

AGRICULTURAL HOLDINGS (AMENDMENT) (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Succession by near relatives

4. [Section 1](#) replaces the current definition of “near relative” in paragraph 1 of Part III of Schedule 2 to the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”) with an extended definition. The definition has been extended to include a grandchild of a deceased tenant.
5. The definition was previously extended to include a surviving civil partner of a deceased tenant by article 2 of the [Civil Partnership Act 2004 \(Consequential Amendments\) \(Scotland\) Order 2006 \(SSI 2006/379\)](#).
6. The reference to an adopted child has been deleted. Section 40(1) of the Adoption and Children (Scotland) Act 2007 (status conferred by adoption) provides that “an adopted person is to be treated in law as if born as the child of the adopters or adopter.” As “child” automatically includes “adopted child” the reference to “adopted child” is unnecessary.
7. The definition operates within the context of Section 25 of the 1991 Act which is the operative provision. Section 25 applies where notice to quit is given to the tenant of an agricultural holding who acquired right to the lease of the holding by succession.
8. Where notice to quit is given to a successor tenant who is a “near relative” of the deceased tenant, that person is entitled to give the landlord a counter notice requiring that the Scottish Land Court consents to operation of the notice to quit.
9. A landlord can serve an incontestable notice to quit on any successor as tenant if they are not a near relative of the deceased tenant.
10. The addition of “grandchild” to the class of “near relatives” will afford a grandchild who succeeds a statutory protection, as it will confer upon him or her the right to serve a counter notice to a notice to quit.

Section 2: Prohibition of upward only rent reviews etc.

11. [Section 2](#) amends section 9 of the Agricultural Holdings (Scotland) Act 2003 through the insertion of a new subsection to provide that rent review provisions which provide for the upward only review of rent or for reviews which can be initiated only by the landlord in a limited duration tenancy, are void. Where such provisions appear, the rent shall instead be determined in accordance with the statutory formula set down in the remainder of section 9.

Section 3: Effect of VAT changes on determination of rent

12. Section 13 of the 1991 Act sets out circumstances under which the landlord or tenant farmer of an agricultural holding may seek to have the rent payable in respect of the

*These notes relate to the Agricultural Holdings (Amendment) (Scotland)
Act 2012 (asp 6) which received Royal Assent on 12 July 2012*

holding determined by the Scottish Land Court. Subsection (8) states that a reference to the Scottish Land Court may not be made within 3 years of the commencement of the tenancy, the last variation of the rent or the last time a previous direction was given that the rent should remain unchanged. Subsection (9) sets out certain circumstances where subsection (8) may be disregarded.

13. [Section 3](#) amends section 13 of the 1991 Act to the effect that the exercise or revocation of the option to tax, or a change in the rate of VAT where such an option has effect, does not qualify as a variation of rent for the purposes of the Section 13(8)(b) of the 1991 Act.

Section 4: Transitional provisions

14. Subsection (1) provides that the change in the definition of “near relative” has effect in respect of a notice to quit given by a landlord to a tenant who has acquired interest in the tenancy on succession only if the successor gives the landlord of the tenancy in question notice of his or her acquisition of the right to the lease under section 11(2) or 12(1) of the Agricultural Holdings (Scotland) Act 1991 on or after the day on which section 1 comes into force.
15. Subsection (2) clarifies that the prohibition on upward only and landlord only initiated rent review clauses giving rise to annulment, has effect only in relation to such clauses where they are made after section 2 comes into force.
16. Subsection (3) provides that the changes made by section 3 of the 2012 Act will apply to options, revocations or VAT rate changes that have effect before the date of Royal Assent. This means that in cases where an option to tax had effect, the changes in the rate of VAT which occurred in January 2010 and January 2011 will not prevent parties seeking a reference to the Scottish Land Court to determine the rent for a period of 3 years from the rate change.

Section 5: Commencement

17. [Section 5](#) (which comes into force on the day after Royal Assent) provides that the other sections of the 2012 Act come into force at the end of the period of 2 months beginning with the day of Royal Assent. Royal Assent was granted on 12 July 2012.