



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 3

USE OF AGRICULTURAL LAND: DIVERSIFICATION

39 Use of land for non-agricultural purposes

- (1) A—
 - (a) 1991 Act tenancy; or
 - (b) tenancy under a lease constituting a limited duration 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.

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 section 41 referred to as a "notice of diversification") to the landlord.

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- (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);
 - (b) where the landlord has made—
 - (i) a request for information under subsection (6), the date falling 70 days from the making of the request; or
 - (ii) more than one such request, the date falling 70 days from making of the later or, as the case may be, latest request,
 if later than the date so specified; or
 - (c) such earlier date as the landlord and tenant may agree to.
- (6) The landlord may—
- (a) within 30 days of the giving of the notice of diversification, request the tenant to provide the landlord with relevant information; and
 - (b) within 30 days of the providing by the tenant of any relevant information, request the tenant to provide the landlord with further 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

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- (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).
- (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—
- (a) where the landlord has made—
 - (i) a request for information under subsection (6), 60 days from the making of the request; or
 - (ii) more than one such request, 60 days from the making of the later or, as the case may be, latest request; or
 - (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.

41 Imposition of conditions by Land Court

- (1) Where 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

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- (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 40(4) (a), 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 the Land Court determines that a condition imposed by the landlord under section 40(10) 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.

42 Tenant's right to timber

- (1) The tenant under—
 - (a) a 1991 Act tenancy; or
 - (b) a limited duration 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.