



Relinquishment and Assignment of Agricultural Tenancies

National Advice Hub
T: 0300 323 0161
E: advice@fas.scot
W: www.fas.scot

The relinquishment and assignation of agricultural tenancies became live on the 28th February 2021 by the Land Reform Scotland Act 2016, with a new section (32A) being introduced.

The legislation was introduced to provide an alternative exit route for elderly tenants, who may be looking to retire, but do not have any successors (next generation, etc.) to pass the tenancy on to. The legislation also allows for a value to be put onto the tenancy, meaning the ingoing tenant would pay the outgoing tenant an agreed amount for their tenancy, aiding the exiting farmer for retirement.

What is relinquishment and assignation?

Relinquishment and assignation, basically means an existing farm tenant (with a 1991 act tenancy), can offer to sell their tenancy back to the landlord. If the **landlord agrees to buy the tenancy**, then the value of this will be assessed by either a valuer agreed by both parties or an independent valuer appointed by the Tenant Farming Commissioner. The valuation of the tenancy must be carried out in accordance with the legislation.

If the **landlord decides not to purchase the tenancy**, then the tenant has 12 months to sell it to a “new entrant” or “progressing farmer”. In this scenario there is no independent valuation, undertaken on the valuation of the tenancy, instead a negotiation is initiated between the outgoing and ingoing tenant, on how much they are prepared to pay, bearing in mind, that the individual taking on the tenancy, takes on the same terms as the outgoing tenant (rent and security). The landlord has limited ability to object to the person the tenancy is being assigned too.

It is a very complex procedure, and independent professional advice must be sought by both the outgoing and ingoing tenant.



The European Agricultural Fund
for Rural Development
Europe investing in rural areas



Scottish Government
Riaghaltas na h-Alba
gov.scot

What is a new entrant?

A new entrant in this legislation is defined as someone who does not hold a relevant interest and has not done so in the last five years. They must not hold more than one relevant interest after buying the tenancy.

A *relevant interest* would include the following,

- 1) A tenant who has an agricultural lease, excluding an SLDT with less than 3 years to run
- 2) A small land holder or crofter, who holds more than 3 hectares of land
- 3) An owner of more than 3 hectares of agricultural land in aggregate, regardless of where it is situated
- 4) A person who holds a relevant interest if they, or any legal person in respect of which they have, control holds a share of 50% or more in that relevant interest

What is a progressing farmer?

A progressing farmer is defined in this legislation as someone who does not hold two or more *relevant interests* (see above), and will not do so after purchasing the tenancy. If a *relevant interest* is an agricultural tenancy that will end in less than one year, then it is disregarded.

A partner in another farming business who has under 50% of the capital share of a *relevant interest* could still qualify as a new entrant or progressing farmer. Similarly, someone who owns a farm, would be one relative interest, meaning they would qualify as a progressing farmer.

What is to be valued?

It is not just the value of the tenancy that is valued but also the tenant's improvements, this may include buildings, handling facilities, fencing, etc.

What is a 1991 Act Tenancy?

This legislation only relates to secure 1991 act tenancies including those held by limited partnerships. A 1991 act tenancy, also known as a secure heritable tenancy, is as this name suggests a secure, heritable tenancy which, provided the correct legal procedure is followed at the time, can be passed on to subsequent generations. Over recent years, there have been changes to the rules by which these tenancies are governed, in almost all cases increasing a bias towards the tenant. Since 2003 it has not been possible to inadvertently create a secure heritable tenancy – it is still possible to create one, but it must be explicitly stated that this is the case, and the landlord would have to do so in the knowledge that they are unlikely to ever have possession of their farm again in the future.

Purchasing a 1991 act tenancy is a unique opportunity for a new entrant, in that it allows you the security of a secure, heritable lease, as well as taking on the tenancy at the same rental rate as the previous tenant, rather than competing on the competitive market. An example of this may be that the rent has historically been £30/acre, but to tender for the farm in the open market the rent may be £70/acre. If this was a 200-acre tenancy this would have a saving of £8,000 per year or £200,000 over 25 years.



Financing

The legislation does offer a unique opportunity for new entrants to gain a 1991 act tenancy. However, it does require capital (finance) to purchase the tenancy and the outgoing tenant's valuations. A tenancy is not deemed as a secure asset to borrow against by lenders. Meaning banks will not tend to lend to purchase a tenancy, in the same way they would to purchase land, unless you can provide security e.g. a guarantor.

Top Tip

If you are offered an opportunity, employ independent professionals, who can guide you through the valuations, legislation and tax implications, to ensure there is transparency from both sides throughout negotiations.

Further Information

The Scottish Land Commission has an excellent guide available explaining Relinquishment and Assignment, which can be found at [https://www.landcommission.gov.scot/downloads/602bacea606dd_TFC - A Guide to Relinquishment and Assignment.pdf](https://www.landcommission.gov.scot/downloads/602bacea606dd_TFC_-_A_Guide_to_Relinquishment_and_Assignment.pdf)

To understand the different types of tenancy available <https://www.fas.scot/downloads/understanding-agricultural-tenancies-for-new-entrants/>

