

POLICY NOTE

THE AGRICULTURAL HOLDINGS (RELINQUISHMENT AND ASSIGNATION) (SCOTLAND) REGULATIONS 2020

SSI 2020/430

The above instrument was made in exercise of the powers conferred by sections 32B(1), 32(D)(1) and (2), 32(G)(3)(b) and 32(Q)(8) of the Agricultural Holdings (Scotland) Act 1991, inserted by section 110 of the Land Reform (Scotland) Act 2016. The instrument is subject to negative procedure.

The purpose of the instrument is set out the procedure for a tenant farmer with a secure 1991 Act agricultural tenancy to be able to relinquish their tenancy to their landlord in exchange for compensation or, if the landlord does not buy them out, they can assign the tenancy to a new entrant or to a person progressing in farming, for value for relinquishment. It also provides a definition of a new entrant and person progressing in farming.

The Regulations come into force on the 28 February 2021.

Policy Objectives

This SSI is accompanied by two further SSIs. The Land Reform (Scotland) Act 2016 (Commencement No. 12) Regulations 2020 bring into force sections 110 and 111 of the Land Reform (Scotland) Act 2016 which insert a new Part 3A into the Agricultural Holdings (Scotland) Act 1991 enabling a tenant farmer with a secure 1991 Act agricultural tenancy who have no successor or who have an eligible successor or assignee who does not wish to take on the tenancy to relinquish their tenancy to their landlord for a sum; and inserting a new section 74A into the Agricultural Holdings (Scotland) Act 2003 giving Ministers the power to modify the application of Part 3A in its application to tenancies where the tenant is a limited partnership.

The Agricultural Holdings (Relinquishment and Assignment) (Application to Relevant Partnerships) Regulation 2021 set out the modifications in the application of Part 3A to Limited Partnership tenancies, allowing eligible tenant farmers to seek to relinquish their tenancy but not assign it.

In combination these SSIs provide a mechanism for eligible tenant farmers who wish to relinquish their secure 1991 Act agricultural tenancy to be recompensed for the value of their tenancy enabling them to move forward into retirement in a more structured manner, and provide them with a return. This policy will also enable secure 1991 Act tenant farmers who do not wish to retire but who wish to relinquish their tenancy for whatever reason, to do so.

The provisions not only enable secure 1991 Act tenant farmers with no assignees or successors retire from their business, but also allow a new entrant or a person progressing in farming to take on a secure 1991 Act agricultural tenancy. This approach encourages the

continuation of tenant farming in a local area and gives a young person or a person progressing in farming an opportunity to farm.

The provisions within the three SSIs apply to secure 1991 Act agricultural tenancies across Scotland, including those located on islands. During the Agricultural Holdings Legislation Review Group consultation period some tenant farmers identified a lack of agricultural tenancies or agricultural land. Due to the culture in agriculture and the ability to pass a secure 1991 Act agricultural tenancy onto the next generation, this tenancy type does not normally become available on the tenancy market.

Prior to the Land Reform (Scotland) Act 2016 (the 2016 Act) and these SSIs, the only way to enable tenant farmers of secure 1991 Act agricultural tenancies without eligible assignees or successors, or with potential assignees willing to take on the tenancy, to bring their tenancy to an end was to revert to the Scottish Land Court or go through way-go which can be a significantly more lengthy approach.

Through the implementation of the 2016 Act and these accompanying SSIs, this policy contributes to the Scottish Government vision for a vibrant tenanted agricultural sector, which is dynamic, sustainable and part of our wider Scottish Government economic and land use strategies. This vision recognises the role that tenant farmers and their landlords play in the cultural, economic and social well-being of our rural and island communities.

Parts 2 and 3 of this SSI and its accompanying Schedules bring forward the regulations set out in section 32C(1) of the Agricultural Holdings (Scotland) Act 1991 (the 1991 Act), setting out the forms and the associated specification criteria for any maps to be used where eligible tenant farmers with a secure 1991 Act agricultural tenancy or a secure 1991 Act tenancy which is a limited partnership wish to relinquish their tenancy and the forms to be used by their landlord confirming they wish to accept their tenant's request to relinquish for the purpose set out in section 32Q(2)(a) of the 1991 Act. The forms contain the range of information required to ensure the process for all parties is as transparent as possible.

Part 4 enacts section 32G(3)(b) of the Agricultural Holdings (Scotland) Act 1991 and enables the appointment of valuers within 28 days by the Tenant Farming Commissioner once the Commissioner receives a notice of intention to relinquish by an eligible tenant farmer.

Part 5 of the Regulations sets out the two groups of eligible persons able to be assigned a secure 1991 Act agricultural tenancy. In order to meet the policy aim of reinvigorating the sector, Regulation 8 and 10 define the eligibility criteria for a proposed assignee the purposes of these regulations.

Regulation 8 confirms that a person is a new entrant to farming for the purposes of being assigned a secure 1991 Act agricultural tenancy under section 32U(2) of the 1991 Act in the event that an eligible tenant farmer's landlord chooses not to accept the relinquishment of the tenancy if that person is someone who does not, or will not, hold a relevant interest in agricultural land. Relevant interests are listed in subsection 8(2) and are an SLDT over 3 years, MLDTs, LDTs, 1991 Act tenancy, a small landholding, a crofter or an owner of 3 hectares of land. An individual has a relevant interest where they, or a legal person controlled by them, hold or have held more than 50% of the interest. The provisions detailing what amounts to control of a legal person mirror those used for Modern Limited Duration Tenancies (in the Agricultural Holdings (Modern Limited Duration Tenancy & Consequential

etc. Provisions (Scotland) Regulations 2017) and set out the circumstances where a person would be excluded from being a new entrant.

Regulation 9 sets out additional provisions on how it is determined whether someone is a new entrant in a similar way to MLDTs.

To ensure that the policy aims of supporting people who are not new entrants consolidate and start to grow their agricultural business further Regulation 10 and 11 define the eligibility criteria of when a person is or is not a person progressing in farming for the purposes of these regulations.

Regulation 10 sets out the definition of a person progressing in farming. It defines them as a person who holds no more than two and will not hold as a result of the assignment date of the secure 1991 Act agricultural tenancy more than two relevant interests.

A relevant interest is where someone, has control or legal control of land subject to relevant interest or the control tests and that land is 3 hectares or more in size and is an LDT, MLDT, a 1991 Act tenancy, and SLDT, a small landholding, a croft or is owned. The person is considered to have legal control of a person when that other person holds shares of 50% or more in a relevant interest. In the circumstances where an LDT, MLDT, 1991 Act tenancy or SLDT has less than one year before it expires then these are not to be included. This approach enables those individuals in limited partnership tenancies on tacit relocation to move out of those limited partnership tenancies and obtain greater security of tenure.

There is no exclusion of activity in the past 5 years under these provisions, and all land of under 3 hectares is excluded. While land is capable of agricultural production, the 3 hectare limit has been chosen because parcels of land of less than 3 hectares in the majority of cases do not provide sufficient income to support a full time agricultural business. Although they can provide a new entrant with the opportunity to gain the basic skills and knowledge, this area of land does not provide sufficient scope to develop and grow their business to the degree necessary to move into the agricultural industry full time.

Regulation 11 makes similar provisions for individuals progressing in farming to those provided for at Regulation 9 for new entrants.

Consultation

After the Land Reform (Scotland) Act 2016 came into force on 22 April 2016, the Scottish Government started commencement of the provisions relating to tenant farming. In January 2019, officials engaged with national tenant farming stakeholders on sections 110 and 111 within the 2016 Act. Two tenant farming stakeholder meetings were held on 14 & 15 January 2019, consisted of representatives from NFUS, STFA, SLE, SAAVA, RICS, Scottish Land Commission, Central Association of Agricultural Valuers, Forestry Enterprise Scotland (FES) and the Tenant Farming Commissioner.

The stakeholder discussion concentrated on four topics: Definition of new entrant and person progressing in farming; consideration of the European Convention of Human Rights; exploration of the consequences of including a person progressing in farming in rather than

solely new entrants and the form and content of notice required as part of the intention to relinquish and notice of acceptance.

Written consultation was undertaken in July 2019 when views were sought from the stakeholders on the content of forms, definition of person progressing in agriculture and timescale for TFC to appoint a valuer. These views were evaluated and incorporated into the development of this set of SSIs and accompanying documents. Throughout this process particular attention was paid to the rights of both tenant and landlord under the European Convention of Human Rights.

Impact Assessments

The Equality Impact Assessment (EQIA) for the Land Reform Scotland Bill was published on 30 June 2015 and can be found here:

<https://www.webarchive.org.uk/wayback/en/archive/20170401105358/http://www.gov.scot/Topics/Environment/land-reform/LandReformBill/EQIA>

We have reassessed this EQIA for the purposes of the suite of relinquishment and assignation SSIs to ensure that equality interests are still relevant, this refreshed version was published on 11 December 2020. The document can be found alongside the instrument on www.legislation.gov.uk

Although not yet legally required, an Islands Impact Assessment has been undertaken in the spirit of the forthcoming legal change and was published on 11 December 2020 for this SSI, the Agricultural Holdings (Relinquishment and Assignation) (Scotland) Regulations 2020 and the Agricultural Holdings (Relinquishment and Assignation)(Application to Relevant Partnerships) (Scotland) Regulations 2021. The document can be found at: <https://www.gov.scot/isbn/9781800044371>

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was published for the Land Reform (Scotland) Act 2016 at the introduction of the Bill and can be found here:

<https://www.webarchive.org.uk/wayback/archive/3000/https://www.gov.scot/Resource/0048/00481018.pdf>

Subsequently, we have reassessed the BRIA for the purposes of the suite of relinquishment and assignation SSIs to ensure that business impacts have been considered, this refreshed version was published on 11 December 2020 and can be found alongside the instrument on www.legislation.gov.uk and this has shown that there is potential to increase agricultural productivity through new entrant and person progressing in farming.

Scottish Government
Agriculture and Rural Economy Directorate

11 December 2020