

COMPENSATION TO TENANTS

Limited Duration Tenancy

TYPES OF COMPENSATION

Agricultural tenants may benefit from the entitlement to claim compensation if certain of their interests are harmed or in respect of benefits which they leave behind for the next incoming occupier on quitting tenanted agricultural land. Such claims for compensation are derived from common law, or statute law or the lease which regulates the tenancy, or a combination of these.

In almost every case a tenant's right to claim compensation arises only when the tenancy is terminated or when part of the tenanted land is removed from the tenancy (eg, by resumption). An exception to this is a claim for compensation in connection with –

- **Damage to crops by game**
(deer, pheasants, partridges, grouse and black game), where the tenant does not have the right to kill and take game, and

When a Limited Duration Tenancy ends, or is partially brought to an end, the tenant's claims for compensation may be due in respect of any of the following –

- **Produce on the tenanted land**
manure or compost, or any hay, straw or roots grown on the tenanted land in the last year of the tenancy
- **Residual benefits**
such as young grass and undersown grass, green crops, white crops, unexhausted manurial values and fallow land
- **Works**
such as ploughing and sowing
- **Implements of husbandry, fixtures, farm produce or farm stock**
on or used in connection with the tenanted land
- **Bound ('hefted') sheep stock**
- **Milk quota**
- **Tenant's improvements**
provided that in relevant cases the tenant has given three months' prior notice to, or has received written consent from, the landlord before the improvement was carried out, (there are other compensatable improvements which may be undertaken without such notice or consent)

- **High farming**
if a record of the tenanted land has been made and if the value of that land to an incoming tenant has been increased during the tenancy by the continuous adoption of a standard or system of farming which has been more beneficial to the land than required by the lease or normally practised on comparable holdings in the district
- **Diversification**
- **Disturbance**
- **Reorganisation** (the 'additional payment')
- **Compulsory Acquisition**

THE CLAIM PROCESS

The manner in which a tenant claims compensation differs depending on the item involved. The following outlines the basic requirements –

- **Damage to crops by game**
The tenant has to give two written notices to the landlord –
 - (1) notice of damage, which must be served as soon as practicable after damage was first observed by the tenant, followed by a reasonable opportunity for the landlord to inspect the damage before harvest or (if after harvest) before removal of the crop from the land, and
 - (2) notice of claim, which must be served within six months of the notice of damage being served.
- **Produce on the tenanted land**
The tenant has to give the landlord (or the next incoming tenant) a reasonable opportunity of agreeing to purchase the items in question on the termination of the tenancy. If he fails to do so, the tenant may not sell or remove these items from the land.
- **Residual benefits**
Claims for such items will usually be covered by the terms of the lease, to which reference should be made in appropriate cases. Written notice of claim must be given to the landlord within two months of the termination of the tenancy or of the relevant part of the land being removed from the tenancy.
- **Works**
Claims for such items will usually be covered by the terms of the lease, to which reference should be made in appropriate cases. Written notice of claim must be given to the landlord within two months of the termination of the tenancy or of the relevant part of the land being removed from the tenancy.
- **Implements of husbandry, fixtures, farm produce or farm stock**
Claims for such items will usually be covered by the terms of the lease, to which reference should be made in appropriate cases. Until the tenant is paid the buyer cannot claim ownership. Written notice of claim must be given to the landlord within two months of the termination of the tenancy or of the relevant part of the land being removed from the tenancy.
- **Bound ('hefted') sheep stock**

Reference should be made to the lease if it provides for a basis for the landlord (or incoming tenant) to take over the bound sheep stock. If it does not, then complex statutory provisions set out the claim procedure to be followed. Written notice of claim must be given to the landlord within two months of the termination of the tenancy or of the relevant part of the land being removed from the tenancy.

- **Milk quota**

Milk quota belongs in turn to the successive occupiers of a milk quota holding, so on termination of the tenancy of such land the milk quota automatically transfers from the outgoing tenant to the landlord, who must pay to the outgoing tenant the “tenant’s fraction” of the value of the relevant milk quota. The tenant is also entitled to such compensation if only part of the tenanted land is removed from the tenancy. Written notice of claim must be given to the landlord within two months of the termination of the tenancy.

- **Tenant’s improvements**

Claims for tenant’s improvements only apply if in relevant cases the tenant has given three months’ prior notice to, or has received written consent from, the landlord before the improvement was carried out, but other compensatable improvements may be undertaken without such notice or consent. Written notice of claim must be given to the landlord within two months of the termination of the tenancy or of the relevant part of the land being removed from the tenancy.

- **High farming**

A claim for high farming arises if a record of the tenanted land has been made and if the value of the land to an incoming tenant has been increased during the tenancy by the continuous adoption of a standard or system of farming which has been more beneficial to the land than that required by the lease or normally practised on comparable holdings in the district. A claim for high farming must be made by the tenant serving written notice of intention to claim on the landlord not later than one month before the termination of the tenancy.

- **Diversification**

Compensation is available for an increase in the value of tenanted land during the tenancy by permitted non-agricultural use of it or part of it (diversification), unless (a) the land is unsuitable for agricultural use by an incoming tenant because of the diversification or (b) the landlord would be unable to fulfil his fixed equipment obligations at the commencement of an incoming tenant’s tenancy because of diversification use of the fixed equipment.

- **Disturbance**

Compensation for disturbance is available when the tenancy is terminated by notice to quit, except in cases where the notice to quit is incontestable (other than those where the land is required for use for which planning permission has been granted). Partial compensation for disturbance may apply where the tenant has given counter-notice to a partial notice to quit. Compensation for disturbance is not claimable where the tenant gives notice of intention to quit or is removed from the holding following irritancy, or if the executor of a deceased tenant gives notice to quit. Written notice of claim must be given to the landlord within two months of the termination of the tenancy or of the relevant part of the land being removed from the tenancy.

- **Reorganisation**

Where compensation for disturbance is payable, an additional payment is also due to the tenant, except in certain limited cases. When it is due, this additional payment is to assist in the reorganisation of the tenant’s affairs. It is advisable for a written notice of claim to be given to the landlord within two months of the termination of the tenancy or of the relevant part of the land being removed from the tenancy.

- **Compulsory Acquisition**

Where a person or body with statutory powers acquires the interest of an agricultural tenant or takes possession of tenanted agricultural land, compensation for disturbance is payable.

CALCULATION OF CLAIMS

The basis for calculating compensation claimable by a tenant differs depending on the item involved. The amount of compensation which can be claimed may be established with reference to a statutory formula or with reference to the lease, or in some cases by negotiation and agreement. In general, compensation negotiations must be completed within four months of the tenancy terminating or of part of the land being removed from the tenancy. This period may be extended, by statutory procedure, by two further periods of two months each. The basis for calculating compensation claimable by a tenant differs depending on the item involved. The following outlines the calculation criteria in each case –

- **Damage to crops by game**
Compensation for damage to crops by game, if not agreed between the tenant and the landlord, is determined on application to the Scottish Land Court.
- **Produce on the holding**
The lease may specify what compensation may be payable for these items. If not, fair market value should apply. An application to the Scottish Land Court is applicable to resolve disputes.
- **Residual benefits**
The lease may specify what compensation may be payable for these items. In the event of dispute, the compensation may be determined by application to the Scottish Land Court.
- **Works**
The lease may specify what compensation may be payable for these items. In the event of dispute, the compensation may be determined by application to the Scottish Land Court.
- **Implements of husbandry, fixtures, farm produce or farm stock**
The lease may specify what compensation may be payable for these items. Disputes may be resolved by application to the Scottish Land Court. Statute provides for the price to be paid within one month after the tenant has quitted the tenanted land or, if the price is to be ascertained by valuation, within one month after the award in the valuation has been delivered.
- **Bound ('hefted') sheep stock**
The method of valuing bound sheep stock is either specified in the lease or is governed by statute. The latter is complex and specialist advice is recommended.
- **Milk quota**
The statutory formula for calculating the "tenant's fraction" of the value of the relevant milk quota is extremely complex and specialist advice is recommended.
- **Tenant's improvements**
The compensation for a tenant's improvement is stated by statute to be such sum as fairly represents its value to an incoming tenant. The amount of the compensation may differ if a grant was obtained to assist the financing of the improvement. It is no longer competent for a tenant and a landlord to agree in advance a basis for valuing compensation for a tenant's improvement which differs from the statutory formula. Indeed all such agreements, whenever they were made, were retrospectively

rendered unenforceable by statute as from 27 November 2003. In the event of dispute, the statutory compensation may be determined by application to the Scottish Land Court.

- **High farming**

Compensation for high farming (the continuous adoption of a standard or system of farming which has been more beneficial to the land than required by the lease or normally practised on comparable holdings in the district) is stated by statute to be such compensation as represents the value to an incoming tenant of the adoption of that more beneficial standard or system. In the event of dispute, the compensation may be determined by application to the Scottish Land Court.

- **Diversification**

Other than in certain excepted circumstances, the tenant's entitlement for non-agricultural use of tenanted agricultural land (diversification) which has resulted in an increase in the value of the land during the tenancy is stated to be such compensation as fairly represents the value to an incoming tenant of the non-agricultural use of the land or the change to the land or the carrying out of the diversification activities. In the event of dispute, the compensation may be determined by application to the Scottish Land Court.

- **Disturbance**

Compensation for disturbance is stated by statute to be the amount of the loss or expense directly attributable to the quitting of the tenanted land which is unavoidably incurred by the tenant upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the tenanted land and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (other than expenses of an application to the Scottish Land Court to determine any relevant question in this context).

This compensation is set by statute as one year's rent at the rate at which the rent was payable immediately before the termination of the tenancy, or more if the tenant has given at least one month's notice to the landlord of the sale of such goods, implements, fixtures, produce or stock and has given the landlord a reasonable opportunity of valuing them. Disputes regarding compensation for disturbance can be referred to the Scottish Land Court for resolution.

- **Reorganisation**

The "additional payment" for reorganisation is set by statute as the sum equal to four times the annual rent which was payable immediately before the termination of the tenancy.

- **Compulsory Acquisition**

The compensation due the tenant is four times the annual rent of the land or, if only part of the tenanted land is acquired compulsorily, four times the annual rent proportionate to that part. In the event of dispute, the compensation may be determined by application to the Lands Tribunal for Scotland.

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For more information please contact Robert Scott-Dempster 0131 225 1677
or robert.scott-dempster@gillespiemacandrew.co.uk
Gillespie Macandrew LLP
5 Atholl Crescent, Edinburgh, EH3 8EJ
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