

DIVERSIFICATION

Agricultural Tenancies
1991 Act Tenancy
Limited Duration Tenancy

DIVERSIFICATION

Diversification is the use of land for purposes other than agriculture.

Agriculture is defined as including (but is not limited to) horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.

LANDLORD CONSENT

If a tenant wishes to diversify he must first notify the landlord in writing not less than 70 days before the date he proposes to commence the diversified use. The notice must contain information prescribed in the Agricultural Holdings (Scotland) Act 2003 ("the 2003 Act").

On receipt of a notice from the tenant that he intends to diversify (specifying the proposed diversification activity) the landlord's options are to accept the proposal, request further information, impose reasonable conditions or object on any of the grounds of objection set out in the 2003 Act. The grounds of objection are –

- that the landlord reasonably considers that the intended use of the land for the non-agricultural purpose and any proposed changes to the land would –
 - lessen significantly the amenity of the land or the surrounding area
 - substantially prejudice the use of the land for agricultural purposes in the future
 - be detrimental to the sound management of the estate of which the land consists or forms part, or
 - cause the landlord to suffer undue hardship
- that the landlord reasonably considers the proposed diversification and/or business involved in the diversified use is/are not viable, or
- that the tenant has failed to provide timeously to the landlord the information reasonably requested.

The tenant can appeal to the Scottish Land Court if he considers the landlord's objections or any of the conditions which he seeks to impose are not reasonable. The Scottish Land Court can then override the landlord's objections or conditions as it sees fit, as well as impose such of its own reasonable conditions as it considers appropriate.

The 2003 Act also permits sub-letting even if prohibited in the lease, provided that the prohibition impedes the use of the land for a non-agricultural purpose and the sub-let is ancillary to the tenant's use of the land for a non-agricultural purpose.

THE EFFECT ON RENT

In any determination of rent the Scottish Land Court is obliged to take into account –

- any reduction in the rental value of the farm resulting from –
 - the use of the land or part of the land, or changes to the land for a purpose that is a non-agricultural purpose, or
 - the carrying out of conservation activities on the farm

and

- any increase in the rental value of the farm resulting from the use of the land for a purpose which is not an agricultural purpose.

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