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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 430**

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

**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<sup>(1)</sup>),

(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,

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(1) Section 5 of the 2003 Act was repealed by section 85(2) of the 2016 Act.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) 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—

- (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(2), 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<sup>(3)</sup>),
  - (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-

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(3) 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.’

- (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
  - (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.