



# Agricultural Holdings (Scotland) Act 1991

## 1991 CHAPTER 55

### [<sup>F1</sup>PART 3A

#### RELINQUISHING AND ASSIGNATION OF HOLDINGS

### [<sup>F1</sup>CHAPTER 1

#### TENANT'S OFFER TO RELINQUISH HOLDING

##### Textual Amendments

- F1** Pt. 3A inserted (23.12.2016 for specified purposes, 28.2.2021 in so far as not already in force) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), ss. **110(2)**, 130(1) (with s. 128); S.S.I. 2016/365, reg. 2; S.S.I. 2020/428, reg. 2

#### *Application of Part and key terms*

### **32A Application of Part**

- (1) This Part applies where the tenant of an agricultural holding to which subsection (2) applies wishes to quit the tenancy before the date on which the tenancy could otherwise be brought to an end by notice of intention to quit or, failing which, assign the lease to an individual who is a new entrant to, or who is progressing in, farming.
- (2) This subsection applies to an agricultural holding in respect of which—
  - (a) the lease was entered into before 27 November 2003, or
  - (b) the lease—
    - (i) was entered into in writing on or after that date but prior to the commencement of the tenancy, and
    - (ii) expressly states that this Act is to apply to the tenancy.

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### **32B New entrants to farming and persons progressing in farming**

- (1) The Scottish Ministers may by regulations make further provision about the individuals who are new entrants to, or who are progressing in, farming for the purposes of this Part.
- (2) Regulations under subsection (1) are subject to the negative procedure. Notice of intention to relinquish

### **32C Tenant's offer to relinquish tenancy**

- (1) The tenant may serve notice in writing on the landlord of the holding indicating that the tenant will quit the tenancy provided the landlord pays to the tenant an amount, calculated in accordance with section 32L, as compensation for so doing.
- (2) A notice served under subsection (1) is a “notice of intention to relinquish”.
- (3) The tenant must, at the same time as serving a notice of intention to relinquish, send a copy of the notice to the Tenant Farming Commissioner.

### **32D Form and content of notice of intention to relinquish**

- (1) The Scottish Ministers may by regulations prescribe the form and content of notices of intention to relinquish.
- (2) Regulations under subsection (1) may, in particular, include provision for—
  - (a) such notices to be dated,
  - (b) such notices to state—
    - (i) the names and designations of the landlord and the tenant of the agricultural holding,
    - (ii) the name (if any) and the address of the holding or such other description of the holding as will identify it,
    - (iii) the rent currently payable in respect of the holding,
    - (iv) the date on which the rent for the holding was last varied or, as the case may be, continued unchanged (whether by agreement or by determination of the Land Court),
    - (v) the improvements (if any) carried out to the holding by the tenant,
  - (c) the information that must or may accompany such notices (which may include maps or plans of the holding).
- (3) Regulations under subsection (1) are subject to the negative procedure.

### **32E Restrictions on serving notice of intention to relinquish**

- (1) A tenant may not serve a notice of intention to relinquish if, at the date of service, any of subsections (2) to (7) apply.
- (2) This subsection applies where the tenant has served notice of intention to quit.
- (3) This subsection applies where the tenant has failed to comply with a written demand, served on the tenant by the landlord, requiring the tenant—
  - (a) to pay rent due in respect of the holding within 2 months from the date of service of the demand, or

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- (b) to remedy a relevant breach within a reasonable time.
- (4) In subsection (3)(b), a “relevant breach” is a breach by the tenant of a condition of the tenancy which—
  - (a) is capable of being remedied, and
  - (b) is not inconsistent with the fulfilment of the tenant's responsibilities to farm in accordance with the rules of good husbandry.
- (5) This subsection applies where the landlord has served notice to quit to which section 22(2) applies.
- (6) This subsection applies where the landlord has served notice to quit to which section 22(2) does not apply and—
  - (a) the period mentioned in section 23(1) within which the landlord may apply to the Land Court for consent to the operation of the notice has not expired,
  - (b) the landlord has applied in accordance with that section and the Land Court has yet to reach a decision, or
  - (c) the Land Court has, on such an application, consented to the notice and—
    - (i) any period within which an appeal may be made against that decision has not expired,
    - (ii) such a period has expired without an appeal having been made, or
    - (iii) an appeal having been made, the decision of the Land Court to consent to the notice has been upheld.
- (7) This subsection applies where, in relation to a notice to quit to which section 22(2) does not apply, the Land Court has, following an application under section 23(1), refused consent to its operation and—
  - (a) any period within which an appeal may be made against that decision has not expired,
  - (b) an appeal has been made but not determined, or
  - (c) the decision of the Land Court to refuse consent to the notice has been quashed.

### **32F Restriction on notice to quit etc. where notice of intention to relinquish served**

- (1) This section applies where a tenant serves a notice of intention to relinquish.
- (2) During the relevant period, sections 22 to 24 and 43 have effect in relation to the tenancy subject to the following modifications.
- (3) The relevant period is the period beginning with the date of service of the notice of intention to relinquish and ending with—
  - (a) the date the tenancy is terminated under section 32T(2), or
  - (b) the date on which the period of 1 year mentioned in section 32U(2) expires.
- (4) Section 22(2) has effect as if—
  - (a) paragraphs (a) and (b) were omitted, and
  - (b) for “any of paragraphs (a) to (f)” there were substituted “ any of paragraphs (c) to (f) ”.
- (5) Section 24(1) has effect as if paragraph (e) were omitted.
- (6) Section 43 has effect as if, for subsection (2), there were substituted—

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- “(2) Compensation is not payable under this section where—
- (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in the landlord's own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on condition that the tenant must, along with the last or waygoing crop, sow permanent grass seeds, or
  - (b) the application of section 22(1) to the notice to quit is excluded by any of paragraphs (c) to (f) of subsection (2) of that section.”.

### *Appointment of valuer*

#### **32G Appointment of valuer by Tenant Farming Commissioner**

- (1) This section applies where the Tenant Farming Commissioner receives a copy of a notice of intention to relinquish.
- (2) The Commissioner must, before the expiry of the period mentioned in subsection (3), appoint a person, who meets the requirements mentioned in subsection (4), to—
  - (a) carry out the assessment mentioned in section 32J(1), and
  - (b) calculate the amount to be payable by the landlord to the tenant as compensation for the tenant quitting the tenancy were the landlord to accept the notice of intention to relinquish.
- (3) The period is—
  - (a) the period of 14 days beginning with the date on which the notice is served, or
  - (b) such other period specified by the Scottish Ministers by regulations.
- (4) The requirements referred to in subsection (2) are that the person appears to the Commissioner—
  - (a) to be independent of the landlord and the tenant, and
  - (b) to possess qualifications, knowledge and experience suitable for assessing the—
    - (i) value of agricultural land, both with vacant possession and where subject to agricultural holdings, and
    - (ii) compensation that may be payable to tenants and landlords of such holdings.
- (5) A person appointed under subsection (2) is the “valuer”.
- (6) The Tenant Farming Commissioner must give notice in writing to the tenant and the landlord of the name and address of the valuer appointed under subsection (2).
- (7) Regulations under subsection (3)(b) are subject to the negative procedure.

#### **32H Objection to valuer appointed by Tenant Farming Commissioner**

- (1) This section applies where the tenant or the landlord objects to the person appointed under section 32G(2) by the Tenant Farming Commissioner on one or more of the grounds mentioned in subsection (2).
- (2) Those grounds are that the person—

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- (a) is not independent of the landlord or, as the case may be, the tenant, or
  - (b) does not possess the qualifications, knowledge and experience mentioned in section 32G(4)(b).
- (3) The tenant or, as the case may be, the landlord may apply to the Land Court to appoint a person as the valuer in place of the person appointed by the Tenant Farming Commissioner.
- (4) An application under subsection (3)—
- (a) must—
    - (i) be made before the expiry of the period of 14 days beginning with the date of the notice under section 32G(6), and
    - (ii) state the ground of objection to the person appointed by the Tenant Farming Commissioner, and
  - (b) may propose a person to be appointed as the valuer in place of that person.
- (5) The Land Court may, on an application under subsection (3)—
- (a) reject the objection, or
  - (b) appoint a person as the valuer (whether a person proposed in the application or not).
- (6) The decision of the Land Court on an application under subsection (3) is final.

### **32I Valuer's expenses**

- (1) The tenant is responsible for meeting the expenses, incurred in carrying out functions under this Part, of a valuer appointed—
- (a) by the Tenant Farming Commissioner under section 32G(2), or
  - (b) by the Land Court under section 32H(5)(b).
- (2) Where, in the case of a valuer appointed under section 32G(2), those expenses have been met by the Tenant Farming Commissioner, the Commissioner is entitled to recover them from the tenant.

#### *Valuer's assessment*

### **32J Assessment of value of land etc.**

- (1) The valuer is to assess—
- (a) the value of the land to which the holding relates—
    - (i) if sold with vacant possession,
    - (ii) if sold with the tenant still in occupation, and
  - (b) the amount of compensation—
    - (i) to which the tenant would be entitled, by virtue of Part 4, sections 40 and 41 or any agreement applying in place of that Part or those sections, in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44, and
    - (iii) to which the landlord would be entitled under sections 45 and 45A.
- (2) In assessing the value of the land under subsection (1)(a)(i) or (ii), the valuer—

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- (a) is to have regard to the value that would be likely to be agreed between a reasonable seller and buyer of such land assuming the seller and buyer are, as respects the transaction, willing,
  - (b) is to take account—
    - (i) of when the landlord would in the normal course of events have been likely to recover vacant possession of the land from the tenant,
    - (ii) of the terms and conditions of any lease, other than the lease of the holding, affecting the land,
  - (c) is to take no account of—
    - (i) the existence of any person to whom the tenant could assign the lease of the holding under section 10A or to whom the lease could be bequeathed under section 11,
    - (ii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale,
    - (iii) any factor attributable to any use of the land which is or would be unlawful,
    - (iv) any increase in the value of the land resulting from improvements in relation to which the tenant would be entitled to compensation as mentioned in subsection (1)(b)(i) and (ii),
    - (v) any increase in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding,
    - (vi) any reduction in the value of the land resulting from any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant in relation to which the landlord would be entitled to compensation as mentioned in subsection (1)(b)(iii),
    - (vii) any reduction in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not one permitted by the lease of the holding.
- (3) For the purposes of subsection (2)(c)(iv)—
- (a) subject to paragraph (b), “improvements” is to be construed by reference to schedule 5, and
  - (b) the continuous adoption by the tenant of a standard of farming more beneficial to the land than the standard or system required by the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant's expense.
- (4) The valuer is to calculate, in accordance with section 32L, the amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish.
- (5) The Scottish Ministers may by regulations amend subsections (2) and (3) so as to—
- (a) add,
  - (b) remove,
  - (c) vary the description of,
- a matter which the valuer must have regard to, take account of or take no account of in assessing the value of the land under subsection (1)(a)(i) or (ii).
- (6) Regulations under subsection (5) are subject to the affirmative procedure.

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### **32K Valuation: further provision**

- (1) The valuer is—
  - (a) to invite the landlord and the tenant to make written representations about the assessment under section 32J(1), and
  - (b) to have regard to any such representations.
- (2) The valuer may—
  - (a) enter onto land, and
  - (b) make any reasonable request of the landlord and tenant,  
for the purposes of any assessment under section 32J(1).

#### *Calculation of compensation*

### **32L Compensation payable by landlord to tenant**

The amount to be payable by the landlord to the tenant as compensation were the landlord to accept the notice of intention to relinquish is to be calculated as follows:

*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 (both as assessed under section 32J(1) or, as the case may be, 32N(3)(a)).

*Step 2* Divide the amount calculated under Step 1 by 2.

*Step 3* Add to the amount of compensation to which the tenant would be entitled in relation to improvements the amount of compensation to which the tenant would be entitled under section 44 (as so assessed).

*Step 4* Deduct from the amount calculated under Step 3 the amount of compensation to which the landlord would be entitled under sections 45 and 45A (as so assessed).

*Step 5* Add to the amount calculated under Step 2 the amount calculated under Step 4.

#### *Notice of assessment*

### **32M Notice of assessment**

- (1) The valuer must, before the expiry of the period mentioned in subsection (2), serve a notice in writing, specifying the matters mentioned in subsection (3), on—
  - (a) the tenant, and
  - (b) the landlord.
- (2) The period is the period of 8 weeks beginning with—
  - (a) the date on which the period, within which an application under section 32H(3) may be made, expires, or
  - (b) where such an application is made, the date of the Land Court's decision on it.
- (3) The matters are—
  - (a) the value, assessed under section 32J(1)(a), of the land to which the holding relates—
    - (i) if sold with vacant possession, and
    - (ii) if sold with the tenant still in occupation,

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- (b) the amount, assessed under section 32J(1)(b), of compensation—
    - (i) to which the tenant would be entitled in relation to any improvements to the holding,
    - (ii) to which the tenant would be entitled under section 44,
    - (iii) to which the landlord would be entitled under section 45 and 45A, and
  - (c) the amount, calculated in accordance with section 32L, to be payable by the landlord to the tenant as compensation were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The notice must also—
- (a) be dated,
  - (b) state the date of valuation of each of the values and amounts mentioned in subsection (3), and
  - (c) set out how the valuer arrived at each of those values and amounts.
- (5) The notice may also contain or be accompanied by any other information that the valuer considers appropriate.
- (6) A notice served under subsection (1) is a “notice of assessment”.
- (7) The valuer must, at the same time as serving a notice of assessment, send a copy of the notice to the Tenant Farming Commissioner.

#### *Appeal against valuer's assessment*

### **32N Appeal to Lands Tribunal against valuer's assessment**

- (1) The tenant or the landlord may appeal to the Lands Tribunal against a notice of assessment.
- (2) An appeal under this section must—
- (a) state the grounds on which it is being made, and
  - (b) be lodged before the expiry of the period of 21 days beginning with the date the notice of assessment was served.
- (3) The Lands Tribunal may—
- (a) reassess any value or amount of compensation mentioned in section 32J(1) (and any factor affecting the value or amount),
  - (b) determine the amount to be payable by the landlord to the tenant as compensation, calculated in accordance with section 32L, were the landlord to accept the tenant's notice of intention to relinquish.
- (4) The valuer whose assessment is appealed against may be a witness in the appeal proceedings.
- (5) In the appeal proceedings, in addition to the landlord and the tenant, the following persons are entitled to be heard—
- (a) where the landlord is a creditor in a standard security, the owner of the land,
  - (b) where the landlord is the owner of the land, any creditor in a standard security over the land or any part of it.
- (6) The Lands Tribunal is to give written reasons for its decision on an appeal under this section.



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(7) The decision of the Lands Tribunal in an appeal under this section is final.

### **32O Referral of certain matters by Lands Tribunal to Land Court**

Where, in an appeal before the Lands Tribunal under section 32N, an issue of law arises which may competently be determined by the Land Court by virtue of this Act or the 2003 Act, the Tribunal is to refer the issue to the Land Court for determination unless the Tribunal considers that it is not appropriate to do so.

#### *Withdrawal of notice of intention to relinquish*

### **32P Withdrawal of notice of intention to relinquish**

- (1) The tenant may, before the expiry of the period mentioned in subsection (2), withdraw a notice of intention to relinquish by serving notice on the landlord.
- (2) The period is—
  - (a) the period of 35 days beginning with the day the notice of assessment is served, or
  - (b) if an appeal is made to the Lands Tribunal under section 32N, the period of 14 days beginning with the date of the Tribunal's decision.
- (3) The tenant must, at the same time as serving notice under subsection (1), send a copy of the notice to—
  - (a) the Tenant Farming Commissioner,
  - (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).
- (4) Where the tenant serves notice under subsection (1)—
  - (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
  - (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

#### *Landlord's response to tenant's offer to quit tenancy*

### **32Q Landlord's acceptance of notice of intention to relinquish**

- (1) The section applies where the landlord wishes to accept the tenant's notice of intention to relinquish.
- (2) The landlord must—
  - (a) serve notice on the tenant which complies with subsection (3), and
  - (b) pay the amount of compensation calculated under section 32L before the expiry of the period mentioned in subsection (5).
- (3) A notice complies with this subsection if it—
  - (a) is served before the expiry of the period mentioned in subsection (4), and
  - (b) states that the landlord will, in exchange for the tenant quitting the tenancy, pay to the tenant—

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- (i) the amount of compensation assessed by the valuer and specified in the notice of assessment, or
  - (ii) where the Lands Tribunal has determined under section 32N(3)(b) that the compensation should be a different amount, that amount.
- (4) The period referred to in subsection (3)(a) is the period of 28 days beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (5) The period referred to in subsection (2)(b) is the period of 6 months beginning with the date on which the period, within which the tenant may, under section 32P, withdraw the notice of intention to relinquish, expires.
- (6) A notice served under subsection (2)(a) is a “notice of acceptance”.
- (7) The landlord must, at the same time as serving a notice of acceptance, send a copy of the notice to the Tenant Farming Commissioner.
- (8) The Scottish Ministers may by regulations specify the form and content of notices of acceptance.
- (9) Regulations under subsection (8) are subject to the negative procedure.

### **32R Notice of declinature**

- (1) The landlord may, at any time before the expiry of the period of 28 days mentioned in section 32Q(4), serve notice on the tenant stating that the landlord does not wish to accept the notice of intention to relinquish.
- (2) A notice served under subsection (1) is a “notice of declinature”.
- (3) The landlord must, at the same time as serving a notice of declinature, send a copy of the notice to—
- (a) the Tenant Farming Commissioner,
  - (b) any valuer appointed under section 32G(2) or, as the case may be, 32H(5)(b).
- (4) Where the landlord serves notice of declinature—
- (a) if no person has been appointed as the valuer under section 32G(2), the Tenant Farming Commissioner need not so appoint a person,
  - (b) if a valuer has been appointed under section 32G(2) or, as the case may be, 32H(5)(b), the valuer's appointment comes to an end.

### **32S Withdrawal of notice of acceptance**

- (1) A landlord may, at any time before the expiry of the period of 6 months mentioned in section 32Q(5), withdraw a notice of acceptance by serving notice in writing on the tenant.
- (2) A notice served under subsection (1) is a “notice of withdrawal”.
- (3) The landlord must, at the same time as serving notice of withdrawal, send a copy of the notice to the Tenant Farming Commissioner.
- (4) The tenant is entitled to recover from the landlord any loss or expense incurred in reliance on the landlord's notice of acceptance.

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*Payment of compensation ends tenancy*

**32T Consequences of landlord paying compensation to tenant**

- (1) This section applies where, on or before the expiry of the period mentioned in section 32Q(5), the landlord pays to the tenant the amount of compensation in accordance with section 32Q(2)(b).
- (2) The tenancy comes to an end—
  - (a) on the expiry of that period, or
  - (b) on such earlier date as the tenant and landlord may agree.
- (3) Where a tenancy is terminated under subsection (2), section 21 does not apply in respect of the tenancy.
- (4) Any claim or entitlement to compensation or any other payment, other than to the compensation mentioned in section 32J(1)(b), is preserved despite the payment of compensation in accordance with section 32Q(2)(b).]

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