s. 99\(4\)\(c\)](#)