
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 430

LANDLORD AND TENANT

**The Agricultural Holdings (Relinquishment
and Assignation) (Scotland) Regulations 2020**

Made - - - - - *9th December 2020*
Laid before the Scottish
Parliament - - - - - *11th December 2020*
Coming into force - - - - - *28th February 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 32B(1), 32D(1) and (2), 32G(3)(b) and 32Q(8) of the Agricultural Holdings (Scotland) Act 1991⁽¹⁾ and all other powers enabling them to do so.

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Agricultural Holdings (Relinquishment and Assignation) (Scotland) Regulations 2020 and come into force on 28 February 2021.

(2) In these Regulations—

“the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991,

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003⁽²⁾, and

“the 2016 Act” means the Land Reform (Scotland) Act 2016⁽³⁾.

(1) 1991 c.55. Part 3A comprising sections 32A to 32W was inserted by section 110 of the Land Reform (Scotland) Act 2016 (asp 18).
(2) 2003 asp 11.
(3) 2016 asp 18.

PART 2

Tenant's notice of intention to relinquish

Form of application to relinquish tenancy

2. For the purposes of section 32C(1) of the 1991 Act (tenant's offer to relinquish tenancy), a notice of intention to relinquish must—

- (a) be made in the form specified in schedule 1, and
- (b) include or be accompanied by information of the kind specified in that schedule.

Specification for maps, plans or other drawings relating to land

3. A map, plan or other drawing that is referred to in schedule 1 must—

- (a) be at a scale of 1:1250 for buildings and 1:10000 for land or be at a metric scale corresponding to a scale used by the Ordnance Survey for that land,
- (b) be taxative and not demonstrative only,
- (c) show the compass orientation of north,
- (d) contain map grid reference numbers and sufficient surrounding details (fences, houses etc.) to enable the position of the land to be fixed accurately,
- (e) show the boundaries of the land, and
- (f) where measurements are given, give those measurements to one decimal place.

PART 3

Landlord's acceptance of notice of intention to relinquish

Form of acceptance by landlord

4. For the purposes of section 32Q(2)(a) of the 1991 Act (landlord's acceptance of notice of intention to relinquish), a notice of acceptance to a tenant (other than a tenant to which regulation 5 applies) must be made in the form specified in schedule 2.

Form of acceptance by landlord where tenant is a relevant limited partnership

5. Where the tenant is a limited partnership falling within the definition in regulation 2 of the Agricultural Holdings (Relinquishment and Assignment) (Application to Relevant Partnerships) (Scotland) Regulations 2021(4), for the purposes of section 32Q(2)(a) of the 1991 Act a notice of acceptance to a tenant must be made in the form specified in schedule 3.

PART 4

Appointment of Valuer by Tenant Farming Commissioner

6. For the purposes of section 32G(3)(b) of the 1991 Act (appointment of valuer by Tenant Farming Commissioner) the period specified is 28 days beginning with the date on which the notice under section 32G(1) of that Act is received.

PART 5

Individuals who are new entrants to, or persons progressing in, farming

Interpretation of Part 5

7. In this Part—

“agricultural land” has the meaning given in section 1(2) of the 1991 Act,

“assignment date” means the date on which the assignment of the 1991 Act tenancy by virtue of section 32U(2) of the 1991 Act takes effect,

“relevant interest” means an interest in agricultural land within the meaning of regulation 8(2) or regulation 9(2).

New entrant to farming

8.—(1) An individual (“A”) is a new entrant to farming for the purposes of section 32U(2) of the 1991 Act if A—

(a) does not hold a relevant interest and will not, immediately before the assignment date under that section, have held a relevant interest at any point in the preceding 5 years,

(b) will not, by virtue of that assignment, become the holder of more than one relevant interest.

(2) Subject to paragraph (3), for the purposes of paragraph (1), A holds or, as the case may be, held a relevant interest if A, or any legal person in respect of which A has or has had control, is or was—

(a) a tenant under a lease constituting—

(i) a limited duration tenancy (within the meaning of section 5 of the 2003 Act⁽⁵⁾),

(ii) a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),

(iii) a 1991 Act tenancy,

(iv) a short limited duration tenancy (within the meaning of section 4 of the 2003 Act) (but ignoring any such tenancy under 3 years in duration, whether continuous or in aggregate),

(b) a small landholder (construed in accordance with section 124(3) of the 2016 Act) of a small landholding of more than 3 hectares,

(c) a crofter (within the meaning of section 3(3) of the Crofters (Scotland) Act 1993) of a croft of more than 3 hectares,

(d) the owner of more than 3 hectares of agricultural land in aggregate, wherever such land is located.

(3) For the purposes of paragraph (1) and (2), A holds or, as the case may be, held a relevant interest if A, or any legal person in respect of which A has or had control, holds or held a share of 50% or more in that relevant interest.

New entrants to farming: supplemental

9.—(1) Subject to paragraph (2), for the purposes of regulation 8(2), A does not have a relevant interest if A is—

(5) Section 5 of the 2003 Act was repealed by section 85(2) of the 2016 Act. Regulation 4 of the Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Savings Provisions) Regulations 2017 (S.S.I. 2016/299) provides, “Despite its repeal by section 85(2) of the 2016 Act, section 5 of the 2003 Act (limited duration tenancies) continues to have effect in relation to a limited duration tenancy in existence immediately before 30th November 2017.”

- (a) as the case may be—
 - (i) the executor, guardian or legal representative (within the meaning of Part 1 of the Children (Scotland) Act 1995) of a tenant, crofter, small landholder or owner,
 - (ii) the trustee or interim trustee in the sequestration of a tenant’s estate, or
 - (iii) a liquidator, interim liquidator or provisional liquidator appointed to the tenant, small landholder, crofter or owner,
 - (b) a trustee of a trust which holds a relevant interest,
 - (c) a person to whom a lease constituting a 1991 Act tenancy was bequeathed in accordance with section 11(1) of the 1991 Act, where—
 - (i) A did not accept the bequest,
 - (ii) the bequest was declared null and void under section 12A(6)(a) or 12B(2)(a) of the 1991 Act, or
 - (iii) the will or other testamentary writing containing the bequest was made before 23rd December 2016 and the bequest was declared null and void under section 11(6) of the 1991 Act, or
 - (d) a person to whom a lease constituting a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy is bequeathed in accordance with section 21(1) of the Land Reform (Scotland) Act 2003(6), where—
 - (i) A did not accept the bequest,
 - (ii) the bequest was declared null and void under section 12A(6)(a) or 12B(2)(a) of the 1991 Act, or
 - (iii) the will or other testamentary writing containing the bequest was made before 23rd December 2016 and the bequest was declared null and void under section 11(6) of the 1991 Act.
- (2) For the purposes of paragraphs (1)(a) and (b) A does have a relevant interest where A is also a beneficiary in respect of the same relevant interest.
- (3) For the purposes of regulation 8(2) and (3), A has control of a legal person (“L”) if A—
- (a) holds or controls, directly or indirectly, more than 50% of the voting rights in L,
 - (b) holds or controls the right, directly or indirectly, to appoint or remove more than 50% of the board of directors of L, or
 - (c) otherwise has the right to exercise, or actually exercises, dominant influence or control over L.
- (4) In paragraph (3)—
- (a) references to voting rights in L are to the rights conferred on shareholders in respect of their shares (or, in the case of L not having a share capital, on members or equivalent persons) to vote at a general meeting of L on all or substantially all matters,
 - (b) where L does not have general meetings at which matters are decided by the exercise of voting rights, references to voting rights in L are to be read as references to rights in relation to L that are equivalent to those of a person entitled to exercise voting rights in a company,
 - (c) references to the board of directors of L, where L does not have such a board, are to be read as references to the equivalent management body of L, and
 - (d) references to the right to appoint or remove a majority of the board of directors of L are to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

Person progressing in farming

10.—(1) An individual (“B”) is a person progressing in farming for the purposes of section 32U(2) of the 1991 Act if B—

- (a) does not hold two or more relevant interests, and
- (b) will not, by virtue of the assignation under that section, become the holder of more than two relevant interests.

(2) Subject to paragraph (3), for the purposes of paragraph (1) B holds a relevant interest where B, or any legal person in respect of which B has control, is—

- (a) a tenant of more than 3 hectares under a lease constituting—
 - (i) a limited duration tenancy (within the meaning of section 5 of the 2003 Act⁽⁷⁾),
 - (ii) a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),
 - (iii) a 1991 Act tenancy,
 - (iv) a short limited duration tenancy (within the meaning of section 4 of the 2003 Act),
- (b) a small landholder (construed in accordance with section 124(3) of the 2016 Act) with a small landholding of more than 3 hectares,
- (c) a crofter (within the meaning of section 3(3) of the Crofters (Scotland) Act 1993) with a croft of more than 3 hectares,
- (d) the owner of more than 3 hectares of agricultural land on a single title.

(3) For the purposes of paragraphs (1) and (2), B holds a relevant interest if B, or any legal person in respect of which B has control, holds a share of 50% or more in that relevant interest.

(4) But paragraphs (2) and (3) do not apply to any lease constituting a limited duration tenancy, a modern limited duration tenancy, a 1991 Act tenancy or a short limited duration tenancy if the term of the tenancy will, at the assignation date, expire in less than 1 year.

Person progressing in farming: supplemental

11.—(1) For the purposes of regulation 10(2), B does not have a relevant interest if B is—

- (a) as the case may be—
 - (i) the executor, guardian or legal representative (within the meaning of Part 1 of the Children (Scotland) Act 1995) of a tenant, crofter, small landholder or owner,
 - (ii) the trustee or interim trustee in the sequestration of a tenant’s estate, or
 - (iii) a liquidator, interim liquidator or provisional liquidator appointed to the tenant, small landholder, crofter or owner,
- (b) a trustee of a trust which holds a relevant interest.

(2) For the purposes of paragraph (1), B does have a relevant interest where B is also a beneficiary in respect of the same relevant interest.

(3) For the purposes of regulation 10(2) and (3), B has control of a legal person (“L”) if B—

- (a) holds or controls, directly or indirectly, more than 50% of the voting rights in L,
- (b) holds or controls the right, directly or indirectly, to appoint or remove more than 50% of the board of directors of L, or

(7) Section 5 of the 2003 Act was repealed by section 85(2) of the 2016 Act. Regulation 4 of the Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Savings Provisions) Regulations 2017 (S.S.I. 2016/299) provides, ‘Despite its repeal by section 85(2) of the 2016 Act, section 5 of the 2003 Act (limited duration tenancies) continues to have effect in relation to a limited duration tenancy in existence immediately before 30th November 2017.’

- (c) otherwise has the right to exercise, or actually exercises, dominant influence or control over L.
- (4) In paragraph (3)—
 - (a) references to voting rights in L are to the rights conferred on shareholders in respect of their shares (or, in the case of L not having a share capital, on members or equivalent persons) to vote at a general meeting of L on all or substantially all matters,
 - (b) where L does not have general meetings at which matters are decided by the exercise of voting rights, references to voting rights in L are to be read as references to rights in relation to L that are equivalent to those of a person entitled to exercise voting rights in a company,
 - (c) references to the board of directors of L, where L does not have such a board, are to be read as references to the equivalent management body of L, and
 - (d) references to the right to appoint or remove a majority of the board of directors of L are to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

St Andrew's House,
Edinburgh
9th December 2020

GRAEME DEY
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 2

FORM 1

FORM OF NOTICE OF INTENTION TO RELINQUISH A TENANCY UNDER SECTION 32C(1) OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991

This Form 1 is for use where the Tenant wishes to notify the Landlord of an intention to relinquish a tenancy in accordance with section 32C(1) of the Agricultural Holdings (Scotland) Act 1991.

It should only be used when the Tenant wishes to give notice to relinquish the tenancy and where none of the conditions in section 32E of the Agricultural Holdings (Scotland) Act 1991 apply.

This Form 1 may be completed online and printed, or printed and completed by hand. If completing by hand, use black ink and block capital letters.

Name of holding: (1)

Full name and address of Landlord(s) (2):

Full name and address of Tenant(s) (3):

Date (4):

This Form 1 gives notice to the Landlord that the Tenant offers to quit the tenancy of (5)

.....

provided the Landlord pays to the Tenant the sum to be calculated in accordance with section 32L of the Agricultural Holdings (Scotland) Act 1991 in compensation.

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This notice is copied to the Tenant Farming Commissioner who will appoint a valuer to assess the compensation due. The Tenant Farming Commissioner will notify the Tenant and the Landlord of the person appointed. The Tenant and the Landlord have a preference that is appointed.

Full name and business address of preferred valuer (6):

.....
.....
.....
.....

The Tenant includes the information listed below in respect of the tenancy (set out in Annex 1):

1. The rent currently payable in respect of the holding.
2. Details of the last review of the rent carried out in respect of the holding, including how the review was conducted, the previous rental figure and whether the rent was varied or unchanged.
3. Any improvements carried out in respect of which compensation is sought by the Tenant and the date and cost of those improvements.
4. A copy if available of any record of tenants improvements eligible for compensation at waygo agreed with the Landlord.
5. A copy of any written lease and of any variations to the terms of the tenancy agreement.
6. A plan or plans sufficient to enable the valuer to identify the full extent of the holding as detailed in notes for guidance. (7)

Signed (8):

This notice is copied to the Tenant Farming Commissioner (9) by email/post (delete as appropriate)

Annex 1

RENT AND REVIEWS

The rent currently payable in respect of the holding is (10)

The rent was last reviewed on (11).....

The rent review was carried out by (12)

At that review the rent (13)

If available provide a copy of Tenant’s improvements eligible for compensation at waygo agreed under the tenant amnesty provisions.

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SCHEDULE 2

Regulation 4

FORM 2

FORM OF NOTICE OF ACCEPTANCE UNDER SECTION 32Q(2)(a) OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991

This Form 2 is for use where the Landlord wishes to accept the Tenant’s notice of intention to relinquish in terms of section 32Q(2)(a) of the Agricultural Holdings (Scotland) Act 1991

This Form 2 may be completed online, or printed and completed by hand. If completed by hand, use black ink and block capital letters.

Name of holding (1):

Full name and address of Landlord(s) (2):

Full name and address of Tenant(s) (3):

Date (4):

This Form 2 gives notice to the Tenant that the Landlord will, in exchange for the Tenant quitting the Tenancy, pay to the Tenant the amount of compensation of as assessed by (5)

The Landlord acknowledges that if payment is not made within the timescales set out in section 32Q of the Agricultural Holdings (Scotland) Act 1991, the Tenant will have the rights to assign the tenancy set out in Chapter 2 of Part 3 of that Act: Assignment where Landlord does not accept notice of intention to relinquish.

Signed (6)

This notice is copied to the Tenant Farming Commissioner (7) by email/post (delete as appropriate).

SCHEDULE 3

Regulation 5

FORM 3

FORM OF NOTICE OF ACCEPTANCE UNDER SECTION 32Q(2)(a) OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991 – RELEVANT PARTNERSHIP

This Form 3 is for use where the Landlord wishes to accept the Tenant’s notice of intention to relinquish a tenancy in terms of section 32Q(2)(a) of the Agricultural Holdings (Scotland) Act 1991 and the Tenant is a relevant partnership within the meaning in regulation 2 of the Agricultural Holdings (Relinquishment and Assignation) (Modifications in respect of Limited Partnership Tenancies) (Scotland) Regulations 2020.

This Form 2 may be completed online, or printed and completed by hand. If completed by hand, use black ink and block capital letters.

Name of holding (1):

Full name and address of Landlord(s) (2):

Full name and address of Tenant(s) (3):

Date (4):

This Form 3 gives notice to the Tenant that the Landlord will, in exchange for the Tenant quitting the Tenancy, pay to the Tenant the amount of compensation of as assessed by (5)

Signed (6)

This notice is copied to the Tenant Farming Commissioner (7) by email/post (delete as appropriate).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 110 of the Land Reform (Scotland) Act 2016 inserted a new Part 3A into the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”) to provide for a process whereby a 1991 Act tenant can relinquish their tenancy to the landlord in exchange for compensation or, if the landlord does

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not buy them out, can assign the tenancy to a new entrant or person progressing in farming for the tenancy's market value (referred to in this note as "the Part 3A process").

These Regulations make provision in connection with the right of tenant farmers to make use of the Part 3A process by setting out the procedures to be followed and the persons who are eligible to take an assignation as a new entrant to or person progressing in farming.

Part 1 of these Regulations deals with citation, commencement and interpretation of the Regulations.

Part 2 of these Regulations concerns the tenant's offer to the landlord to relinquish the tenancy under section 32C(1) of the 1991 Act.

Regulation 2 provides that the notice must be in the form specified in schedule 1 and must include or be accompanied by information where specified in that schedule.

Regulation 3 sets out the specification for any maps, plans or drawings to accompany the notice.

Part 3 of these Regulations concerns the landlord's acceptance of the tenant's notice of intention to relinquish.

Regulation 4 provides that a notice intimating acceptance of the tenant's notice to relinquish must be in the form specified in schedule 2 and must include or be accompanied by information where specified in the schedule.

Regulation 5 provides that where the tenant is a relevant limited partnership falling within the definition in regulation 2 of the Agricultural Holdings (Relinquishment and Assignation) (Application to Relevant Partnerships) (Scotland) Regulations 2020, the notice intimating acceptance of the tenant's notice to relinquish must be in the form specified in schedule 3 and must include or be accompanied by information where specified in the schedule.

Part 4 concerns the appointment of a valuer by the Tenant Farming Commissioner.

Regulation 6 appoints the period within which the Tenant Farming Commissioner must appoint a valuer as within 28 days beginning with the date of receipt of the notice under section 32G(1) of the 1991 Act.

Part 5 concerns the definition of a new entrant to or person progressing in farming in terms of section 32B of the 1991 Act.

Regulation 7 sets out the definitions to be used in the interpretation of Part 5.

Regulation 8 defines the individuals who will qualify as new entrants to farming for the purposes of section 32U of the 1991 Act.

Regulation 9 makes further provision as to the circumstances in which an individual will be considered to be a new entrant to farming.

Regulation 10 defines the individuals who will qualify as persons progressing in farming for the purposes of section 32U of the 1991 Act.

Regulation 11 makes further provision as to the circumstances in which an individual will be considered to be a person progressing in farming.

A Business Regulatory Impact Assessment and Equalities Impact Assessment have been prepared and placed in the Scottish Parliament Information Centre. Copies of the Business Regulatory Impact Assessment and Equalities Impact Assessment are available from Scottish Government, Victoria Quay, Leith, Edinburgh EH6 6QQ and online at www.legislation.gov.uk