POLICY NOTE

THE AGRICULTURAL HOLDINGS (RELINQUISHMENT AND ASSIGNATION) (APPLICATION TO RELEVANT PARTNERSHIPS) (SCOTLAND) REGULATIONS 2021

SSI 2021/ 106

The above instrument was made in exercise of the powers conferred by sections 74A(b) and (3) of the Agricultural Holdings (Scotland) Act 2003 and is subject to affirmative procedure.

The purpose of this instrument is to make regulations to modify the process under new Part 3A of the Agricultural Holdings (Scotland) 1991 Act for tenant farmers with a limited partnership secure tenancy under the Agricultural Holdings (Scotland) Act 1991, to enable those tenant farmers to relinquish their tenancy to their landlord for compensation but without them being able to assign the tenancy to a new entrant or person progressing in farming.

The Regulations come into force on the 28 February 2021.

Policy Objectives

This SSI is accompanied by the Land Reform (Scotland) Act 2016 (Commencement No. 12) Regulations 2020 and brings into force sections 110 and 111 of the Land Reform (Scotland) Act 2016. Sections 110 and 111 bring into force the new Part 3A of the 1991 Act and insert a new section 74A into the Agricultural Holdings (Scotland) Act 2003. Part 3A enables a tenant farmer with a secure 1991 Act agricultural tenancy who has no successor, or who has an eligible successor or assignee who does not wish to take on the tenancy, to relinquish their tenancy to their landlord for a sum. If their landlord does not wish to take on the tenancy or pay a sum, the tenant farmer can assign their tenancy to a new entrant or a person progressing in farming for a value. It is also accompanied by the Agricultural Holdings (Relinquishment and Assignation) Regulation 2020, which sets out the procedure for relinquishment and provides a definition of a new entrant and person progressing in farming.

These Regulations enable those tenant farmers with a secure agricultural tenancy that is a limited partnership under the 1991 Act and who have no successor or with an eligible successor or assignee who does not wish to take on the tenancy, to relinquish the tenancy to their landlord for a sum. However, the provisions prevent an eligible tenant farmer with a limited parntership from assigning the tenancy.

Limited Partnership secure agricultural tenancies under the 1991 Act were common prior to 2003 as a way of landlords creating an agriucltural tenancy with restricted security of tenure, as there was no other legal mechanism to create a time limited agricultural tenancy. Within a limited partnership, the tenant farmer is the ‘general partner’ and the landlord or their agent is the ‘limited partner’ and the partnership has an agreed end-date. The Agricultural Holdings (Scotland) Act 2003 and other primary legislation have provided a range of alternative time limited agricutlural tenancies and as a result this form of tenancy has been in decline and there are only around 425 left in Scotland.

A range of options were considered for the implementation of the provisions in the new section 74A (which gives the Scottish Ministers powers to modify Part 3A in its application to limited partnerships). The preferred option was to enable limited partnership tenant to seek to relinquish their tenancies, but not to assign the tenancy to a new entrant or person progressing in agriculture if the landlord did not accept the relinquishment. This approach was considered to balance the rights of both parties to the lease in those tenancies where the limited partnership structure gave rise to a different set of rights and considerations on the part of landlords and their tenants.

The Regulations set out which limited partnerships will be considered relevant partnerships for the purposes of the modifications to Part 3A and confirms that these are the same partnerships as defined through sections 70-74 of the Agricultural Holdings (Scotland) Act 2003.

Where the partnership is a relevant partnership, regulation 3 of the Regulations removes the abilty in section 32A(1) of the 1991 Act to assign the tenancy to a new entrant or person progressing in farming and the defintions of those provided by section 32W. It also omits paragraph (b) of section 32F(3) as it is not relevant for a limited partnership tenancy and section 32U which enables an eligible tenant farmer to assign their tenancy to a new entrant or a person progressing in farming. The effect of these modifications is to disapply the option of assignation where the tenant is a limited partnership. The decision to disapply the option to assign a limited partnership tenancy is made on the basis that these tenancies have an end date agreed between the tenant farmer 'the general partner' and their landlord 'the limited partner' at the start of the tenancy, and they are therefore not in the same position as a tenant under a secure 1991 Act agricultural tenancy who has no option for termination of the tenancy other than to give notice to quit.

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 and 15 January 2019, consisted of representatives from NFUS, STFA, SLE, SAAVA, RICS, Scottish Land Commission, Central Association of Agricultural Valuers, Forestry Enterprise Scotland 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 rather than soley 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 three SSIs and accompanying documents.

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 here: 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 2015 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. 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