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A Guide to the Relinquishment and Assignment of 1991 Act Tenancies

This guide describes the main features of the legislation but is intended as a lay person's guide and does not cover some of the fine detail of the legal procedures. Landlords and tenants involved in relinquishment cases are therefore advised to obtain appropriate professional advice that is relevant to their own particular circumstances.

INTRODUCTION

The relinquishment and assignation provisions were introduced as Part 3A of the 1991 Act by the Land Reform (Scotland) Act 2016 and come into force at the end of February 2021. They enable a tenant with a secure tenancy (also known as a 1991 Act tenancy) to relinquish the tenancy in return for a payment by the landlord based on the valuation methodology set out in the Act. Or, if the landlord does not wish to buy the tenancy, to assign it for value to a new entrant or progressing farmer. The aim of these provisions is to help existing tenants wishing to retire or quit the tenancy to do so and to help provide new opportunities for young people to enter the profession.

The Scope of the Legislation

These provisions apply to an agricultural holding in respect of which:

- The lease was entered into before 27 November 2003, or
- The lease was entered into in writing on or after 27 November 2003 but before the commencement of the tenancy, and the lease expressly states that the 1991 Act is to apply to it.

Special arrangements exist for Limited Partnerships. Tenants in a Limited Partnership arrangement are able to use the relinquishment provisions but if the landlord does not accept the relinquishment, the tenant is not able to assign the tenancy. It is important to note that the tenant in a Limited Partnership situation is the Limited Partnership and not the general partner. The reality is that the new provisions are unlikely to have much relevance to tenancies involving a Limited Partnership.



Initial Appraisal by the Tenant

Once initiated, a request to relinquish a tenancy may generate a sequence of time limited procedures, a valuation process (the cost of which is the responsibility of the tenant), the likelihood of bills for professional advice and the possibility of a tax liability.

Tenants are therefore advised to begin with an assessment of whether, in their particular circumstances, the relinquishment and assignation process is one which is likely to deliver a financial outcome that is better than could be gained by the exercise of the tenant's existing rights to give up the tenancy or to assign it for value to one of a potentially wide range of family members.

Informal Discussion with the Landlord

A tenant wishing to invoke the relinquishment and assignation opportunity is advised to begin with an informal discussion with the landlord to establish whether the landlord is likely to want to buy the tenancy or is content for the tenant to try to assign the tenancy for value. An understanding of the preferred outcome for both landlord and tenant at the start of the process can help to speed up the formalities and limit the costs involved. It may be that such a discussion leads to an agreement that respects the principles set out in the legislation but avoids the need to follow the prescribed procedures.

Initiating the Formal Procedures

A tenant who wishes to relinquish a tenancy may serve notice in writing to the landlord that the tenant will quit the tenancy provided that the landlord pays to the tenant an amount of compensation calculated in accordance with the formula set out in the legislation. This is referred to as a 'notice of intention to relinquish' and must be provided using the format set out in Form 1. A copy of the notice must be sent, at the same time, to the Tenant Farming Commissioner (TFC) who is required to appoint a valuer to assess the amount of compensation payable to the tenant.

Restrictions on the Ability to Serve a Notice of Intention to Relinquish

There are certain restrictions on the ability of a tenant to serve a notice of intention to relinquish which include:

- Where the tenant has already served a notice to quit
- Where the tenant has not complied with a written demand to pay rent within two months of the date of demand
- Where the tenant has not remedied, within a reasonable time, a breach of the conditions of the tenancy in respect of their obligations to farm in accordance with the rules of good husbandry
- Where the landlord has already served a legitimate notice to quit.

There are also restrictions on the landlord's ability to issue a notice to quit once the relinquishment process has been initiated by the serving of a notice of intention to relinquish by the tenant.

Provision of Information by the Tenant

It is in the tenant's interests to provide as much information as possible that is relevant to the valuation process and to assemble this before submitting a notice of intention to relinquish.

The relinquishment and assignation provisions set strict limits on the time allowed for the Tenant Farming Commissioner to appoint a valuer and for the valuer to complete the valuation. There is no provision for these timescales to be extended and the clock starts ticking when a competent notice of intention to relinquish (NIR) has been lodged by the tenant with the landlord and copied to the TFC.

It is important that the NIR includes all the information that the valuer requires in order to carry out their task. The Agricultural Holdings (Relinquishment and Assignation) (Scotland) Regulations 2020/430 requires that the NIR is made in the form set out in [Form 1](#) and must be properly completed. The information required includes:

- A statement of the names, addresses and designations (a description of someone's legal standing, e.g. Trustee of a Trust) of the tenant and landlord. Parties should ensure that the names given are those of the legal entities, which may not be the names by which the landlord and/or tenant are referred to on a daily basis.
- The rent currently payable and the date on which it was last reviewed whether or not that resulted in any change to the rent.
- A copy of the written lease, where one exists, and any subsequent legally enforceable variations to the terms of the lease. Where no written lease exists, tenants should ensure that the names of the landlord and tenant are as agreed between landlord and tenant and that the plan of the leased area has been agreed between landlord and tenant as accurately showing the extent of the land and buildings within the tenancy.
- A map or plan which clearly shows the extent of the land and buildings within the tenancy and at a scale that allows the position of the boundaries to be fixed accurately. The map or plan must:
 - a) Be at a scale of 1:1,250 for buildings and 1:10,000 for land
 - b) Be taxative and not demonstrative only (i.e. must show detail and not just be a sketch)
 - c) Show the compass orientation of north
 - d) Contain map grid reference numbers and sufficient surrounding details (fences, houses, etc) to enable the position of the land to be fixed accurately
 - e) Show the boundaries of the land
 - f) Where measurements are given, give these measurements to one decimal place.
- A list of tenant's improvements with a statement of which have been agreed with the landlord. Assessment of the value of tenant's improvements eligible for compensation at waygo is likely to form a significant part of the overall valuation. Where landlords and tenants have an up to date and agreed schedule of tenant's improvements (and many will have done this during the amnesty period) the task will be made easier.

The job of the appointed valuer is to put a value on the components which make up the valuation of the compensation that is payable to the tenant. It is not the job of the valuer to negotiate an agreement between landlord and tenant where there are differences over issues such as the extent of the leased area or the schedule of tenant's improvements eligible for compensation. The amnesty process has demonstrated just how long it can take to agree a schedule of tenant's improvements so tenants should make every effort to avoid submitting information that is likely to be contested by the landlord. If the tenant submits information which is incomplete or is challenged as inaccurate by the landlord, then even if the valuer were appointed and completed their report based on this disputed information, the landlord can appeal the report to the Lands Tribunal, which can remit the dispute to the Land Court and amend the valuations.

While the tenant is responsible for meeting the costs of the valuation, the valuer is appointed by the TFC and is a neutral party. The valuer's role is to apportion a value to tenant's improvements that are eligible for compensation and will be reliant on the information submitted first by the tenant and then in the representations to be sought from both parties. If valid evidence is not put forward to show that an improvement is eligible in accordance with statute, the valuer may not be able to take it into account. A tenant wishing to pursue relinquishment should, therefore, in advance of the submission of a notice, assemble as much information as possible about tenant's improvements which are believed to be eligible for compensation at waygo and should, wherever possible, attempt to have these agreed by the landlord before submitting the NIR.

The TFC is required to appoint a valuer within 28 days of the notice of intention to relinquish being served. The TFC will, in that 28-day period, attempt to ensure that the information provided by the tenant is as accurate as possible and may reject a NIR that doesn't provide the information that is required to accompany Form 1. Agreement between landlord and tenant at this stage on the accuracy of the information provided by the tenant is helpful but not a requirement. It is recognised that some aspects of the subjects being valued may require discussion with the valuer during the valuation process.



Landlords' Response to a Notice of Intention to Relinquish

On receipt of a notice of intention to relinquish, the landlord can choose to issue a 'notice of declinature' (turning down the opportunity to buy the tenancy) or a 'notice of acceptance' (accepting the opportunity to buy the tenancy) or may choose to await receipt of the valuation before deciding how to proceed.

If the landlord is clear from the start that there is no intention to buy the tenancy, early issue of a notice of declinature will avoid the need for a valuation to take place and will enable the tenant to move straight to the assignation opportunity.

Appointment of a Valuer

On receipt of a copy of a valid notice of intention to relinquish, the TFC will appoint, within 28 days, a valuer to assess the compensation payable to the tenant in the event of the landlord agreeing to proceed with the relinquishment.

The TFC will establish and maintain a panel of suitably experienced and qualified valuers who have expressed an interest in taking on this work. The tenant and landlord are able to agree on a preferred valuer and should notify the TFC of their preference. That person will normally be chosen from the panel maintained by the TFC but the TFC will consider a request to appoint someone not on the panel as long as that person is suitably independent, qualified and experienced. Where landlord and tenant have agreed on a preferred valuer they should notify the TFC as soon as possible and confirm that a fee has been agreed with the valuer.

Where tenant and landlord do not put forward an agreed preferred valuer, or would prefer the TFC to appoint one, the TFC will invite proposals from panel members to provide a fee plus expenses quote based on the information provided to the TFC by the tenant with the notice of intention to relinquish. The TFC will consider submissions from panel members and select one taking into account the fee proposal and any specific relevant knowledge and experience. The TFC will issue a letter of appointment to the successful valuer.

The TFC will inform the landlord and tenant of the valuer's appointment and, in choosing a valuer, will have regard to any possible conflict of interest that arises from past involvement by the valuer with either the landlord or tenant. As it is important that this is dealt with at the start, this will be helped by the tenant giving clear information as to the individuals and businesses that are the landlord and tenant.

Either landlord or tenant may object to the person appointed by the TFC to carry out the assessment if the objection can be supported by evidence that the valuer is not independent of the landlord or tenant or does not possess the necessary qualifications, experience and knowledge. In such cases the landlord or tenant can apply to the Land Court to appoint a valuer in place of the one appointed by the TFC. Such an application must be made within 14 days of receiving notice of the valuer appointed by the TFC. The Land Court may reject the objection or appoint a different valuer.

Meeting the Cost of the Valuation

The tenant is responsible for meeting the cost of the valuation, regardless of how the valuer has been appointed.

The Valuation Process

The valuer has eight weeks from the date of appointment within which to prepare a 'notice of assessment' setting out the valuation and must provide a copy of this to the tenant, the landlord and the TFC. The notice must be dated and must provide details of how the valuation of each element in the overall figure has been arrived at.

The valuer may make any reasonable request to the landlord or tenant for further information needed to inform the valuation process. In circumstances where the landlord and tenant cannot agree, within the valuation period, on items such as tenant's improvements that are eligible for compensation, the valuer will have to take a view and apportion a value accordingly.

The valuer is required to assess:

1. The value of the holding if sold with vacant possession. Note that this is not the open market value of the holding because the valuation has to exclude the impact of tenant's improvements.
2. The value of the holding if sold with the tenant in occupation.
3. The amount of any compensation due to the tenant for eligible tenant's improvements. These are improvements which are eligible for compensation by virtue of Part 4 and sections 40 and 41 of the 1991 Act, or any agreement applying in place of that Part or those sections, and, in addition, includes any compensation which the tenant would be entitled to by virtue of section 44, dealing with the adoption of 'high farming.'
4. The amount of any compensation due to the landlord for dilapidations by virtue of section 45, which deals with a deterioration in the condition of the holding, and section 45A which enables compensation to be claimed by the landlord where tree planting by the tenant has reduced the value of the holding.

In carrying out the assessment of 1 and 2 above, the legislation sets out the factors which the valuer is to take account of and those which are not to be taken into account. The key assumptions are:

- a) The value is that which would be likely to be agreed between a reasonable and willing seller and a reasonable and willing buyer.
- b) The valuer should take account of the terms and conditions of any lease, other than the lease of the holding, affecting the land (for example, there may be a long-term lease of the sporting rights over the land to a third party).
- c) The valuer is to take no account of the existence of any person to whom the tenant could assign or bequeath the lease and is to take account of the time when the landlord would, in the normal course of events, have been likely to recover vacant possession. **This will have important implications for older tenants because it will reduce the difference between the value with vacant possession and the value with the tenant in place.**
- d) The valuer will not take account of any increase in the value of the land attributable to any use of the land that is illegal or not permitted by the lease. This may have important implications for tenants who have diversified without any necessary planning permission and/or without obtaining the necessary consents from the landlord.
- e) The valuer will not take into account any increase in the value of the land resulting from eligible tenant's improvements. It is imperative, therefore, that the tenant provides as much detail as possible about the extent of tenant's improvements which are likely to be eligible for compensation at waygo.

Written Representations to the Valuer

The landlord and tenant may each make written representations to the valuer concerning particular issues or circumstances which might, in their opinion, be relevant to the valuation process. Such representations (which the valuer is not obliged to take into account) should be made as early in the valuation process as possible.

Establishing the Compensation Payable to the Tenant

Having completed the assessment, the valuer will calculate the compensation payable by the landlord to the tenant according to the following formula:

1

Deduct from the value of the land if sold with vacant possession the value if sold with the tenant in occupation

2

Divide that figure by two

3

Add the amount of compensation that the tenant is entitled to for tenant's improvements

4

Deduct the amount of compensation that the landlord is entitled to for dilapidations or reductions in value as a result of tree planting or non-agricultural use by the tenant.

Right of Appeal Against the Valuer's Assessment

Either landlord or tenant can appeal to the Lands Tribunal against a notice of assessment, but the appeal must be made within 21 days of receipt of the notice of assessment and must state the grounds on which the appeal is being made. The Lands Tribunal is to give written reasons for its decision on an appeal and its decision is final. If the appeal involves matters of law, the Lands Tribunal may refer the issue to the Land Court.

Dealing with Other Statutory Compensation Rights

The statutory valuation process only requires the valuer to take account of compensation for agricultural improvements listed in Schedule 5 of the 1991 Act and for continuous adoption of special standards of farming. Landlords and tenants preserve their statutory rights to compensation at waygo for other improvements and dilapidations such as those due to the tenant having diversified into non-agricultural activities. It is for landlords and tenants to make their own arrangements to reach agreement on the value of any such compensation. They may choose to appoint the same valuer that the TFC has appointed but that will be a private arrangement amongst the valuer, the landlord and the tenant.

In the case of tree planting by the tenant, compensation to the landlord for a reduction in the value of the holding due to tree planting is assessed as part of the relinquishment valuation. Compensation to the tenant for an increase in value of the holding as a result of tree planting is recoverable as part of the tenants statutory waygo rights and is not part of the relinquishment valuation.

Action Following Receipt of the Valuation

The Tenant

Following determination of the compensation payable, the tenant can decide to proceed or can withdraw the notice of relinquishment. Withdrawal of the notice of relinquishment can be made at any time from serving the initial notice but no later than 35 days following receipt of the valuation (or 14 days from a decision by the Lands Tribunal). The tenant must serve a notice on the landlord withdrawing the notice of relinquishment with a copy to the TFC and to any valuer that has been appointed.

If the tenant withdraws the notice of intention to relinquish, no further action is required but the tenant will be required to meet any costs incurred by the valuer and will not be able to assign the tenancy using the relinquishment and assignation provisions (but retains any rights to assign under existing legislation).

The Landlord

If the landlord wishes to proceed with the relinquishment, and a notice of acceptance has not already been served, such a notice must be served on the tenant at any time up to 28 days from the last day on which the tenant could have served a notice of withdrawal of the notice of intention to relinquish (i.e. up to 63 days from receipt of the notice of assessment). The notice (which must be copied to the TFC) must be in the format set out in Form 2 and must state that the landlord will, in exchange for the tenant quitting the tenancy, pay to the tenant the amount of compensation assessed by the valuer or by the Lands Tribunal.

The compensation must be paid within six months of the last date on which the tenant could have withdrawn the notice of intention to relinquish, and the tenancy will end at the end of that period or on such earlier date as the tenant and landlord may agree.

If the landlord declines to accept the relinquishment, a 'notice of declinature' should be served on the tenant, and a copy sent to the TFC and to any valuer that has been appointed. The notice can be served at any time but must be served before 28 days have elapsed since the last date on which the tenant could have withdrawn the notice of intention to relinquish (i.e. before 63 days have elapsed since the date of assessment was received).

Withdrawal of a Notice of Acceptance

Where the landlord has accepted the notice of intention to relinquish by issuing a notice of acceptance, that notice can be withdrawn at any time before the end of the six-month period beginning on the last date on which the tenant could have withdrawn the notice of intention to relinquish. If the landlord decides to withdraw the notice of acceptance, a notice to this effect must be served on the tenant and copied to the TFC. If the tenant has incurred any expenditure or loss as a result of reliance on the landlord's notice of acceptance, the tenant is entitled to recover such loss or expenditure from the landlord.

Timescale for Completing the Process of Relinquishment

Tenants should note that, in circumstances where the landlord wishes to buy back the tenancy, if things progress smoothly, and all timescales set out in the legislation are adhered to, the tenancy will normally come to an end within a year of the process being initiated.

Consequences of the Landlord Not Wishing to Accept Relinquishment

In circumstances where the landlord has served a notice of declinature, or has failed to comply with the timescales associated with the issue of a notice of acceptance or a notice of withdrawal of acceptance or payment of compensation due, the tenant has a period of one year in which to assign the lease to an individual who is a new entrant to, or is progressing in, farming.

The definitions of a new entrant and progressing farmer are set fairly widely but require careful interpretation. In essence a new entrant is someone who does not hold, or have a controlling interest in an existing agricultural tenancy and who is not a smallholder, crofter or the owner of more than three hectares of agricultural land. A progressing farmer is someone who does not already hold two or more controlling interests in a lease, croft, smallholding or ownership that is more than three hectares. Existing tenants wishing to assign their lease and individuals wishing to acquire the lease are advised to take professional advice on the ability of the prospective tenant to qualify as either a new entrant or progressing farmer.



Assigning the Lease

The tenant may seek to assign the lease for value. There is no prescribed method of valuation of the lease and it will be a matter for negotiation between the outgoing and incoming tenants. The incoming tenant will take on the existing lease as it stands and there is no ability for landlord or tenant to use this opportunity to change the terms of the lease or the current rent payable, other than by agreement.

The landlord can, however, object to the person to whom the lease is to be assigned if the landlord has reasonable grounds for believing that:

- The person does not meet the new entrant or progressing farmer definitions.
- The person would not have the ability to pay the rent. Prospective assignees are therefore advised to ensure that they have a credible business plan and proof of access to sufficient finance.
- The person does not have the necessary skills or experience to manage and maintain the land in accordance with the rules of good husbandry.

The last of these objections can be overcome if it can be shown that the person is a new entrant and is engaged in, or is about to begin, a relevant training course in agriculture and has made arrangements to ensure that the farm is efficiently managed until the course has been completed.

As the lease is being assigned, the tenant will not be able to claim compensation from the landlord for tenant's improvements so will have to rely on the value obtained from selling the tenancy being enough to cover both a value for the tenancy and the amount of compensation for tenant's improvements that the tenant would normally be eligible for at waygo.

A person wishing to acquire the tenancy is advised to clarify the position with regard to their entitlement to claim compensation at waygo for any tenant's improvements which are taken over with the tenancy.

Should the tenant be unable to assign the tenancy within one year, the situation reverts to the status quo.

Tax Implications

Whether the discussions result in the landlord buying the tenancy or the assignation of the tenancy to a third party, there are likely to be taxation implications for both parties and landlords and tenants are advised to take advice on how any tax liability would apply in their own particular circumstances.

Further Sources of Advice

The Central Association of Agricultural Valuers (CAAV) has published a guide to the relinquishment and assignation procedures which includes detailed advice on the valuation process. Information on how non-members of CAAV can purchase a copy can be found at www.caav.org.uk.



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