



Agriculture (Miscellaneous Provisions) Act 1976

1976 CHAPTER 55

PART II

AGRICULTURAL HOLDINGS: PROVISION FOR SUCCESSION ON DEATH OF TENANT

Provision for succession on death of tenant

18 Application of following sections of Part II

(1) Where after the passing of this Act the sole (or sole surviving) tenant of an agricultural holding dies and is survived by any of the following persons:—

- (a) the wife or husband of the deceased ;
- (b) a brother or sister of the deceased ;
- (c) a child of the deceased ;
- (d) any person (not within (b) or (c) above) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage,

the following sections of this Part of this Act (except sections 20(14) and 23(8), which are of general application) shall apply unless excluded by subsection (4) below.

In this subsection "tenant" does not include an executor, administrator, committee of the estate, trustee in bankruptcy or other person deriving title from a tenant by operation of law.

(2) In the following provisions of this Part of this Act—

- " the 1948 Act " means the Agricultural Holdings Act 1948 ;
- " the holding " means the agricultural holding mentioned in subsection (1) above;
- " the deceased " means the deceased tenant of the holding ;
- " the date of death " means the date of the death of the deceased;

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" eligible person " means (subject to subsection (3) below and without prejudice to section 21 of this Act) a survivor of the deceased in whose case the following conditions are satisfied—

- (a) he falls within paragraphs (a) to (d) of subsection (1) above;
- (b) in the seven years ending with the date of death his only or principal source of livelihood throughout a continuous period of not less than five years, or two or more discontinuous periods together amounting to not less than five years, derived from his agricultural work on the holding or on an agricultural unit of which the holding forms part; and
- (c) he is not the occupier of a commercial unit of agricultural land within the meaning of Part II of the Agriculture Act 1967 or, if he is, occupies it as a licensee only;

" the relevant period " means—

- (a) except where the following paragraph applies, the period of three months beginning with the day after the date of death;
- (b) if the deceased died between the passing of this Act and the end of 1976, the period of three months beginning with 1st January 1977 or with such later date as may be prescribed for the purposes of this paragraph by order under section 73(3) of the Agriculture Act 1947 (procedure of Agricultural Land Tribunals);

" the tenancy " means the tenancy of the holding;

" the Tribunal " means the Agricultural Land Tribunal.

(3) For the purposes of paragraph (b) of the definition of " eligible person " in subsection (2) above any period during which a survivor of the deceased was, in the period of seven years mentioned in that paragraph, attending a full-time course at a university, college or other establishment of further education shall be treated as a period throughout which his only or principal source of livelihood derived from his agricultural work on the holding; but not more than three years in all shall be so treated by virtue of this subsection.

(4) The following sections of this Part of this Act shall not apply—

- (a) if on the date of death the tenancy is the subject of a valid notice to quit to which subsection (1) of section 24 of the 1948 Act applies, being a notice given before that date in the case of which either—
 - (i) the month allowed by that subsection for serving a counter-notice thereunder expired before that date without such a counter-notice having been served; or
 - (ii) the Tribunal consented to its operation before that date;
- (b) if on the date of death the tenancy is the subject of a valid notice to quit given before that date and falling within section 24(2)(a), (c) or (f) of the 1948 Act;
- (c) if on the date of death the tenancy is the subject of a valid notice to quit given before that date and falling within section 24(2)(b), (d) or (e) of the 1948 Act, and either—
 - (i) the time within which the tenant could have required any question arising in connection with the notice to be determined by arbitration under that Act expired before that date without such a requirement having been made by the tenant, and the month allowed for serving any counter-notice in respect of the notice expired before that date without any such counter-notice having been served - , or

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- (ii) questions arising in connection with the notice were referred to arbitration under that Act before that date and were determined before that date in such a way as to uphold the operation of the notice, and (where applicable) the month allowed for serving any counter-notice in respect of the notice expired before that date without a counter-notice having been served ; or
 - (iii) the Tribunal consented to the operation of the notice before that date ;
 - (d) if on the date of death the holding was held by the deceased—
 - (i) under a tenancy for a fixed term of years of which more than twenty-seven months remained unexpired, or a tenancy for a fixed term of more than one but less than two years ; or
 - (ii) for an interest less than a tenancy from year to year;
 - (e) without prejudice to subsection (5) below, if on each of the two last occasions when there died a sole (or sole surviving) tenant (within the meaning of subsection (1) above) of the holding or of an agricultural holding which comprised the whole or a substantial part of the land comprised in the holding there occurred one or other of the following things, namely—
 - (i) a direction under section 20 of this Act was given by the Tribunal in respect of the holding or such an agricultural holding as aforesaid; or
 - (ii) a tenancy of the holding or of such an agricultural holding as aforesaid was granted by the landlord to a person who, being on that occasion an eligible person, was or had become the sole or sole remaining applicant for such a direction ;
 - (f) if the holding consists of land held by a smallholdings authority or the Minister for the purposes of smallholdings within the meaning of Part III of the Agriculture Act 1970, and the tenancy was granted by them or him in pursuance of the said Part III;
 - (g) if the tenancy was granted by trustees in whom the land is vested on charitable trusts the sole or principal object of which is the settlement or employment in agriculture of persons who have served in any of Her Majesty's naval, military or air forces.
- (5) If on any occasion prior to the date of death the holding, or an agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, became let under a new tenancy thereof granted by the landlord, with the agreement of the outgoing tenant, to a person who, if the outgoing tenant had died immediately before the grant, would have fallen within paragraphs (a) to (d) of subsection (1) above, that occasion shall for the purposes of paragraph (e) of subsection (4) above be deemed to be an occasion such as is mentioned in that paragraph on which a direction under section 20 of this Act was given by the Tribunal in respect of the holding or such an agricultural holding as aforesaid.
- In this subsection " tenant" has the same meaning as in subsection (1) above; and if such a new tenancy was granted as aforesaid for a term commencing later than the date of the grant, the holding in question shall for the purposes of this subsection not be taken to have become let under that tenancy until the commencement of the term.
- (6) For the purposes of the following sections of this Part of this Act a certificate of the Minister that a particular agricultural unit is, or would if brought into existence be, a commercial unit within the meaning of Part II of the Agriculture Act 1967 shall be conclusive evidence that this is so ; and any document purporting to be such a

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certificate and to be signed by or on behalf of the Minister shall be deemed to be such a certificate, unless the contrary is shown.

- (7) Unless the context otherwise requires, expressions used in this Part of this Act and the 1948 Act have the same meaning in this Part of this Act as in that Act.
- (8) Section 87(1) and (2) of the 1948 Act (Crown land) shall have effect as if references to that Act included references to this Part of this Act.

19 Restriction on operation of notice to quit given by reason of death of tenant

A notice to quit the holding given to the tenant thereof by reason of the death of the deceased and falling within section 24(2)(g) of the 1948 Act shall not have effect unless either—

- (a) no application to become the tenant of the holding is made under section 20 of this Act within the relevant period ; or
- (b) one or more such applications having been made within that period, either—
 - (i) none of the applicants is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding ; or
 - (ii) the Tribunal consent under section 22 of this Act to the operation of the notice to quit.

20 Applications for tenancy of the holding

- (1) Any eligible person may within the relevant period apply to the Tribunal for a direction entitling him to a tenancy of the holding.
- (2) Where only one application is made under this section the Tribunal, if satisfied that the applicant is an eligible person, shall determine whether he is in their opinion a suitable person to become the tenant of the holding.
- (3) Where two or more applications are made under this section, then, subject to subsection (4) below, subsection (2) above shall apply to each of the applicants as if he were the only applicant.
- (4) If the applicants under this section include a person validly designated by the deceased in his will as the person he wished to succeed him as tenant of the holding, the Tribunal shall first make a determination under subsection (2) above as regards that person, and shall do so as regards the other applicant or each of the other applicants only if the Tribunal determine that the person so designated is not in their opinion a suitable person to become the tenant of the holding.
- (5) If under the preceding provisions of this section only one applicant is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, the Tribunal shall, subject to section 22 of this Act, give a direction entitling him to a tenancy of the holding.
- (6) If under the preceding provisions of this section each of two or more applicants is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, the Tribunal shall, subject to subsection (9) below, determine which of those applicants is in their opinion the more or most suitable person to become the tenant of the holding and shall, subject to section 22 of this Act, give a direction entitling that applicant to a tenancy of the holding.

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- (7) Before making a determination under subsection (2) above in the case of any applicant the Tribunal shall afford the landlord an opportunity of stating his views on the suitability of that applicant.
- (8) In making a determination under subsection (2) above in the case of a particular applicant, or a determination under subsection (6) above as between two or more applicants, the Tribunal shall have regard to all relevant matters, including—
 - (a) the extent to which the applicant or each of those applicants has been trained in, or has had practical experience of, agriculture;
 - (b) the age, physical health and financial standing of the applicant or each of those applicants ; and
 - (c) the views (if any) stated by the landlord on the suitability of the applicant or any of those applicants.
- (9) Where subsection (6) above would apply apart from this subsection, the Tribunal may, with the consent of the landlord, give instead a direction specifying any two, any three or any four of the applicants within that subsection, and entitling the specified applicants to a joint tenancy of the holding.
- (10) In this section " will" includes codicil, and for the purposes of this section a person shall be taken to be validly designated by the deceased in his will as the person he wishes to succeed him as tenant of the holding if, but only if, a will of the deceased which is the subject of a grant of probate or administration either—
 - (a) contains an effective specific bequest to that person of the deceased's tenancy of the holding ; or
 - (b) does not contain an effective specific bequest of that tenancy, but does contain a statement specifically mentioning the holding or the deceased's tenancy thereof and exclusively designating that person (in whatever words, and whether by name or description) as the person whom the deceased wishes to succeed him as tenant of the holding.
- (11) For the purposes of subsection (10) above a statement which is framed so as to designate as mentioned in paragraph (b) of that subsection different persons in different circumstances shall be taken to satisfy that paragraph if, in the events which have happened, the statement exclusively designates a particular person.
- (12) A direction under this section given in favour of a person by reason of his being a person validly designated by the deceased as mentioned in subsection (4) above shall be valid even if the probate or administration by virtue of which he was such a person at the giving of the direction is subsequently revoked or varied.
- (13) For the purposes of this Part of this Act an application under subsection (1) above which is withdrawn or abandoned shall be treated as if it had never been made.
- (14) Provision shall be made by order under section 73(3) of the Agriculture Act 1947 (procedure of Agricultural Land Tribunals) for requiring any person making an application to such a tribunal under this or the following section to give notice of the application to the landlord of the agricultural holding to which the application relates and to take such steps as the order may require for bringing the application to the notice of other persons interested in the outcome of the application.

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21 Application by not fully eligible person to be treated as eligible

- (1) This section applies to any survivor of the deceased who for some part of the seven years ending with the date of death engaged (whether full-time or part-time) in agricultural work on the holding, being a person in whose case—
 - (a) the conditions specified in paragraphs (a) and (c) of the definition of " eligible person " in section 18(2) of this Act are satisfied ; and
 - (b) the condition specified in paragraph (b) of that definition, though not fully satisfied, is satisfied to a material extent.
- (2) A person to whom this section applies may within the relevant period apply to the Tribunal for a determination that he is to be treated as an eligible person for the purposes of this Part of this Act.
- (3) If on an application under this section—
 - (a) the Tribunal are satisfied that the applicant is a person to whom this section applies ; and
 - (b) it appears to the Tribunal that in all the circumstances it would be fair and reasonable for the applicant to be able to apply under section 20 of this Act for a direction entitling him to a tenancy of the holding,

the Tribunal shall determine that he is to be treated as an eligible person for the purposes of this Part of this Act, but shall otherwise dismiss the application.
- (4) In relation to a person in respect of whom the Tribunal have determined as mentioned in subsection (3) above this Part of this Act shall apply as if he were an eligible person.
- (5) A person to whom this section applies may make an application under section 20 of this Act as well as an application under this section; and if the Tribunal determine as mentioned in subsection (3) above in respect of a person who has made an application under that section, the application under that section shall (without prejudice to subsection (4) above) be treated as made by an eligible person.
- (6) Without prejudice to the generality of subsection (1)(b) above, cases where the condition mentioned in subsection (1)(b) above might be less than fully satisfied include cases where the survivor's agricultural work on the holding fell short of providing him with his principal source of livelihood because the holding was too small.

22 Opportunity for landlord to obtain Tribunal's consent to operation of notice to quit

- (1) Before giving a direction under section 20(5) or (6) of this Act in a case where a notice to quit to which section 19 of this Act applies has been given the Tribunal shall afford the landlord an opportunity of applying for their consent under this section to the operation of the notice.
- (2) Section 25 of the 1948 Act (provisions as to Tribunal's consent for purposes of section 24 of that Act) and section 29 of that Act (penalty for breach of condition accompanying consent to notice to quit) shall apply in relation to an application for, or the giving of, the Tribunal's consent under this section as they apply in relation to an application for, or the giving of, their consent under the said section 24.

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- (3) The Tribunal shall not entertain an application for their consent to the operation of a notice to quit to which section 19 of this Act applies unless it is made in pursuance of subsection (1) above.
- (4) If the Tribunal give their consent on an application made in pursuance of subsection (1) above, they shall dismiss the application or each of the applications made under section 20 of this Act.

23 Effect of direction under s. 20

- (1) Subject to the provisions of this and the following section, a direction by the Tribunal under section 20(5), (6) or (9) of this Act entitling an applicant to a tenancy of the holding, or two or more applicants to a joint tenancy thereof, shall entitle him or them to a tenancy or joint tenancy of the holding as from the relevant time on the same terms as those on which the holding was let immediately before it ceased to be let under the contract of tenancy under which it was let at the date of death; and accordingly, subject as aforesaid, such a tenancy or joint tenancy shall be deemed to be at that time granted by the landlord to, and accepted by, the person or persons so entitled.
- (2) In this and the following section " the relevant time "—
 - (a) except where the following paragraph applies, means the end of the twelve months immediately following the end of the year of tenancy in which the deceased died;
 - (b) if a notice to quit the holding was given to the tenant thereof by reason of the death of the deceased, being a notice falling within section 24(2)(g) of the 1948 Act which, apart from section 19 of this Act, would have terminated the tenancy at a time after the end of those twelve months, means that time.
- (3) If on the date of death the holding was held by the deceased under a tenancy for a fixed term of years, subsection (1) above shall have effect as if the tenancy under which the holding was let at the date of death had before that date become a tenancy from year to year on (with that exception) the terms of the actual tenancy so far as applicable.
- (4) If the terms of the tenancy to which such a direction entitles the person or persons concerned would not, apart from this subsection, include a covenant by the tenant or each of the tenants not to assign, sub-let or part with possession of the holding or any part thereof without the landlord's consent in writing, subsection (1) above shall have effect as if those terms included such a covenant.
- (5) Any tenancy of the holding inconsistent with the tenancy to which such a direction entitles the person or persons concerned shall, if it would not cease at the relevant time apart from this subsection, cease at that time as if terminated at that time by a valid notice to quit given by the tenant.
- (6) If the person or persons whom such a direction entitles to a tenancy or joint tenancy of the holding as from the relevant time becomes or become the tenant or joint tenants thereof before that time under a tenancy granted by the landlord to, and accepted by, the person or persons concerned, the direction shall cease to have effect and section 24 of this Act shall not apply.
- (7) The rights conferred on any person by such a direction (as distinct from his rights under his tenancy of the holding after he has become the tenant or a joint tenant thereof) shall not be capable of assignment.

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- (8) The Lord Chancellor may by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament provide for all or any of the provisions of this Part of this Act (except this subsection) to apply, with such exceptions, additions or other modifications as may be specified in the regulations, in cases where the person or any of the persons whom such a direction entitles to a tenancy or joint tenancy of the holding dies before the relevant time.

24 Arbitration on terms of new tenancy

- (1) Where the Tribunal give a direction such as is mentioned in subsection (1) of section 23 of this Act, the provisions of this section shall apply unless excluded by subsection (6) of that section.
- (2) In the following provisions of this section—
- " the landlord " means the landlord of the holding ;
 - " the tenant " means the person or persons entitled to a tenancy or joint tenancy of the holding by virtue of the direction;
 - " the relevant time " has the meaning given by section 23(2) of this Act;
 - " the prescribed period " means the period between the giving of the direction and the end of the three months immediately following the relevant time.
- (3) At any time within the prescribed period the landlord or the tenant may by notice in writing served on the tenant or landlord (as the case may be) demand a reference to arbitration under the 1948 Act of one or both of the following questions, namely—
- (a) what variations in the terms of the tenancy which the tenant is entitled to or has obtained by virtue of the direction are justifiable having regard to the circumstances of the holding and the length of time since the holding was first let on those terms ;
 - (b) what rent should be or should have been properly payable in respect of the holding at the relevant time.

In the following provisions of this section those questions are referred to as " question (a) " and " question (b) " respectively.

- (4) On a reference under subsection (3) above the arbitrator—
- (a) where question (a) is so referred (with or without question (b))—
 - (i) shall determine what variations, if any, in the terms mentioned in that question are justifiable as there mentioned; and
 - (ii) without prejudice to the preceding sub-paragraph, shall include in his award such provisions, if any, as are necessary for entitling the landlord to recover from the tenant under those terms a sum equal to so much as is in all the circumstances fair and reasonable of the aggregate amount of the compensation mentioned in subsection (5) (a) below, and for entitling the tenant to recover from the landlord under those terms a sum equal to so much as is in all the circumstances fair and reasonable of the aggregate amount of the compensation mentioned in subsection (5)(b) below,
- and shall accordingly, with effect from the relevant time, vary those terms in accordance with his determination or direct that they are to remain unchanged ;

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- (b) if, where question (a) but not question (b) is so referred, it appears to him that by reason of any provision included in his award under paragraph (a) above (not being a provision of a kind mentioned in sub-paragraph (ii) of that paragraph) it is equitable that the rent of the holding should be varied, may vary the rent accordingly with effect from the relevant time ;
- (c) where question (b) is so referred (with or without question (a)), shall determine what rent should be or should have been properly payable in respect of the holding at the relevant time and accordingly shall, with effect from that time, increase or reduce the rent which would otherwise be or have been payable or direct that it shall remain unchanged ;

and if the date of the award is before the relevant time, section 23(1) of this Act shall have effect subject to, and in accordance with, the award.

- (5) The compensation referred to in subsection (4)(a)(ii) above is—
 - (a) the compensation paid or payable by the landlord, whether under the 1948 Act or under agreement or custom, on the termination of the deceased's tenancy of the holding;
 - (b) the compensation paid or payable to the landlord, whether under the 1948 Act or under agreement, on that termination in respect of any such dilapidation or deterioration of, or damage to, any part of the holding or anything in or on the holding as the tenant is or will be liable to make good under the terms of his tenancy.
- (6) For the purposes of this section the rent properly payable in respect of the holding shall be the rent at which, having regard to the terms of the tenancy or prospective tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing landlord to a willing tenant, there being disregarded any effect on rent of the fact that the tenant will be or is in occupation of the holding.
- (7) On any reference under subsection (3) above the arbitrator may include in his award such further provisions, if any, relating to the tenancy which the tenant is entitled to or has obtained by virtue of the direction as may be agreed between the landlord and the tenant.
- (8) The award of an arbitrator under this section, if made after the relevant time, shall have effect as if the terms of the award were contained in an agreement in writing entered into by the landlord and the tenant and having effect as from the relevant time.
- (9) Section 77 of the 1948 Act (arbitration under that Act) shall have effect as if in subsection (1) the first reference to that Act included a reference to this Part of this Act.