

## **RESUMPTION**

**Agricultural Tenancies**  
Limited Duration Tenancy

### **THE RIGHT OF RESUMPTION**

A landlord may resume all or part of the land comprised in a Limited Duration Tenancy subject to the following conditions being met –

- the resumption is for a non-agricultural purpose
- planning permission has been obtained in respect of the land to be resumed for the proposed purpose (provided that the planning permission was not obtained by the tenant), and
- the lease does not expressly prohibit resumption for the proposed purpose.

### **THE PROCESS OF RESUMPTION**

Resumption of land comprised in a Limited Duration Tenancy is regulated by the Agricultural Holdings (Scotland) Act 2003 which will override any contrary contractual provisions.

The landlord must give to the tenant formal written notice of the proposed resumption. This must be given not less than one year before the date on which the resumption is to take effect and must specify –

- details of the land to be resumed, and
- the date on which the resumption is to take effect.

Having been notified of the proposed resumption the tenant may choose to terminate the tenancy by giving to the landlord written notice which must be served within 28 days of the later to occur of

- the giving of the notice of resumption
- the determination of any matter arising from that notice.

Termination of the tenancy then occurs on the date specified in the notice of resumption.

The resumed part of the land must be restored to the tenancy if –

- the resumption was for the purpose of one or more of certain types of mining activities
- the resumed part has been made suitable for and is available for agricultural use
- the tenancy continues with the same landlord and the same tenant under the lease, and
- any compensation paid to the tenant for the resumption took into account restoration of the resumed area for return to agricultural use.

## COMPENSATION TO TENANTS

Where resumption relates to only **part** of the land, the tenant is entitled to –

- a rent reduction which is proportionate to that part of the land, but taking account of any related benefit or relief for the tenant provided for in the lease, and
- an amount equal to the depreciation in value to the tenant of the remainder of the land because of the resumption or of any use made of the resumed part.

Compensation for disturbance is payable to the tenant where the land is resumed by the landlord or where the tenant exercises his rights to terminate the lease as a result of a resumption notice.

In addition to any contractual rights provided for in the resumption clause in the lease, the tenant is entitled to pursue his statutory claims which include –

- reduction in rent
- additional payment for re-organisation
- early resumption compensation
- improvements.

Where a tenant exercises his right to terminate the lease as a result of a resumption notice and the area being resumed is less than a quarter of the original area comprised in the lease or has a rental value of less than a quarter of the rental value of the original area and the remainder of the land is capable of being farmed separately, then compensation is only payable in respect of the land to which the resumption notice relates.

**Disclaimer** - The above information is a summary of the main legal provisions and given for general information only. It is not a full statement of the law and detailed advice should always be obtained from a suitably experienced solicitor. Accordingly Gillespie Macandrew LLP does not accept any liability for the information given or any resulting action taken by any person. Gillespie Macandrew LLP is a limited liability partnership, registered in Scotland number SO300743. Authorised and regulated by the Financial Services Authority.