Contract succession

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Introduction

A succession takes place when:

- an individual or business gives up the ownership, occupancy, tenancy or contractual licence of land and/or capital items that are covered by an AECS contract to another IACS or legal business and
- the new owner or occupier agrees to take on some or all parts of the AECS contract

As part of this process, the individual or business leaving the land will be referred to as the ‘outgoer’ and whoever is taking on the land will be referred to as the ‘incomer’.

Successions will be appropriate when contracts, which involve area related options managed over a period of five years, are to be transferred to an incomer, prior to the end of the five year commitment.

In this situation, the areas being managed will be transferred to the incomer for the remainder of the contract term as these areas will continue to provide environmental benefits.

Contracts solely for capital works - for example slurry store and Improved Public Access - are more complex.

Outgoers who own assets can sell these if they wish. However, they should not benefit from the sale of a capital asset funded by the taxpayer. Therefore, if assets which were grant funded are sold or transferred, recovery of the grant in full is the most likely outcome.

Where a succession is requested for a contract related to capital only, there must be some exceptional circumstances or force majeure which make the transfer of the grant aided project inevitable or unavoidable.

For example, long-term professional incapacity or the transfer of land subject to a contractual licence.

Change of occupier or transfer of land

If you have a contract as part of this scheme and decide to transfer, lease or sell all or part of land covered by the contract, you must let us know of this within three months.

You should do this in writing to either the Rural Payments and Inspections Division or Scottish Natural Heritage.

Contact details

For further information, see 'What the outgoer/incomer needs to do' below. If you, as the outgoer, fail to notify us within three months of the change of occupation, we may reclaim all or part of your AECS payments, with interest.

More information on breaches and penalties can be found in our dedicated section.

Breaches and Penalties

You cannot apply for land-based options on seasonal-held land, including arable, if your lease is for a period of less than a full year.

Types of succession

There are two types of succession:

- full transfer of AECS contract to a single or multiple incomers:

The incomer(s) agrees to take over the entire AECS contract and the outgoer has no further obligations under the AECS contract.

- partial transfer of AECS Contract to a single or multiple incomers:

The incomer agrees to take over some elements of the AECS contract – for example the original contract holder retains some of the land and is obliged to fulfil the remaining commitments of their AECS contract.

Full or partial transfer to tenants

If the incomer is a tenant but the tenancy agreement is shorter than the remaining period of the AECS contract, the owner or principal tenant (in the case of a sub-tenancy) and the incomer must undertake jointly to take over the succession.

The tenant and the owner or principal tenant must complete the Agri-Environment Climate Scheme landlord declaration form as well as any other documents required as per this guidance.

Landlord declaration form

Full or partial transfer between Contractual Licensees

If the incomer and outgoer are both contractual licensees then the incoming contractual licensee must supply a copy of the new contractual licence between themselves and the owner or principle tenant.

Where the duration of the licence does not cover the remaining period of the contract, a new landlord declaration must be submitted, as per the occupancy of land guidance.

What the outgoer and incomer need to do

The outgoer should notify their local RPID or SNH regional office, in writing, of the change of occupancy, within three months of the transfer of the lease or sale of part or all of the land covered by their AECS contract. This should be accompanied with the completion of the following forms:

- Land Maintenance form – to be completed jointly by outgoer and incomer giving us details of the land transferred or purchased. If not already IACS registered, the incomer will also need to register their business and any other land they occupy using this form
- BACS form – incomers registering for the first time must complete this form so that we are able to make payments
- Succession Request Form (SRF) – to be completed jointly by outgoer and incomer

Change of occupier before AECS contract is signed

Where an application is submitted by a business and occupancy of all or part of the land covered by that application passes to another business before the AECS contract undertakings are signed, the action to be taken depends on the transfer type:

- Full Transfer of AECS application

The details of the unsigned contract can be transferred to the new owner or lease holder. The incomer will not need to submit an AECS application but will take over and sign the contract initially intended for the outgoer. This will be dependent on RPID and/or SNH being satisfied that the expected objectives will still be delivered and also that the incomer meets all relevant eligibility criteria.

- Partial Transfer of AECS application

The original application by the outgoer would be adjusted to remove the land subject to the succession and then reassessed by RPID or SNH. The incomer would need to submit an application covering the land they now occupy. Applications must be submitted by the closing date of any AECS application round still open or within the application window of future rounds.

Assessing a succession request

Following the receipt of the required succession documentation, the case officer will assess the succession request. The case officer's decision will be based on the incomer's ability to meet the application and option eligibility criteria, (which is detailed in the AECS application guidance) and their ability to deliver the commitments in the outgoer's application / contract.

Part or no transfer of contracts

If the incomer does not wish to take on all or any elements of the AECS contract on the transferred or purchased land, then the outgoer may be liable to repay all or part of the payments received, with interest.

If the succession request form and associated documentation is not submitted to RPID or SNH within three months of sale or transfer, we may be obliged to reclaim all or part of any payments made, with interest, from the outgoer.

We would not seek recovery where we accept evidence from the outgoer that the reason for the incomer not taking on the undertakings meets the conditions of force majeure or exceptional circumstances. (LINK)

An example of this would be where a large part of a holding is compulsorily purchased and this could not have been anticipated at application stage.

Outgoer's obligations

If we agree the full succession of the contract to the incomer, and the incomer have agreed to take it on, we will issue you with confirmation that your contract has ended and that you have no further legal responsibilities under that AECS contract.

If we agree the partial succession of the contract to the incomer, and the incomer agree to take on part of the contract, the contract commitments will be split accordingly between the incomer and outgoer and all parties will have legal responsibility for their own contracts.

What can be claimed

Outgoer

If the outgoer occupied the land on 15 May and claimed the AECS annual recurrent options on their Single Application Form (SAF) that year, then they will receive the annual recurrent payments for that scheme year (year ending 31 December), provided the contract conditions are met.

If the outgoer has already submitted a capital claim, we will pay that to them provided that we received the claim before the date of change of occupier.

If any breaches are discovered at the time of a compliance inspection, we will apply any penalty to who ever made the claim.

Incomer

On or after the date of change of occupier, only the incomer will be entitled to claim payments for the transferred options, even if the work was carried out by the outgoer.

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This is on the understanding that if the date of transfer to the Incomer is after 15 May in any given year, then any annual recurrent management grant payments, for that year, would be paid to the outgoer. If any breaches are discovered at the time of a compliance inspection, we will apply any penalty to whoever made the claim.

After a successful succession, your land maybe subject to option area and payment limits. For example, organic options are subject to a total limit of 1,000Ha per business. Within that, there is a 300Ha limit for arable land, improved grassland and fruit and vegetable taken together or separately.

Notifying you of our decision

Approval

- Incomer (full and part transfer)

The incomer will receive two copies of a full contract. The incomer must sign and date both copies returning one to the local RPID or SNH within 28 days from the contract issue date.

- Outgoer (part transfer to incomer)

The outgoer will receive two copies of their new schedule of works and map(s), if applicable, which details the commitments they have retained. A management diary, again where applicable, will also be enclosed. The outgoer must sign and date both copies returning one to the local RPID or SNH within 28 days from the contract issue date.

- Outgoer (full transfer to incomer)

The outgoer will get a letter to confirm transfer of contract to the incomer and that their responsibilities under the contract have ceased.

Refusal

If we refuse a succession request we will write to all parties involved to inform them of this along with any implications.

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