



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 3 **S**

#### USE OF AGRICULTURAL LAND: DIVERSIFICATION

#### 39 Use of land for non-agricultural purposes **S**

- (1) A—
- (a) 1991 Act tenancy; <sup>F1</sup>...
  - (b) tenancy under a lease constituting a limited duration tenancy,
  - [<sup>F2</sup>(c) tenancy under a lease constituting a modern limited duration tenancy, or
  - (d) tenancy under a lease constituting a repairing tenancy,]
- does not cease to be such a tenancy by reason only that the land is used for a non-agricultural purpose.
- (2) Any term of the lease which prohibits the use of the land for a non-agricultural purpose is of no effect.
- (3) Where—
- (a) subletting the land is prohibited (by the lease or otherwise); and
  - (b) that prohibition impedes the use of the land for a non-agricultural purpose,
- the tenant may, despite the prohibition, sublet the land provided that the purpose for which it is sublet is ancillary to the tenant's use of the land for the non-agricultural purpose.
- (4) Subsections (1) to (3) do not apply if the use of the land for a non-agricultural purpose is otherwise than has been permitted under section 40 or 41.
- (5) In this section and sections 40 and 41, any reference to the land is a reference to the whole of the land comprised in the lease constituting the tenancy or any part of it.

#### Textual Amendments

- F1** Word in s. 39(1) repealed (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(13\)\(a\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

*Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Part 3 is up to date with all changes known to be in force on or before 20 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**F2** S. 39(1)(c)(d) inserted (30.11.2017) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), **sch. 2 para. 7(13)(b)** (with s. 128); S.S.I. 2017/299, reg. 2, **sch.** (with reg. 12)

**Commencement Information**

**II** S. 39 in force at 27.11.2003 by S.S.I. 2003/548, **art. 2(c)** (with Sch.)

**40 Notice of and objection to diversification** **S**

- (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 [<sup>F3</sup>in 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).
- (5) For the purposes of subsection (4)(b), the appointed date is—
- (a) the date specified under subsection (2)(d);
  - [<sup>F4</sup>(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.
- [<sup>F5</sup>(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,

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- (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).]
- [<sup>F6</sup>(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;
    - (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).

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- (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—
- [<sup>F7</sup>(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.
- [<sup>F8</sup>(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

- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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

- I2** S. 40 in force at 27.11.2003 by [S.S.I. 2003/548](#), **art. 2(c)** (with Sch.)

#### [<sup>F9</sup>40A Landlord's objection: application to Land Court **S**

- (1) This section applies where the landlord gives notice of an objection under section 40(11)(a) to a notice of diversification.

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- (2) The landlord may, before the expiry of the period mentioned in subsection (3), apply to the Land Court for a determination under section 41 that the objection is reasonable.
- (3) That period is 60 days from the giving of notice of the objection under section 40(11)(a).
- (4) The objection ceases to have effect—
  - (a) on the expiry of the period mentioned in subsection (3) unless the landlord applies, before the expiry of that period, to the Land Court under subsection (2), or
  - (b) if it is withdrawn before the expiry of that period, no such application having been made.]

#### Textual Amendments

**F9** S. 40A inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 121(3), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)

## 41 Imposition of conditions by Land Court **S**

- (1) Where [<sup>F10</sup>, on an application made by the landlord under section 40A(2),] the Land Court determines that an objection by the landlord to a notice of diversification is unreasonable—
  - (a) the objection is of no effect; and
  - (b) the land may be used—
    - (i) as mentioned in paragraph (a) of subsection (4) of section 40; and
    - (ii) from such date as the Court may fix,subject to any conditions imposed under subsection (2).
- (2) Where, by virtue of subsection (1), the land may be used as mentioned in section [<sup>F11</sup>40(4)(a) or (5A)] , the Land Court may impose on the tenant such reasonable conditions in relation to the use of the land as so mentioned as it considers appropriate.
- (3) Where [<sup>F12</sup>, on the application of the tenant,] the Land Court determines that a condition imposed by the landlord under section 40(10) [<sup>F13</sup>or, as the case may be, (14)] is unreasonable, the Court may—
  - (a) remove the condition; and
  - (b) in its place, impose on the tenant such reasonable conditions as it considers appropriate.

#### Textual Amendments

**F10** Words in s. 41(1) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 121(4)(a), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)

**F11** Words in s. 41(2) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 121(4)(b), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)

**F12** Words in s. 41(3) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 121(4)(c)(i), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)

**F13** Words in s. 41(3) inserted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), ss. 121(4)(c)(ii), 130(1) (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with reg. 12)

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#### Commencement Information

**I3** S. 41 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(c\)](#) (with [Sch.](#))

## 42 Tenant's right to timber **S**

(1) The tenant under—

- (a) a 1991 Act tenancy; <sup>F14</sup> ...
- (b) a limited duration tenancy,
- [<sup>F15</sup>(c) a modern limited duration tenancy, or
- (d) a repairing tenancy,]

has, for so long as the tenancy continues to have effect, the right to cut timber from any trees planted on the land by the tenant on or after the coming into force of this section; and any such timber belongs to the tenant.

(2) Subsection (1) does not apply in so far as the lease or any agreement in writing between the landlord and tenant makes provision to the contrary, provided that the lease or agreement also includes provision for a reduction in rent or payment of compensation to the tenant in respect of any loss incurred by the tenant as a result of that contrary provision.

#### Textual Amendments

**F14** Word in [s. 42\(1\)](#) repealed (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [s. 130\(1\)](#), [sch. 2 para. 7\(14\)\(a\)](#) (with [s. 128](#)); [S.S.I. 2017/299](#), [reg. 2](#), [sch.](#) (with [reg. 12](#))

**F15** [S. 42\(1\)\(c\)\(d\)](#) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), [s. 130\(1\)](#), [sch. 2 para. 7\(14\)\(b\)](#) (with [s. 128](#)); [S.S.I. 2017/299](#), [reg. 2](#), [sch.](#) (with [reg. 12](#))

#### Commencement Information

**I4** S. 42 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(c\)](#) (with [Sch.](#))

**Changes to legislation:**

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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\(4\)\(c\)](#)