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A GUIDE TO — The proposed legislation on relinquishment of 1991 act tenancies

This guide provides a summary of the Land Reform (Scotland) Act 2016 provisions relating to the relinquishment of 1991 Act tenancies. It describes the main features of the legislation but is not comprehensive and does not cover some of the fine detail of procedures and exceptions. Landlords and tenants involved in relinquishment cases are therefore advised to obtain appropriate professional advice relevant to their own particular circumstances.

Background

Many tenants are reluctant to retire or give up their secure tenancy because of the financial consequences of doing so. The new arrangements for relinquishing tenancies were introduced with the aim of enabling tenants to realise the value in a secure tenancy when they relinquish it and in the hope that this would release more tenancing opportunities for new entrants to farming.

In essence, the new provisions enable an existing tenant to relinquish the tenancy on payment by the landlord of compensation based on the value of the tenancy or, where the landlord does not accept the tenant's proposal to relinquish the tenancy, the tenant can assign it for value to a new entrant to farming or to an individual who is progressing in farming.

These measures are not yet in force and are expected to be commenced later in 2017 or early in 2018. The Scottish Government has yet to provide a definition of a "new entrant" or "a person who is progressing in farming" and has yet to decide on the form and content of the notice which the tenant must serve on the landlord.

Scope of the Legislation

The process of relinquishment applies to only two forms of 91 Act tenancies:

- Where the lease was entered into before 27th November 2003 and
- Where the lease was entered into in writing on or after 27th November 2003 but before the commencement of the tenancy, and the lease expressly states that the 91 Act is to apply to it.

Serving a Notice

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 calculated in accordance with the legislation. This is referred to as a "notice of intention to relinquish" and it is expected that the Scottish Government will provide, in due course, guidance on the form and content of such notices. The tenant must also send a copy of the notice to the Tenant Farming Commissioner (TFC).

There are certain restrictions on the tenant's ability to serve a notice of relinquishment 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 2 months of the date of the demand.
- Where the tenant has not remedied, within a reasonable time, a breach of the conditions of the tenancy in respect of his obligations to farm in accordance with the rules of good husbandry.
- Where the landlord has already served a notice to quit.

Procedure if the landlord **accepts** the notice of relinquishment

The landlord must serve on the tenant a “notice of acceptance”. He can choose to withdraw that notice within 6 months but in that case must pay any expenses incurred by the tenant as a result of the landlord’s initial notice of acceptance.

On receiving a copy of the notice, the TFC must, within 14 days, appoint a valuer to carry out an assessment and to calculate the amount to be payable by the landlord to the tenant. He must notify the landlord and tenant of the name of the valuer and either party can object to the valuer appointed.

The tenant is responsible for meeting the cost of the valuation.

- 1) In assessing the amount of compensation to which a tenant may be entitled, the valuer should take account of:
 - The value of the land to which the holding relates if sold with vacant possession.
 - The value of the land to which the holding relates if sold with the tenant still in occupation.
 - The amount of compensation to which the tenant would be entitled for eligible tenant’s improvements.
 - The amount of compensation to which the tenant would be entitled by virtue of continuous adoption of a standard of farming more beneficial to the land than the standard or system required by the lease or than the system of farming normally practised on comparable agricultural land in the district.
 - The amount of compensation that the landlord may be entitled to recover from the tenant for a reduction in the value of the holding caused by the tenant’s failure to fulfil his responsibilities to farm in accordance with the rules of good husbandry or from a diversification activity which is not an agricultural purpose and which can be shown to have reduced the value of the holding during the tenancy.

- 2) The valuer is not to take account of:
 - The existence of any person to whom the tenant might assign the lease or who might inherit it.
 - The absence of the period of time during which the land would have been likely to be advertised and exposed for sale.
 - Any use of the land which is unlawful.
 - Any increase in value of the land resulting from improvements to which the tenant is entitled to compensation.
 - Any increase or reduction in the value of the land resulting from actions which are not permitted in the lease.
 - Any reduction in the value of the land as a result of dilapidations and/or damage to fixed equipment caused by the tenant and for which the landlord would be entitled to compensation.

3) Arriving at the Final Compensation Figure:

Step 1 – Deduct from the value of the land to which the holding relates if sold with vacant possession the value of the land if sold with the tenant still in occupation.

Step 2 – Divide above figure by two.

Step 3 – Add the amount of compensation to which the tenant would be entitled in relation to improvements.

Step 4 – Deduct from the amount calculated under step 3 the amount of compensation to which the landlord would be entitled for dilapidations etc.

Step 5 – Add to the amount calculated under step 2 the amount calculated under step 4 to get the value of the land.

The tenant or landlord can appeal to the Lands Tribunal if they are unhappy with the valuation.

The tenant can withdraw the relinquishment notice within 35 days of receiving the valuation.

The landlord has 28 days to notify the tenant that the valuation is accepted and must pay the amount due within 6 months. The tenancy comes to an end at the expiry of the 6 month period.

Procedure if the landlord does not accept the tenant's notice of relinquishment

In this case the landlord has to serve a "notice of declinature" on the tenant and the tenant may, within 12 months, assign the lease of the holding to an individual who is a new entrant to, or who is progressing in, farming. The Scottish Government has yet to provide a definition of "new entrant" and "a person who is progressing in farming".

The landlord may withhold consent to the assignation if the proposed assignee is not a new entrant or a person progressing in farming or if he believes that the person would not have the ability to pay the rent or does not have the necessary skills and experience to manage the farm properly. An objection to a new entrant on the latter grounds will not be allowable if the person is engaged in, or will shortly begin, a relevant training course and has made arrangements to ensure that the holding is farmed efficiently in the interim.

There is no regulation concerning the amount that a new entrant or person progressing in farming will have to pay for the assignation of the tenancy. That will be a matter for negotiation between the outgoing and incoming tenants.

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