

## RENT REVIEWS

### Agricultural Tenancies 1991 Act Tenancy

#### FREQUENCY

In order to understand how the frequency of rent reviews is regulated it is necessary to distinguish between the initial contractual term of the lease (the duration of the tenancy stated in the lease) and the period after the contractual duration of the tenancy has expired, when the tenancy continues on a year-to-year basis (which is known as “tacit relocation”).

During the contractual term of the lease there is no statutory provision for review of rent. The only review during this period will be as provided for in the lease. This can be at such frequency and according to any formula which the parties choose.

At the contractual expiry of the lease or at any anniversary of that expiry date (provided that in either case a minimum of three years has elapsed) the rent may be reviewed in accordance with the statutory formula. Formal written notice must be given by one party to the other at least one year (but not more than two) before the selected date. Once the rent has been reviewed, at least another three years must elapse before the rent can be reviewed again.

There is nothing to prevent the parties agreeing between themselves to have the rent reviewed within the three years period, but this will preclude another review until a further three years have passed.

There are other occasions when the rent may be varied, such as where land is resumed or where the landlord has made an improvement. Specialist advice on variation of the rent should be obtained in these circumstances.

The new rent, once determined, takes effect from the date of the rent review date.

#### WHAT IS TAKEN INTO ACCOUNT

The starting point for the statutory rent review formula is that the rent must be an **open market rent** between a willing landlord and a willing tenant.

There must be disregarded –

- any effect on the rent due to the fact that the tenant is in occupation of the land, and
- any distortion in rent due to scarcity of lets.

Regard must be had to –

- the terms of the tenancy
- information about rents for other agricultural tenancies (including when fixed) and any factors affecting those rents (or any of them) except any distortion due to scarcity of lets, and
- the current economic conditions in the relevant sector of agriculture.

Account is to be taken of any increase in the rental value of the land resulting from the use of the land for a purpose that is not an agricultural purpose. This may apply where the tenant has exercised his right to diversify.

No account is to be taken of any increase in rental value resulting from improvements where

- they have been carried out wholly or partly at the expense of the tenant (irrespective of whether the tenant receives reimbursement by way of a grant for the works) without equivalent allowance or benefit having been made or given by the landlord in consideration of the works
- they have not been carried out under an obligation imposed on the tenant in terms of the lease, and
- they have been carried out by the landlord in so far as the landlord will receive a grant in respect of such works.

In addition, the rent may not be a higher amount than would have been payable if the improvements had not been carried out.

No account is to be taken of –

- any reduction in the rental value of the land as a result of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant, or
- any such reduction resulting from –
  - use of any of the land or changes to the land for a purpose which is not an agricultural purpose, or
  - the carrying out of conservation activities on the land.

## **THE DECISION MAKING PROCESS**

A formal statutory rent review is determined by the Scottish Land Court. This will be on the application of the party demanding the rent review.

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