

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 3: Use of Agricultural Land: Diversification

Section 39: Use of land for non-agricultural purposes

120. This section provides the basis for tenants under a 1991 Act tenancy or LDT to use the land for non-agricultural purposes, provided (as subsection (4) makes clear) that the notice procedure in section 40 is adhered to. The meaning of "non-agricultural" can be found in section 93 (interpretation).
121. Subsection (1) provides that, once such an agricultural tenancy has been entered into, the use of the land for a non-agricultural purpose shall not of itself cause the tenancy to cease to be a tenancy of agricultural land subject to the 1991 or 2003 Acts. Subsection 2 provides that this provision over-rides any term within a lease constituting a 1991 Act tenancy or LDT that purports to prohibit diversification.
122. Subsection (3) allows land to be sublet for a purpose ancillary to the tenant's diversification (e.g. a bed and breakfast or serviced holiday home business, where the tenant is providing a service and not simply subletting land or buildings) notwithstanding any provision in the lease to the contrary. Subsection (5) stipulates that the diversification provisions can apply to all or part of the land.

Section 40: Notice of and objection to diversification

123. This section sets out the procedures for the giving of notice of diversification to the landlord by the tenant of a 1991 Act tenancy or an LDT and for the landlord to object to such notice of diversification.
124. Subsection (4) allows a tenant under a 1991 Act tenancy or LDT to use land subject to that tenancy for a non-agricultural purpose from the appointed date (defined in subsection (5)) if the landlord does not object. Subsections (1) and (2) require that the tenant must first give notice of diversification in writing to the landlord not less than 70 days before the date on which the tenant proposes using the land for a non-agricultural purpose. The notice must specify those matters set out at (a) to (d) of subsection (2) and must address the heads under which a landlord may object to such a notice set out in subsection (9). Subsection (3) provides that where the tenant proposes to make changes to the land or intends to use the land in furtherance of a business then the notice must also specify how the changes are, or the business is (so far as relating to the land), to be financed and managed.
125. The information which the tenant should provide by virtue of subsections (2) and (3) should allow the landlord to determine whether or not to object to the proposed diversification, on the basis of one or more of the grounds set out in subsection (9). If the landlord requires more information from the tenant to make such a determination then,

*These notes relate to the Agricultural Holdings (Scotland) Act
2003 (asp 11) which received Royal Assent on 17 April 2003*

under subsection (6)(a), the landlord may, within 30 days of the giving by the tenant of notice of diversification, request the tenant to provide relevant information. Subsection (7) identifies what information is relevant for the purposes of subsection (6). If, having received that relevant information, the landlord requires more information from the tenant then, under subsection (6)(b), the landlord may, within 30 days of the tenant having provided any relevant information, request the tenant to provide further relevant information. Subsection (8) provides that any information reasonably requested under subsection (6) is to be provided by the tenant within 30 days of the date on which it was requested.

126. Where the landlord does not object to the notice of diversification the landlord may, under subsection (10), impose upon the tenant any reasonable conditions in respect of the use of the land for the non-agricultural purpose, including in relation to any proposed changes to the land itself. Such conditions must be notified to the tenant in writing under subsection (11)(b) within the time limit set out in subsection (12). The time limit set out in subsection (12) is 60 days from either the giving of the notice of diversification or, where the landlord has requested relevant information from the tenant under subsection (6), from the making of that request, or from the making of the most recent request, if more than one request for relevant information has been made by the landlord under subsection (6), whichever is the later. If the conditions to be imposed are not notified 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 imposed any conditions by virtue of subsection (13). Where the tenant believes that such a condition is unreasonable, the tenant may apply to the Land Court which has power, under section 41(3) to remove such a condition.
127. Where the landlord does object to the notice of diversification under subsection (9) then any objection, along with grounds for the objection, must be notified to the tenant in writing under subsection (11)(a) within the time limit set out in subsection (12). The time limit set out in subsection (12) is 60 days from either the giving of the notice of diversification or, where the landlord has requested relevant information from the tenant under subsection (6), from the making of that request, or from the making of the most recent request, if more than one request for relevant information has been made by the landlord under subsection (6), whichever is the later.
128. Where no notification of objection to the diversification is given by the landlord in accordance with subsections (11) and (12) the landlord is deemed, except where the non-agricultural purpose of the diversification is the planting and cropping of trees, not to have objected to the notice of diversification and the diversification can begin from the appointed date. Subsection (5) provides that the appointed date is the date specified in the tenant's notice of diversification unless either the landlord requests additional information or the landlord and tenant agree an earlier date. Where the landlord requests relevant information from the tenant under subsection (6), the appointed date is to be 70 days from the making of that request or from the making of the most recent request, if more than one request for relevant information has been made by the landlord under subsection (6), whichever is the later.
129. Where a proposed diversification relates to the planting and cropping of trees, subsection (13) provides that the landlord will not be deemed not to have objected or not to have imposed conditions just because the provisions in respect of notifying the tenant of objections or conditions (set out in subsections (11) and (12)) have not been complied with. This is because the trees will mature over a long period, typically substantially longer than the term of an LDT, and their presence will restrict the utility of the land for agricultural purposes and, consequently, its rental value. For those reasons the positive consent and agreement of the landlord to the planting and cropping of trees is required.

Section 41: Imposition of conditions by Land Court

130. This section applies where a landlord objects to a tenant's notice of diversification, on the basis of one or more of the grounds under section 40(9), and has notified the tenant in accordance with section 40(11) and (12). Subsection (1) provides that where the Land Court determines such an objection to be unreasonable, then the objection is of no effect and the land may be used as specified in the notice of diversification (see (a), (b) and (c) of section 40(2)) from such date as the Court may fix, subject to any conditions imposed by the Court under subsection (2).
131. Subsection (3) provides that where the Land Court determines a condition imposed on a tenant by a landlord and notified to the tenant in accordance with section 40(11) and (12) to be unreasonable, then the Court may remove the condition. The Court may, in place of a condition which it removes, impose on the tenant any such reasonable conditions as it considers appropriate.

Section 42: Tenant's right to timber

132. This section provides that, unless an agricultural lease or agreement between the parties expressly makes provision to the contrary and includes provision for a reduction in rent or payment of compensation to the tenant in respect of any loss incurred by that tenant as a result of that provision, the tenant under a 1991 Act tenancy or LDT has the right to cut timber from any trees planted by that tenant on or after the coming into force of this section. Such cut timber is owned by the tenant.