



# Agricultural Holdings Act 1986

## 1986 CHAPTER 5

### PART IV

#### SUCCESSION ON DEATH OR RETIREMENT OF TENANT

**Modifications etc. (not altering text)**

**C1** Pts. III–VI (ss. 25–82) excluded by [Housing Act 1988 \(c. 50, SIF 61\)](#), **s. 101**

*Tenancies to which Part IV applies*

**34 Tenancies to which Part IV applies.**

- (1) The provisions of this Part of this Act shall have effect with respect to—
- (a) any tenancy of an agricultural holding granted before 12th July 1984, and
  - (b) a tenancy granted on or after that date if (but only if)—
    - (i) the tenancy was obtained by virtue of a direction of the Tribunal under section 39 or 53 below,
    - (ii) the tenancy was granted (following a direction under section 39 below) in circumstances within section 45(6) below,
    - (iii) the tenancy was granted by a written contract of tenancy indicating (in whatever terms) that this Part of this Act is to apply in relation to the tenancy, or
    - (iv) the tenancy was granted otherwise than as mentioned in the preceding provisions of this subsection to a person who, immediately before that date, was a tenant of the holding or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding.
- (2) In this section “tenant” does not include an executor, administrator, trustee in bankruptcy or other person deriving title from a tenant by operation of law.

*Status: Point in time view as at 05/12/2005.*

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### *Succession on death of tenant*

#### **35 Application of sections 36 to 48.**

- (1) Sections 36 to 48 below (except sections 40(5), 42 and 45(8) which are of general application) shall apply where—
- (a) an agricultural holding is held under a tenancy which falls within paragraph (a) or (b) of section 34(1) above, and
  - (b) the sole (or sole surviving) tenant (within the meaning of that section) dies and is survived by a close relative of his.
- (2) In sections 36 to 48 below (and in Part I of Schedule 6 to this Act)—
- “close relative” of a deceased tenant means—
- (a) the wife [<sup>F1</sup>, husband or civil partner] of the deceased;
  - (b) a brother or sister of the deceased;
  - (c) a child of the deceased;
  - (d) any person (not within (b) or (c) above) who, in the case of any marriage [<sup>F2</sup>or civil partnership] to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage [<sup>F2</sup>or civil partnership];
- “the date of death” means the date of the death of the deceased;
- “the deceased” means the deceased tenant of the holding;
- “the holding” (except where the context otherwise requires) means the agricultural holding mentioned in subsection (1) above;
- “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 tenancy” means the tenancy of the holding.

#### **Textual Amendments**

- F1** S. 35(2): words in definition of "close relative" substituted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), s. 263(2), [Sch. 8 para. 36\(2\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}
- F2** S. 35(2): words in definition of "close relative" inserted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), s. 263(2), [Sch. 8 para. 36\(3\)](#); S.I. 2005/3175, {art. 2(1), Sch. 1}

#### **36 Right of any eligible person to apply for new tenancy on death of tenant.**

- (1) Any eligible person may apply under section 39 below to the Tribunal for a direction entitling him to a tenancy of the holding unless excluded by subsection (2) or section 37 or 38 below.
- (2) Subsection (1) above (and section 41 below) shall not apply if on the date of death the holding was held by the deceased under—
- (a) a tenancy for a fixed term of years of which more than twenty-seven months remained unexpired, or
  - (b) a tenancy for a fixed term of more than one but less than two years.
- (3) For the purposes of this section and sections 37 to 48 below, “eligible person” means (subject to the provisions of Part I of Schedule 6 to this Act and without prejudice

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to section 41 below) any surviving close relative of the deceased in whose case the following conditions are satisfied—

- (a) in the seven years ending with the date of death 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.
- (4) In the case of the deceased's wife the reference in subsection (3)(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 deceased (or both of them).
- [<sup>F3</sup>(4A) In the case of the deceased's civil partner the reference in subsection (3)(a) above to the relative's agricultural work shall be read as a reference to agricultural work carried out by either the civil partner or the deceased (or both of them).]
- (5) Part I of Schedule 6 to this Act, which supplements subsection (3) above and makes provision with respect to the assessment of the productive capacity of agricultural land for the purposes of paragraph (b) of that subsection, shall have effect.

#### Textual Amendments

- F3** S. 36(4A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(2), [Sch. 8 para. 37](#); [S.I. 2005/3175](#), {art. 2(1), Sch. 1}

### 37 Exclusion of statutory succession where two successions have already occurred.

- (1) Section 36(1) above (and section 41 below) shall not apply if on each of the last two occasions when there died a sole (or sole surviving) tenant of the holding or of a related holding there occurred one or other of the following things, namely—
  - (a) a tenancy of the holding or of a related holding was obtained by virtue of a direction of the Tribunal under section 39 below, or such a tenancy was granted (following such a direction) in circumstances within section 45(6) below, or
  - (b) a tenancy of the holding or of a related holding was granted by the landlord to a person who, being a close relative of the tenant who died on that occasion, was or had become the sole or sole remaining applicant for such a direction.
- (2) If on any occasion prior to the date of death, as a result of an agreement between the landlord and the tenant for the time being of the holding or of a related holding, the holding or a related holding became let—
  - (a) under a tenancy granted by the landlord, or
  - (b) by virtue of an assignment of the current tenancy,  
to a person who, if the said tenant had died immediately before the grant or assignment would have been his close relative, that occasion shall for the purposes of subsection (1) above be deemed to be an occasion such as is mentioned in that subsection on which a tenancy of the holding or a related holding was obtained by virtue of a direction of the Tribunal under section 39 below.
- (3) If any such tenancy was granted as mentioned in subsection (2) above for a term commencing later than the date of the grant, the holding under that tenancy shall for

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the purposes of that subsection not be taken to have become let under that tenancy until the commencement of the term.

- (4) Subsections (1) and (2) above—
- (a) shall apply whether or not any tenancy granted or obtained (otherwise than by virtue of an assignment) as mentioned in those provisions related to the whole of the land held by the tenant on the occasion of whose death, or with whose agreement, the tenancy was so granted or obtained, as the case may be, and
  - (b) shall apply where a joint tenancy is granted by the landlord to persons one of whom is a person such as is mentioned in either of those subsections as they apply where a tenancy is granted by the landlord to any such person alone.
- (5) Subsection (2) above shall apply where a tenancy is assigned to joint tenants one of whom is a person such as is mentioned in that subsection as it applies where a tenancy is assigned to any such person alone.
- (6) Where a tenancy of the holding or of a related holding was obtained by virtue of a direction of the Tribunal under section 53(7) below, that occasion shall for the purposes of subsection (1) above be deemed to be an occasion such as is mentioned in that subsection on which a tenancy of the holding or a related holding was obtained by virtue of a direction of the Tribunal under section 39 below.
- (7) Subsection (2) above shall, in relation to any time before 12th September 1984, have effect with the substitution for the words from “as a result” to “grant or assignment” of the words “the holding or a related holding became let under a new tenancy granted by the landlord, with the agreement of the outgoing tenant, to a person who, if the outgoing tenant had died immediately before the grant”.
- (8) Subsections (4) and (5) above shall not apply in relation to any tenancy if—
- (a) it was granted before 12th September 1984,
  - (b) it was obtained by virtue of any direction given in any proceedings arising out of an application made under Part II of the <sup>M1</sup>Agriculture (Miscellaneous Provisions) Act 1976 before 12th September 1984, or
  - (c) it was granted (following such a direction) in circumstances within section 23(6) of the said Act of 1976.
- (9) In this section “tenant” has the same meaning as in section 34 above.

**Marginal Citations**

**M1** 1976 c. 55.

**38 Other excluded cases.**

- (1) Section 36(1) above (and section 41 below) shall not apply if on the date of death the tenancy is the subject of a valid notice to quit to which subsection (1) of section 26 above applies, being a notice given before that date in the case of which—
- (a) the month allowed by that subsection for serving a counter-notice under that subsection expired before that date without such a counter-notice having been served, or
  - (b) the Tribunal consented before that date to its operation.

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- (2) Section 36(1) (and section 41) shall not apply if on the date of death the tenancy is the subject of a valid notice to quit given before that date and falling within Case C or F.
- (3) Those sections shall not apply if on the date of death the tenancy is the subject of a valid notice to quit given before that date and falling within Case B, D or E, and
  - (a) the time within which the tenant could have required any question arising in connection with the notice to be determined by arbitration under this Act expired before that date without such a requirement having been made by the tenant, and the month allowed for serving any counter-notice in respect of the notice expired before that date without any such counter-notice having been served, or
  - (b) questions arising in connection with the notice were referred to arbitration under this Act before that date and were determined before that date in such a way as to uphold the operation of the notice and (where applicable) the month allowed for serving any counter-notice in respect of the notice expired before that date without a counter-notice having been served, or
  - (c) the Tribunal consented before that date to the operation of the notice.
- (4) Those sections shall not apply if the holding consists of land held by a smallholdings authority or the Minister for the purposes of smallholdings within the meaning of Part III of the <sup>M2</sup>Agriculture Act 1970 (whether the tenancy was granted before or after the commencement of the said Part III).
- (5) Those sections shall not apply if the tenancy was granted by trustees in whom the land is vested on charitable trusts the sole or principle object of which is the settlement or employment in agriculture of persons who have served in any of Her Majesty's naval, military or air forces.

#### Marginal Citations

M2 1970 c. 40.

### 39 Applications for tenancy of holding.

- (1) An application under this section by an eligible person to the Tribunal for a direction entitling him to a tenancy of the holding shall be made within the period of three months beginning with the day after the date of death.
- (2) Where only one application is made under this section the Tribunal, if satisfied—
  - (a) that the applicant was an eligible person at the date of death, and
  - (b) that he has not subsequently ceased to be such a person,shall determine whether he is in their opinion a suitable person to become the tenant of the holding.
- (3) Where two or more applications are made under this section, then, subject to subsection (4) below, subsection (2) above shall apply to each of the applicants as if he were the only applicant.
- (4) If the applicants under this section include a person validly designated by the deceased in his will as the person he wished to succeed him as tenant of the holding, the Tribunal shall first make a determination under subsection (2) above as regards that person, and shall do so as regards the other applicant or each of the other applicants only if

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the Tribunal determine that the person so designated is not in their opinion a suitable person to become the tenant of the holding.

- (5) If under the preceding provisions of this section only one applicant is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, the Tribunal shall, subject to subsection (10) and section 44 below, give a direction entitling him to a tenancy of the holding.
- (6) If under the preceding provisions of this section each of two or more applicants is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, the Tribunal—
  - (a) shall, subject to subsection (9) below, determine which of those applicants is in their opinion the more or most suitable person to become the tenant of the holding, and
  - (b) shall, subject to subsection (10) and section 44 below, give a direction entitling that applicant to a tenancy of the holding.
- (7) Before making a determination under subsection (2) above in the case of any applicant the Tribunal shall afford the landlord an opportunity of stating his views on the suitability of that applicant.
- (8) In making a determination under subsection (2) above in the case of a particular applicant, or a determination under subsection (6) above as between two or more applicants, the Tribunal shall have regard to all relevant matters including—
  - (a) the extent to which the applicant or each of those applicants has been trained in, or has had practical experience of, agriculture,
  - (b) the age, physical health and financial standing of the applicant or each of those applicants, and
  - (c) the views (if any) stated by the landlord on the suitability of the applicant or any of those applicants.
- (9) Where subsection (6) above would apply apart from this subsection, the Tribunal may, with the consent of the landlord, give instead a direction specifying any two, any three or any four of the applicants within that subsection, and entitling the specified applicants to a joint tenancy of the holding.
- (10) Where the person or persons who would, subject to section 44 below, be entitled to a direction under this section entitling him or them to a tenancy or (as the case may be) to a joint tenancy of the holding agree to accept instead a tenancy or joint tenancy of a part of the holding, any direction given by the Tribunal under subsection (5), (6) or (9) above shall relate to that part of the holding only.

#### **40 Provisions supplementary to section 39.**

- (1) In section 39 above “will” includes codicil, and for the purposes of that section a person shall be taken to be validly designated by the deceased in his will as the person he wishes to succeed him as tenant of the holding if, but only if, a will of the deceased which is the subject of a grant of probate or administration—
  - (a) contains an effective specific bequest to that person of the deceased’s tenancy of the holding, or
  - (b) does not contain an effective specific bequest of that tenancy, but does contain a statement specifically mentioning the holding or the deceased’s tenancy of the holding and exclusively designating that person (in whatever words, and

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whether by name or description) as the person whom the deceased wishes to succeed him as tenant of the holding.

- (2) For the purposes of subsection (1) above a statement which is framed so as to designate as mentioned in paragraph (b) of that subsection different persons in different circumstances shall be taken to satisfy that paragraph if, in the events which have happened, the statement exclusively designates a particular person.
- (3) A direction under section 39 above given in favour of a person by reason of his being a person validly designated by the deceased as mentioned in subsection (4) of that section shall be valid even if the probate or administration by virtue of which he was such a person at the giving of the direction is subsequently revoked or varied.
- (4) For the purposes of this Part of this Act an application under section 39 above which is withdrawn or abandoned shall be treated as if it had never been made.
- (5) Provision shall be made by order under section 73(3) of the <sup>M3</sup>Agriculture Act 1947 (procedure of Agricultural Land Tribunals) for requiring any person making an application to the Tribunal under section 39 above or section 41 below to give notice of the application to the landlord of the agricultural holding to which the application relates and to take such steps as the order may require for bringing the application to the notice of other persons interested in the outcome of the application.

#### Marginal Citations

M3 1947 c. 48.

#### 41 Application by not fully eligible person to be treated as eligible.

- (1) This section applies to any surviving close relative of the deceased who for some part of the seven years ending with the date of death engaged (whether full-time or part-time) in agricultural work on the holding, being a person in whose case—
  - (a) the condition specified in paragraph (b) of the definition of “eligible person” in section 36(3) above is satisfied, and
  - (b) the condition specified in paragraph (a) of that definition, though not fully satisfied, is satisfied to a material extent.
- (2) A person to whom this section applies may within the period of three months beginning with the day after the date of death apply to the Tribunal for a determination that he is to be treated as an eligible person for the purposes of sections 36 to 48 of this Act.
- (3) If on an application under this section—
  - (a) the Tribunal are satisfied that the applicant is a person to whom this section applies, and
  - (b) it appears to the Tribunal that in all the circumstances it would be fair and reasonable for the applicant to be able to apply under section 39 above for a direction entitling him to a tenancy of the holding,the Tribunal shall determine that he is to be treated as an eligible person for the purposes of sections 36 to 48 of this Act, but shall otherwise dismiss the application.
- (4) In relation to a person in respect of whom the Tribunal have determined as mentioned in subsection (3) above sections 36 to 48 of this Act shall apply as if he were an eligible person.

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- (5) A person to whom this section applies may make an application under section 39 above as well as an application under this section; and if the Tribunal determine as mentioned in subsection (3) above in respect of a person who has made an application under that section, the application under that section shall (without prejudice to subsection (4) above) be treated as made by an eligible person.
- (6) Without prejudice to the generality of paragraph (b) of subsection (1) above, cases where the condition mentioned in that paragraph might be less than fully satisfied include cases where the close relative's agricultural work on the holding fell short of providing him with his principal source of livelihood because the holding was too small.

#### **42 Procedure where deceased held more than one holding.**

- (1) Subsections (2) and (3) below shall have effect where at the expiry of the period of three months beginning with the day after the date of death of a tenant there are pending before the Tribunal separate applications made under section 39 above by any person, or (as the case may be) by each one of a number of persons, in respect of more than one agricultural holding held by the tenant at that date.
- (2) The applications referred to in subsection (1) above (together with, in each case, any associated application made under section 41 above) shall, subject to and in accordance with the provisions of any such order as is referred to in section 40(5) above, be heard and determined by the Tribunal in such order as may be decided—
  - (a) where the applications were made by one person, by that person,
  - (b) where the applications were made by two or more persons, by agreement between those persons or, in default of agreement, by the chairman of the Tribunal.
- (3) Any decision made by the chairman under subsection (2)(b) above shall be made according to the respective sizes of the holdings concerned so that any application in respect of any holding which is larger than any other of those holdings shall be heard and determined by the Tribunal before any application in respect of that other holding.

#### **43 Restriction on operation of notice to quit given by reason of death of tenant.**

- (1) A notice to quit the holding given to the tenant of the holding by reason of the death of the deceased and falling within Case G shall not have effect unless—
  - (a) no application to become the tenant of the holding is made (or has already at the time of the notice to quit been made) under section 39 above within the period mentioned in subsection (1) of that section, or
  - (b) one or more such applications having been made within that period—
    - (i) none of the applicants is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, or
    - (ii) the Tribunal consent under section 44 below to the operation of the notice to quit in relation to the whole or part of the holding.
- (2) Where the Tribunal consent under section 44 below to the operation of a notice to quit to which subsection (1) above applies in relation to part only of the holding, the notice shall have effect accordingly as a notice to quit that part and shall not be invalid by reason that it relates only to part of the holding.



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#### **44 Opportunity for landlord to obtain Tribunal’s consent to operation of notice to quit.**

- (1) Before giving a direction under section 39(5) or (6) above in a case where a notice to quit to which section 43(1) above applies has been given the Tribunal shall afford the landlord an opportunity of applying for their consent under this section to the operation of the notice.
- (2) Subject to subsection (5) below, section 27 above shall apply in relation to an application for, or the giving of, the Tribunal’s consent under this section as it applies in relation to an application for, or the giving of, their consent under section 26 above.
- (3) The Tribunal shall not entertain an application for their consent to the operation of a notice to quit to which section 43(1) above applies unless it is made in pursuance of subsection (1) above.
- (4) Subject to subsection (5) below, if the Tribunal give their consent on an application made in pursuance of subsection (1) above, they shall dismiss the application or each of the applications made under section 39 above.
- (5) Where in any case—
  - (a) a notice to quit to which section 43(1) above applies has been given, and
  - (b) section 39(10) above applies,the Tribunal shall give their consent to the operation of the notice to quit in relation to the part of the holding which would, in accordance with section 39(10), be excluded from any direction given by the Tribunal with respect to the holding under section 39; and subsections (2) and (4) above shall not apply.
- (6) If on an application made in pursuance of subsection (1) above the Tribunal give their consent to the operation of a notice to quit—
  - (a) within the period of three months ending with the date on which the notice purports to terminate the tenancy (“the original operative date”), or
  - (b) at any time after that date,the Tribunal may, on the application of the tenant, direct that the notice shall have effect from a later date (“the new operative date”).
- (7) The new operative date, in the case of a notice to quit, must be a date not later than the end of the period of three months beginning with—
  - (a) the original operative date, or
  - (b) the date on which the Tribunal give their consent to the operation of the notice, whichever last occurs.

#### **45 Effect of direction under section 39.**

- (1) A direction by the Tribunal—
  - (a) under section 39(5) or (6) above entitling an applicant to a tenancy of the holding, or
  - (b) under section 39(9) above entitling two or more applicants to a joint tenancy of the holding,shall entitle him or them to a tenancy or joint tenancy of the holding as from the relevant time on the terms provided by sections 47 and 48 below; and accordingly such a tenancy or joint tenancy shall be deemed to be at that time granted by the landlord to, and accepted by, the person or persons so entitled.

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- (2) Where the deceased's tenancy was not derived from the interest held by the landlord at the relevant time, the tenancy or joint tenancy deemed by virtue of subsection (1) above to be granted to, and accepted by, the person or persons so entitled shall be deemed to be granted by the person for the time being entitled to the interest from which the deceased's tenancy 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 deceased's tenancy, 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 a direction such as is mentioned in subsection (1) above entitles the person or persons concerned 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) If the person or persons whom such a direction entitles to a tenancy or joint tenancy of the holding as from the relevant time becomes or become the tenant or joint tenants of the holding before that time under a tenancy granted by the landlord to, and accepted by, the person or persons concerned, the direction shall cease to have effect and section 48 below shall not apply.
- (7) 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 or joint tenant of the holding) shall not be capable of assignment.
- (8) The Lord Chancellor may by regulations provide for all or any of the provisions of sections 36 to 48 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 person or any of the persons whom such a direction entitles to a tenancy or joint tenancy of the holding dies before the relevant time.

#### **46 Interpretation of section 45.**

- (1) Subject to subsection (2) below, in sections 45 above and 48 below "the relevant time"—
  - (a) except where the following paragraph applies, means the end of the twelve months immediately following the end of the year of tenancy in which the deceased died,
  - (b) if a notice to quit the holding was given to the tenant by reason of the death of the deceased, being a notice falling within Case G which, apart from section 43 above, would have terminated the tenancy at a time after the end of those twelve months, means that time.
- (2) Where the Tribunal give a direction under section 39(5), (6) or (9) above in relation to the holding at any time after the beginning of the period of three months ending with the relevant time apart from this subsection ("the original relevant time"), then—
  - (a) if the direction is given within that period, the Tribunal may, on the application of the tenant, specify in the direction, as the relevant time for the purposes of

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this section and section 48 below, such a time falling within the period of three months immediately following the original relevant time as they think fit,

- (b) if the direction is given at any time after the original relevant time 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.

- (3) Where in accordance with section 39(10) above, the tenancy to which a direction under that section entitles the person or persons concerned is a tenancy of part of the deceased's holding, references in sections 45 above and 48 below to the holding shall be read as references to the whole of the deceased's holding or to the part of that holding to which the direction relates, as the context requires.

#### **47 Terms of new tenancy unless varied by arbitration.**

- (1) Subject to the provisions of this section and section 48 below, the terms of the tenancy or joint tenancy to which a direction under section 39(5), (6) or (9) above entitles the person or persons concerned 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 death.
- (2) If on the date of death the holding was held by the deceased under a tenancy for a fixed term of years, subsection (1) above shall have effect as if the tenancy under which the holding was let at the date of death had before that date become a tenancy from year to year on (with that exception) the terms of the actual tenancy as far as applicable.
- (3) If the terms of the tenancy to which such a direction entitles the person or persons concerned would not, apart from this subsection, include a covenant by the tenant or each of the tenants 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 such a covenant.

#### **48 Arbitration on terms of new tenancy.**

- (1) Where the Tribunal give a direction such as is mentioned in subsection (1) of section 45 above, the provisions of this section shall apply unless excluded by subsection (6) of that section.
- (2) In the following provisions of this section—
- “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 subsection (1) or (as the case may require) subsection (2) of section 46 above;
- “the tenant” means the person or persons entitled to a tenancy or joint tenancy of the holding by virtue of the direction;
- and references to the holding shall be read in accordance with section 46(3) above.

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- (3) At any time within the prescribed period the landlord or the tenant may by notice in writing served on the other demand a reference to arbitration under this Act of one or both of the questions specified in subsection (4) below.
- (4) Those questions (referred to in the following provisions of this section as “question (a)” and “question (b)” respectively) are—
- (a) what variations in the terms of the tenancy which the tenant is entitled to or has obtained by virtue of the direction are justifiable having regard to the circumstances of the holding and the length of time since the holding was first let on those terms;
  - (b) what rent should be or should have been properly payable in respect of the holding at the relevant time.
- (5) Where question (a) is referred to arbitration under subsection (3) above (with or without question (b)), the arbitrator—
- (a) shall determine what variations, if any, in the terms mentioned in that question are justifiable as there mentioned, and
  - (b) without prejudice to the preceding paragraph, shall include in his award such provisions, if any, as are necessary—
    - (i) for entitling the landlord to recover from the tenant under those terms a sum equal to so much as is in all the circumstances fair and reasonable of the aggregate amount of the compensation mentioned in subsection (8)(a) below, and
    - (ii) for entitling the tenant to recover from the landlord under those terms a sum equal to so much as is in all the circumstances fair and reasonable of the aggregate amount of the compensation mentioned in subsection (8)(b) below,
 and shall accordingly, with effect from the relevant time, vary those terms in accordance with his determination or direct that they are to remain unchanged.
- (6) Where question (a) but not question (b) is referred to arbitration under subsection (3) above and it appears to the arbitrator that by reason of any provision included in his award under subsection (5) above (not being a provision of a kind mentioned in paragraph (b) of that subsection) it is equitable that the rent of the holding should be varied, he may vary the rent accordingly with effect from the relevant time.
- (7) Where question (b) is referred to arbitration under subsection (3) above (with or without question (a)), the arbitrator shall determine what rent should be or should have been properly payable in respect of the holding at the relevant time and accordingly shall, with effect from that time, increase or reduce the rent which would otherwise be or have been payable or direct that it shall remain unchanged.
- (8) The compensation referred to in subsection (5)(b) above is—
- (a) the compensation paid or payable by the landlord, whether under this Act or under agreement or custom, on the termination of the deceased’s tenancy of the holding,
  - (b) the compensation paid or payable to the landlord, whether under this Act or under agreement, on that termination in respect of any such dilapidation or deterioration of, or damage to, any part of the holding or anything in or on the holding as the tenant is or will be liable to make good under the terms of his tenancy.

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- (9) For the purposes of this section the rent properly payable in respect of the holding shall be the rent at which the holding might reasonably be expected to be let by a prudent and willing landlord to a prudent and willing tenant, taking into account all relevant factors, including (in every case) the terms of the tenancy or prospective tenancy (including those relating to rent) and any such other matters as are specifically mentioned in subparagraph (1) of paragraph 1 of Schedule 2 to this Act (read with subparagraphs (2) and (3) of that paragraph).
- (10) On any reference under subsection (3) above the arbitrator may include in his award such further provisions, if any, relating to the tenancy which the tenant is entitled to or has obtained by virtue of the direction as may be agreed between the landlord and the tenant.
- (11) If the award of an arbitrator under this section is made before the relevant time, section 47(1) above shall have effect subject to, and in accordance with, the award.
- (12) If the award of an arbitrator under this section is made after the relevant time, it shall have effect as if the terms of the award were contained in an agreement in writing entered into by the landlord and the tenant and having effect as from the relevant time.

#### *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 [<sup>F4</sup>, husband or civil partner] 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 (b) or (c) above) who, in the case of any marriage [<sup>F5</sup> or civil partnership] 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 [<sup>F5</sup> or civil partnership];
- “eligible person” has the meaning given by section 50 below;
- “the holding” means the holding in respect of which the retirement notice is given;

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“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.

#### **Textual Amendments**

- F4** S. 49(3): words in definition of "close relative" substituted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), s. 263(2), **Sch. 8 para. 36(2)**; S.I. 2005/3175, {art. 2(1), Sch. 1}
- F5** S. 49(3): words in definition of "close relative" inserted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), s. 263(2), **Sch. 8 para. 36(3)**; S.I. 2005/3175, {art. 2(1), Sch. 1}

## **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).
- [<sup>F6</sup>(3A) In the case of the civil partner 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 civil partner 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.

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### Textual Amendments

**F6** S. 50(3A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(2), [Sch. 8 para. 38](#); [S.I. 2005/3175](#), {art. 2(1), Sch. 1}

## 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
  - (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).

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## **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.
- (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.



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### **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 suitability.
- (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).

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- (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 <sup>M4</sup>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.

#### Marginal Citations

**M4** 1947 c. 48.

### **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.
- (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

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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,

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- (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.
- (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

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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.

### *Interpretation*

## **59 Interpretation of Part IV.**

(1) In sections 36 to 48 above (and in Part I of Schedule 6 to this Act)—

“the date of death”,  
“the deceased”,  
“the holding”,  
“related holding”, and  
“the tenancy”,

have the meanings given by section 35(2) above; and in those sections “eligible person” has the meaning given by section 36(3) above.

(2) In sections 49 to 58 above (and in Part I of Schedule 6 to this Act as applied by section 50(4) above)—

“close relative” of the retiring tenant,  
“the holding”,  
“the nominated successor”,  
“related holding”,  
“the retirement date”,  
“the retirement notice”,  
“the retiring tenant”,  
“the retiring tenants”, and  
“the tenancy”,

have the meanings given by section 49(3) above; and in those sections “eligible person” has the meaning given by section 50(2) above.

**Status:**

Point in time view as at 05/12/2005.

**Changes to legislation:**

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