



Agricultural Holdings Act 1986

1986 CHAPTER 5

PART IV

SUCCESSION ON DEATH OR RETIREMENT OF TENANT

Succession on retirement of tenant

49 Application of sections 50 to 58

- (1) Sections 50 to 58 below (except sections 53(11) and 55(7) which are of general application) shall apply where—
- (a) an agricultural holding is held under a tenancy from year to year, being a tenancy which falls within paragraph (a) or (b) of section 34(1) above, and
 - (b) a notice is given to the landlord by the tenant, or (in the case of a joint tenancy) by all the tenants, of the holding indicating (in whatever terms) that he or they wish a single eligible person named in the notice to succeed him or them as tenant of the holding as from a date specified in the notice, being a date on which the tenancy of the holding could have been determined by notice to quit given at the date of the notice and which falls not less than one year, but not more than two years, after the date of the notice.
- (2) In subsection (1) above "tenant" has the same meaning as in section 34 above.
- (3) In this section and sections 50 to 58 below (and in Part I of Schedule 6 to this Act as applied by section 50(4))—
- "close relative" of the retiring tenant means—
 - (a) the wife or husband of the retiring tenant;
 - (b) a brother or sister of the retiring tenant;
 - (c) a child of the retiring tenant;
 - (d) any person (not within or above) who, in the case of any marriage to which the retiring tenant has been at any time a party, has been treated by the latter as a child of the family in relation to that marriage;
 - "eligible person" has the meaning given by section 50 below;

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" the holding " means the holding in respect of which the retirement notice is given ;

"the nominated successor" means the eligible person named in the retirement notice ;

" related holding " means, in relation to the holding, any agricultural holding comprising the whole or a substantial part of the land comprised in the holding;

" the retirement date" means the date specified in the retirement notice as the date as from which the proposed succession is to take place;

" the retirement notice " means the notice mentioned in subsection (1) above;

" the retiring tenant " means the tenant by whom the retirement notice was given, or, where it was given by joint tenants (and the context so permits), any one of those tenants, and " the retiring tenants " accordingly means those tenants;

" the tenancy " means the tenancy of the holding.

50 Right to apply for new tenancy on retirement of tenant

- (1) The eligible person named in the retirement notice may (subject to section 57(2) below) apply under section 53 below to the Tribunal for a direction entitling him to a tenancy of the holding unless excluded by section 51 below.
- (2) For the purposes of sections 49 to 58 of this Act, " eligible person " means (subject to the provisions of Part I of Schedule 6 to this Act as applied by subsection (4) below) a close relative of the retiring tenant in whose case the following conditions are satisfied—
 - (a) in the last seven years his only or principal source of livelihood throughout a continuous period of not less than five years, or two or more discontinuous periods together amounting to not less than five years, derived from his agricultural work on the holding or on an agricultural unit of which the holding forms part, and
 - (b) he is not the occupier of a commercial unit of agricultural land.
- (3) In the case of the wife of the retiring tenant the reference in subsection (2) (a) above to the relative's agricultural work shall be read as a reference to agricultural work carried out by either the wife or the retiring tenant (or both of them).
- (4) Part I of Schedule 6 to this Act shall apply for the purposes of supplementing subsection (2) above and making provision with respect to the assessment of the productive capacity of agricultural land for the purposes of paragraph (b) of that subsection, but subject to the modifications set out in Part II of that Schedule.

51 Excluded cases

- (1) Sections 37 and 38 above shall apply for the purpose of excluding the application of section 50(1) above, but subject to the following modifications—
 - (a) references to sections 36(1) and 41 above shall be read as references to section 50(1),
 - (b) references to the holding, a related holding and the tenancy shall be read in accordance with section 49(3) above, and

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- (c) references to the date of death shall be read as references to the date of the giving of the retirement notice.
- (2) Section 50(1) shall not apply if the retiring tenant has at any time given any other notice under section 49(1) above in respect of the holding or a related holding and an application to become the tenant of the holding or a related holding has been duly made by any person under section 53 below in respect of that notice.
- (3) Section 50(1) shall not apply if at the retirement date the retiring tenant will be under sixty-five, unless the retirement notice is given on the grounds that—
 - (a) the retiring tenant or (where the notice is given by joint tenants) each of the retiring tenants is or will at the retirement date be incapable, by reason of bodily or mental infirmity, of conducting the farming of the holding in such a way as to secure the fulfilment of the responsibilities of the tenant to farm in accordance with the rules of good husbandry, and
 - (b) any such incapacity is likely to be permanent, and that fact is stated in the notice.
- (4) If on the date of the giving of the retirement notice the tenancy is the subject of a valid notice to quit given before that date and including a statement that it is given for any such reason as is referred to in Case B, D or E (not being a notice to quit falling within section 38(3) above as applied by subsection (1) above), section 50(1) shall not apply unless one of the events mentioned in subsection (5) below occurs.
- (5) Those events are as follows—
 - (a) it is determined by arbitration under this Act that the notice to quit is ineffective for the purposes of section 26(2) above on account of the invalidity of any such reason as aforesaid, or
 - (b) where a counter-notice is duly served under section 28(2) above—
 - (i) the Tribunal withhold consent to the operation of the notice to quit, or
 - (ii) the period for making an application to the Tribunal for such consent expires without such an application having been made.
- (6) Where one of the events mentioned in subsection (5) above occurs the relevant period shall for the purposes of sections 53(1) and 54(2) below be the period of one month beginning with the date on which the arbitrator's award is delivered to the tenant, with the date of the Tribunal's decision to withhold consent, or with the expiry of the said period for making an application (as the case may be).

52 Notices to quit restricting operation of section 53

- (1) If the tenancy becomes the subject of a valid notice to quit given on or after the date of the giving of the retirement notice (but before the Tribunal have begun to hear any application by the nominated successor under section 53 below in respect of the retirement notice) and the notice to quit—
 - (a) falls within Case C and is founded on a certificate granted under paragraph 9 of Part II of Schedule 3 to this Act in accordance with an application made before that date, or
 - (b) falls within Case F,the retirement notice shall be of no effect and no proceedings, or (as the case may be) no further proceedings, shall be taken under this Part of this Act in respect of it.

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- (2) If the tenancy becomes the subject of a valid notice to quit given on or after the date of the giving of the retirement notice (but before the Tribunal have begun to hear any application by the nominated successor under section 53 below in respect of the retirement notice) and the notice to quit—
- (a) includes a statement that it is given for any such reason as is referred to in Case B, or
 - (b) includes a statement that it is given for any such reason as is referred to in Case D and is founded on a notice given for the purposes of that Case before that date,
- the retirement notice shall be of no effect and no proceedings, or (as the case may be) no further proceedings, shall be taken under this Part of this Act in respect of it unless one of the events mentioned in subsection (3) below occurs.
- (3) Those events are as follows—
- (a) it is determined by arbitration under this Act that the notice to quit is ineffective for the purposes of section 26(2) above on account of the invalidity of any such reason as aforesaid, or
 - (b) where a counter-notice is duly served under section 28(2) above—
 - (i) the Tribunal withhold consent to the operation of the notice to quit, or
 - (ii) the period for making an application to the Tribunal for such consent expires without such an application having been made.
- (4) Where
- (a) one of the events mentioned in subsection (3) above occurs, and
 - (b) the notice to quit was given before the time when the relevant period for the purposes of sections 53(1) and 54(2) would expire apart from this subsection, that period shall for those purposes expire at the end of the period of one month beginning with the date on which the arbitrator's award is delivered to the tenant, with the date of the Tribunal's decision to withhold consent, or with the expiry of the said period for making an application (as the case may be).
- (5) For the purposes of this Part of this Act an application by the nominated successor under section 53 below which is invalidated by subsection (1) or (2) above shall be treated as if it had never been made.

53 Application for tenancy of holding by nominated successor

- (1) An application under this section by the nominated successor to the Tribunal for a direction entitling him to a tenancy of the holding shall be made within the relevant period.
- (2) In subsection (1) above "the relevant period" means (subject to sections 51(6) and 52(4) above) the period of one month beginning with the day after the date of the giving of the retirement notice.
- (3) Any such application—
 - (a) must be accompanied by a copy of the retirement notice, and
 - (b) must be signed by both the nominated successor and the retiring tenant or, where the notice was given by joint tenants, by each of the retiring tenants.
- (4) If the retirement notice includes a statement in accordance with section 51(3) above that it is given on the grounds mentioned in that provision, then, before the nominated

successor's application is further proceeded with under this section, the Tribunal must be satisfied—

- (a) that the retiring tenant or (as the case may be) each of the retiring tenants either is or will at the retirement date be incapable, by reason of bodily or mental infirmity, of conducting the farming of the holding in such a way as to secure the fulfilment of the responsibilities of the tenant to farm in accordance with the rules of good husbandry, and
- (b) that any such incapacity is likely to be permanent.

(5) If the Tribunal are satisfied—

- (a) that the nominated successor was an eligible person at the date of the giving of the retirement notice, and
- (b) that he has not subsequently ceased to be such a person,

the Tribunal shall determine whether he is in their opinion a suitable person to become the tenant of the holding.

(6) Before making a determination under subsection (5) above the Tribunal shall afford the landlord an opportunity of stating his views on the suitability of the nominated successor; and in making any such determination the Tribunal shall have regard to all relevant matters, including—

- (a) the extent to which the nominated successor has been trained in, or has had practical experience of, agriculture,
- (b) his age, physical health and financial standing,
- (c) the views (if any) stated by the landlord on his suit ability.

(7) If the nominated successor is determined under that subsection to be in their opinion a suitable person to become the tenant of the holding, the Tribunal shall, subject to subsection (8) below, give a direction entitling him to a tenancy of the holding.

(8) The Tribunal shall not give such a direction if, on an application made by the landlord, it appears to the Tribunal that greater hardship would be caused by giving the direction than by refusing the nominated successor's application under this section,

(9) If the Tribunal dispose of the nominated successor's application otherwise than by the giving of a direction under subsection (7) above the retirement notice shall be of no effect (but without prejudice to section 51(2) above).

(10) For the purposes of this Part of this Act, an application by the nominated successor under this section which is withdrawn or abandoned shall be treated as if it had never been made.

(11) Provision shall be made by order under section 73(3) of the Agriculture Act 1947 (procedure of Agricultural Land Tribunals) for requiring any person making an application to the Tribunal for a direction under this section to give notice of the application to the landlord of the agricultural holding to which the application relates.

54 Restriction on operation of certain notices to quit

(1) This section applies to any notice to quit the holding or part of it given to the tenant of the holding (whether before or on or after the date of the giving of the retirement notice), not being a notice to quit falling within any provision of section 38 above (as applied by section 51(1) above) or section 51 or 52 above.

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- (2) A notice to quit to which this section applies shall not, if it would otherwise be capable of so having effect, have effect—
- (a) at any time during the relevant period, or
 - (b) where an application to become the tenant of the holding is made by the nominated successor under section 53 above within that period, at any time before the application has been finally disposed of by the Tribunal or withdrawn or abandoned,
- and shall in any event not have effect if any such application is disposed of by the Tribunal by the giving of a direction under section 53(7) above.
- (3) In subsection (2) above " the relevant period " means (subject to sections 51(6) and 52(4) above) the period of one month beginning with the day after the date of the giving of the retirement notice.

55 Effect of direction under section 53

- (1) A direction by the Tribunal under section 53(7) above entitling the nominated successor to a tenancy of the holding shall entitle him to a tenancy of the holding as from the relevant time on the terms provided by section 56 below; and accordingly such a tenancy shall be deemed to be at that time granted by the landlord to, and accepted by, the nominated successor.
- (2) Where the tenancy of the retiring tenant or (as the case may be) of the retiring tenants was not derived from the interest held by the landlord at the relevant time, the tenancy deemed by virtue of subsection (1) above to be granted to, and accepted by, the nominated successor shall be deemed to be granted by the person for the time being entitled to the interest from which the tenancy of the retiring tenant or tenants was derived, instead of by the landlord, with like effect as if the landlord's interest and any other supervening interest were not subsisting at the relevant time.
- (3) The reference in subsection (2) above to a supervening interest is a reference to any interest in the land comprised in the tenancy of the retiring tenant or tenants, being an interest created subsequently to that tenancy and derived (whether immediately or otherwise) from the interest from which that tenancy was derived and still subsisting at the relevant time.
- (4) Subsection (2) above shall not be read as affecting the rights and liabilities of the landlord under this Part of this Act.
- (5) Any tenancy of the holding inconsistent with the tenancy to which the nominated successor is entitled by virtue of a direction under section 53(7) above shall, if it would not cease at the relevant time apart from this subsection, cease at that time as if terminated at that time by a valid notice to quit given by the tenant.
- (6) The rights conferred on any person by such a direction (as distinct from his rights under his tenancy of the holding after he has become the tenant) shall not be capable of assignment.
- (7) The Lord Chancellor may by regulations provide for all or any of the provisions of sections 37(6) and 50 to 58 of this Act (except this subsection) to apply, with such exceptions, additions or other modifications as may be specified in the regulations, in cases where the nominated successor, being entitled to a tenancy of the holding by virtue of such a direction, dies before the relevant time.

- (8) In this section " the relevant time " means the retirement date, except that—
- (a) where such a direction is given within the period of three months ending with the retirement date, the Tribunal may, on the application of the tenant, specify in the direction, as the relevant time for the purposes of this section, such a time falling within the period of three months immediately following the retirement date as they think fit,
 - (b) where such a direction is given at any time after the retirement date, the Tribunal shall specify in the direction, as the relevant time for those purposes, such a time falling within the period of three months immediately following the date of the giving of the direction as they think fit,
- and any time so specified shall be the relevant time for those purposes accordingly.

56 Terms of new tenancy

- (1) Subject to subsections (2) and (3) below, the terms of the tenancy to which a direction under section 53(7) above entitles the nominated successor shall be the same as the terms on which the holding was let immediately before it ceased to be let under the contract of tenancy under which it was let at the date of the giving of the retirement notice.
- (2) If the terms of the tenancy to which the nominated successor is entitled as mentioned in subsection (1) above would not, apart from this subsection, include a covenant by the tenant not to assign, sub-let or part with possession of the holding or any part of it without the landlord's consent in writing, subsection (1) above shall have effect as if those terms included that covenant.
- (3) Where the Tribunal give a direction under section 53(7) above, subsections (3) to (12) of section 48 above shall have effect in relation to the tenancy which the nominated successor is entitled to or has obtained by virtue of the direction, but with the substitution—
- (a) in subsection (8) (a) of a reference to the tenancy of the retiring tenant or (as the case may be) tenants for the reference to the deceased's tenancy,
 - (b) in subsection (11) of a reference to subsection (1) above for the reference to section 47(1).
- (4) In those provisions, as extended by subsection (3) above—
- " the landlord " means the landlord of the holding;
 - " the prescribed period " means the period between the giving of the direction and—
 - (a) the end of the three months immediately following the relevant time, or
 - (b) the end of the three months immediately following the date of the giving of the direction,whichever last occurs;
 - " the relevant time " has the meaning given by section 55(8) above;
 - " the tenant " means the nominated successor.

57 Effect of death of retiring tenant on succession to the holding

- (1) Subsections (2) to (4) below apply where the retiring tenant, being the sole (or sole surviving) tenant of the holding, dies after giving the retirement notice.

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- (2) If the tenant's death occurs at a time when no application by the nominated successor has been made under section 53 above or such an application has not been finally disposed of by the Tribunal, the retirement notice shall be of no effect and no proceedings, or (as the case may be) no further proceedings, shall be taken under section 53 above in respect of it; and accordingly sections 36 to 48 above shall apply on the tenant's death in relation to the holding.
- (3) If the tenant's death occurs at a time when any such application has been so disposed of by the giving of a direction such as is mentioned in subsection (1) of section 55 above, but before the relevant time (within the meaning of that section), that section and section 56 above shall continue to have effect in relation to the holding; and accordingly sections 36 to 48 above shall not apply on the tenant's death in relation to the holding.
- (4) If the tenant's death occurs at a time when any such application has been so disposed of otherwise than by the giving of any such direction, sections 36 to 48 above shall apply on the tenant's death in relation to the holding, but no application under section 39 (or 41) above may be made on that occasion by the nominated successor in relation to the holding.
- (5) Where the retirement notice was given by joint tenants and one of those tenants, not being the sole surviving tenant of the holding, dies, his death shall not affect any rights of the nominated successor under sections 50 to 56 above.

58 Effect of direction under section 53 on succession to other holdings

Where

- (a) the retiring tenant, being the sole (or sole surviving) tenant of the holding, dies, and
- (b) the nominated successor is for the time being entitled to a tenancy of the holding by virtue of a direction under section 53(7) above,

then for the purpose of determining whether, in relation to any other agricultural holding held by the retiring tenant at the date of his death, the nominated successor is a person in whose case the condition specified in paragraph (b) of section 36(3) above is satisfied, the nominated successor shall be deemed to be in occupation of the holding.