

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Agricultural Holdings

Chapter 7 – Relinquishing and Assignment of 1991 Act Tenancies

Section 110– Tenant’s offer to relinquish 1991 Act tenancy

643. Section 110 inserts a new Part 3A into the 1991 Act to provide for a process whereby a 1991 Act tenant can relinquish their tenancy to the landlord in exchange for compensation or, if the landlord does not buy them out, can assign the tenancy to a new entrant or progressing farmer for the tenancy’s market value.
644. New section 32A of the 1991 Act sets out that the provisions of the new Part 3A are to apply to those 1991 Act tenancies where the tenant wishes to quit the tenancy before the date by which the tenancy could otherwise be brought to an end by notice of intention to quit or, failing which, assign their tenancy as above.
645. Section 32B gives the Scottish Ministers power to make regulations to define a new entrant and a progressing farmer for the purposes of this new process. These regulations are subject to negative parliamentary procedure.
646. Section 32C provides that a tenant can serve the landlord with a “notice of intention to relinquish”, which says that the tenant will relinquish the tenancy if the landlord pays compensation as calculated under this new process (in section 32L). The tenant must send a copy of the notice to the Tenant Farming Commissioner (established by Part 2 of the Act) at the same time as serving it on the landlord.
647. Section 32D enables Ministers to make regulations about the form and content of notices of intention to relinquish. Subsection (2) gives examples of what these regulations might cover. These regulations are subject to negative parliamentary procedure.
648. Section 32E sets out circumstances in which a tenant may not serve a notice of intention to relinquish. These include where the tenant has already served a notice of intention to quit; where the tenant has not complied with written demands to pay rent or remedy breaches; where the landlord has already served an incontestable notice to quit; and where the landlord has served a contestable notice to quit that is still being considered by the Land Court or has been consented to by the Land Court (or in equivalent appeal situations).
649. Section 32F sets out some restrictions on a landlord’s ability to issue a notice to quit once the tenant has issued a notice of intention to relinquish. The restrictions apply until the tenancy is terminated under Part 3A or until the window within which the tenant can assign the tenancy under this Part has expired. A landlord may still issue an incontestable notice to quit during this period on grounds that are due to failings on the part of the tenant.

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650. Section 32G, subsections (1) to (3) provide that within 14 days of the notice to relinquish being served on the tenant, the Tenant Farming Commissioner must appoint a suitable person to calculate the amount of compensation payable by the landlord to the tenant as a result of the tenant quitting their tenancy. Ministers may specify a different period by regulations subject to negative parliamentary procedure.
651. Subsection (4) provides that the valuer who will calculate the compensation due to the tenant must be suitably qualified and independent of both the tenant and the landlord.
652. Subsection (6) requires the Tenant Farming Commissioner to give written notice to the tenant and the landlord of the name and address of the valuer appointed.
653. Section 32H sets out the objection process in respect of the valuer appointed by the Tenant Farming Commissioner.
654. Subsection (2) provides that either the tenant or the landlord may object to the valuer on the grounds that the valuer is not independent of either party or does not have the necessary qualifications, knowledge and experience to carry out the valuation.
655. Subsection (3) enables either the tenant or the landlord to apply to the Land Court to appoint an alternative valuer to the one appointed by the Tenant Farming Commissioner.
656. Subsection (4) states that either party has 14 days from the date of the Tenant Farming Commissioner's notice under section 32G(6) and must state the ground of objection to the valuer. They may propose the name of an alternative valuer in their application.
657. Subsection (5) and (6) state that the Land Court may reject the objection or appoint an alternative valuer and that the Court's decision is final.
658. Section 32I states that the tenant is liable for the costs of the valuer, whether the valuer is appointed by the Tenant Farming Commissioner or the Land Court. In cases where the valuer has been appointed by the Tenant Farming Commissioner, and these expenses have been met by the Commissioner, they are entitled to recover these expenses from the tenant.
659. Section 32J sets out how the valuer must assess the value of the holding: the valuation must include both the value of the land as if it was sold with vacant possession and the value of the land as if it was sold with the sitting tenant. The valuer must also assess the amount of compensation that would be due to the tenant at waygo, and the amount of compensation that would be due to the landlord for dilapidations.
660. Subsection (2) sets out that in assessing the value of the land the valuer must have regard to the value that would be likely to be agreed between a reasonable seller and a reasonable buyer and sets out a number of things that the valuer should and should not take into account in calculating the valuation.
661. Subsection (5) enables Scottish Ministers by regulations to add, remove or vary the description of a matter which the valuer must take account of or not take account of, when assessing the value of the land. These regulations are subject to affirmative parliamentary procedure.
662. Section 32K makes further provision on the valuation process, stating that for the purposes of carrying out their work, the valuer may enter onto the land; make any reasonable request of the landlord and tenant; and may invite them to make written representations about the assessment.
663. Section 32L sets out the step-by-step calculation for how the compensation payable by the landlord to the tenant is to be assessed by the valuer, if the landlord accepts the notice of intention to relinquish. This is: 50% of the difference in value between the land if vacant and the land with the sitting tenant; plus the compensation the tenant

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would be entitled to at waygo; minus any compensation the landlord is entitled to for dilapidations.

664. Section 32M details the “notice of assessment” which the valuer must prepare and serve on the landlord and tenant.
665. Subsections (1) and (2) provide that the valuer must complete the valuation within eight weeks of being appointed and serve notice in writing to both the tenant and the landlord.
666. Subsections (3) to (6) state that this notice of assessment must set out the findings of the valuation including how the valuer arrived at the values and amounts stated, and any other information which the valuer considers appropriate.
667. Subsection (7) states that a copy of the notice of assessment must be sent to the Tenant Farming Commissioner.
668. Section 32N sets out the process for appealing to the Lands Tribunal against the valuer’s assessment.
669. Subsections (1) and (2) state that either party may appeal to the Lands Tribunal against a notice of assessment, stating what the grounds of appeal are, within 21 days of being served the notice of assessment.
670. Subsection (3) states that the Lands Tribunal may reassess the value or amount of compensation calculated by the valuer and may determine the amount payable by the landlord to the tenant if the landlord were to accept the tenant’s notice of intention to relinquish.
671. Subsections (4) and (5) provide that as part of the appeal proceedings the following people are entitled to be heard: the owner of the land, any creditors in standard securities, and the valuer.
672. Subsections (6) and (7) state that the Lands Tribunal is to give written reasons for its decision and that its decision is final.
673. Section 32O requires the Lands Tribunal to refer to the Land Court any issue of law which arises during an appeal which may competently be determined by that Court, unless it considers it inappropriate to make such a reference.
674. Section 32P sets out the process for withdrawing a notice of intention to relinquish.
675. Subsections (1) and (2) allow a tenant to withdraw their notice of intention to relinquish at any time up until a) 35 days from the date the valuer provided their assessment, or b) if either the tenant or landlord appealed the valuation, then 14 days from the Lands Tribunal’s decision on the appeal.
676. Subsection (3) requires that in order to withdraw their notice of intention to relinquish, the tenant must give written notice of such withdrawal to the landlord, and send copies to the Tenant Farming Commissioner and to the valuer.
677. Subsection (4) provides that where the tenant withdraws their notice of intention to relinquish, and a valuer has already been appointed by the Tenant Farming Commissioner, then the valuer’s appointment comes to an end. If no valuer has been appointed at the time of withdrawal then none need be appointed.
678. Section 32Q sets out the process involved where the landlord wishes to accept the notice of intention to relinquish.
679. Subsections (2) to (7) specify that if the landlord wishes to proceed with buying out the tenant’s interest, they must send the tenant a “notice of acceptance” within 28 days of the expiry of the tenant’s option to withdraw the notice of intention to relinquish. The notice, a copy of which must be sent to the Tenant Farming Commissioner, must state that the landlord will pay the tenant the sum calculated by the valuer (or, as

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the case may be, determined by the Lands Tribunal), which must be paid within six months of the expiry of the tenant's option to withdraw, in exchange for the tenant quitting the tenancy. Under subsections (2)(b) and (5), the landlord must pay the compensation within six months of the expiry of the tenant's option to withdraw the notice to relinquish.

680. Subsection (8) gives Ministers a power to make regulations about the form and content of the landlord's notice of acceptance. These regulations are subject to negative parliamentary procedure.
681. Section 32R, subsections (1) and (2) provide that, if the landlord does not wish to buy out the tenant's interest, the landlord may serve the tenant a "notice of declinature", within 28 days of the expiry of the tenant's option to withdraw the notice of intention to relinquish.
682. Subsection (3) requires the landlord to send a copy of the notice to the Tenant Farming Commissioner and the valuer, if appointed.
683. Subsection (4) states that following the serving of the notice of declinature, if a valuer has been appointed, the valuer's appointment comes to an end; and if none has been appointed then none need be appointed.
684. Section 32S, subsections (1) and (2) enable the landlord to withdraw their notice of acceptance within a specified period, by serving a "notice of withdrawal" in writing to the tenant.
685. Subsection (3) requires the notice to be copied to the Tenant Farming Commissioner.
686. Subsection (4) provides that if the landlord withdraws in this way the tenant is entitled to recover from the landlord any loss or expense incurred because of action the tenant took based on having received the landlord's notice of acceptance.
687. Section 32T provides that where the landlord does pay the compensation within six months of the period specified in section 32P(5) then the tenancy comes to an end at the end of that six-month period or on such earlier date as both parties agree. Subsection (3) disapplies the notice to quit provisions of the 1991 Act here. Subsection (4) confirms that any other compensation or payment to which the parties may be entitled that is not mentioned in section 32I(1)(b) is preserved despite the payment of the compensation figure under section 32Q(2)(b).
688. Section 32U, subsections (1) and (2) state that if the landlord declines the notice to relinquish, fails to accept it within the specified period, or accepts it and fails to pay the compensation required within the specified period, then the tenant has one year to assign the tenancy.
689. Section 32V applies section 10A of the 1991 Act (which deals with lifetime assignation) with modifications for the particular circumstances of Part 3A. The modification of subsection (3) of section 10A of the 1991 Act has the effect that the landlord may withhold consent to the proposed assignee if the person is not a new entrant or progressing in farming or on other reasonable grounds.
690. The modification comprised in subsection (3A) of section 10A provides that 'reasonable grounds' include where the landlord is not satisfied that the proposed assignee has the necessary financial resources, or the landlord is not satisfied that the proposed assignee has the skills or experience needed, in order to farm the land in accordance with the rules of good husbandry.
691. The modification comprised in subsection (3B) states that if the proposed assignee is a new entrant then the landlord cannot object on the ground that the proposed assignee lacks skills or experience provided the new entrant is on, or shortly to begin, relevant training, and has arranged for the land to be farmed efficiently until they have completed their training.

692. Section 32W sets out where the definitions of each of the key terms used in these provisions can be found.

Section 111 – Tenant’s offer to relinquish 1991 Act tenancy: consequential modifications

693. **Section 111** makes consequential modifications to the 1991 and 2003 Acts in light of new Part 3A of the 1991 Act. In particular, new section 74A is inserted into the 2003 Act by section 111(4) of the Act. This provides that the Scottish Ministers may make regulations to disapply the new Part 3A process to tenants in certain types of partnership, such as limited partnerships; to allow general partners in certain types of limited partnership to be treated as if they were a tenant under the new Part 3A process; and to apply this new process to tenants in certain types of partnership with appropriate modifications. These regulations are subject to affirmative parliamentary procedure.