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# SAC New Entrants to Farming Gathering 2017

## Opportunities for Growth

- Tenancy Reform – What's in it for New Entrants?



## Areas to cover

- Current forms of agricultural lease agreements.
- Background to and Changes introduced under Land Reform (Scotland) Act 2016 which may assist New Entrants.
- Other opportunities for “phased entry” to industry outside of formal tenancy structures.



# Types of Agricultural leases under Scots law

1. 1991 Act tenancy (“traditional tenancy”)
2. 2003 Act Tenancies – “Fixed Duration”
  1. LDT – Limited Duration Tenancy
  2. SLDT (Short Limited Duration Tenancy) including seasonal cropping lets
  3. Grazing let
3. 2016 Act Tenancies
  1. MLDT Modern Limited Duration Tenancy (new in 2016)
  2. Repairing Tenancy (new in 2016)



# Background to Land Reform (Scotland) Act 2016

- The Agricultural Holdings Legislation Review Group was convened as a precursor to legal reform and reported in 2015
- Amongst other issues, group concerned by the aging population and barriers to new entrants
- For timetable purposes, agricultural reform carried out under wider banner of Land Reform (Scotland) Act 2016
- Large parts of 2016 Act not yet in force and secondary legislation to be enacted with detail



## Changes introduced under Land Reform (Scotland) Act 2016 Part 10

- Changes to succession rights for 1991 Act tenants
- Changes to assignation rights for 1991 Act tenants
- Option for Assignation of 1991 Act tenancy to New Entrant
- Introduction of the Modern Limited Duration Tenancy with a break option in favour of a “New Entrant”
- Introduction of the Repairing Tenancy
- 1991 Act tenant does not require to register for right to buy.



# Assignment Rights for 1991 Act Tenants

- 1991 Act Tenant has much broader choice of assignees
- Landlord only has 3 grounds of objection:-
  - Person not of good character;
  - Insufficient resources to farm with reasonable efficiency; or
  - Insufficient training or experience – but assignee can undertake training within 6 months
- This route may offer options for New Entrants in relation to a lifetime assignment of an existing tenancy.





## Succession Rights for Tenants

- 1991 Act, LDT, MLDT or Repairing Tenancy tenant has a much broader choice of “near relative” successors.
- Grounds of objection as per 1991 Act assignation.
- Repeal of right for Landlord to serve Notice To Quit on successor.
- **NB** categories of person to whom a lease can be transferred by bequest (i.e. in a will) are only effective if the will itself post-dates **23 December 2016**.
- This route may offer options for New Entrants in relation to succession to an existing tenancy.





## Assignment of 1991 Act tenancy to New Entrant or progressing farmer

- A secure 1991 Act tenant with no obvious successor can offer the tenancy back to the Landlord.
- If the Landlord chooses not to buy the tenancy the tenant is then able to sell it for value on the open market as a secure tenancy to a New Entrant or a “progressing farmer”.
- May offer New Entrants the opportunity to secure a tenancy of this form.
- Provisions unclear at this stage



# Modern Limited Duration Tenancy

- Similar to LDT
- For 10 years or longer
- 5 year break option for New Entrants but Landlord's option to break is heavily qualified
- If Landlords are willing to enter into this arrangement, the 5 year break option gives a New Entrant tenant some control if things are not working out.



## Repairing Tenancy

- New Letting vehicle intended to bring neglected land into more active production
- Period of not less than 35 years
- The Repairing Period is the first 5 years of lease or as agreed or fixed by the Land Court
- During Repairing Period, Tenant cannot be held liable for not farming in accordance with rules of good husbandry
- Landlord cannot resume land until 5 years after the expiry of the Repairing Period.
- Of more interest to those moving up the ladder of phased entry than New Entrants.



# Phased Entry Progression

- Incentivised employment contracts
- Share Farming
- Contract farming
  - These all provide more flexibility than a standard leasing arrangement as they are governed by contract law not tenancy law.
- SLDTs/Annual Lets
- LDT (now MLDT)
  - Once experience (and capital) has been built up, a New Entrant is better placed to enter into one of the available leasing structures.



# Contract Farming Arrangements

- Joint venture between parties - contractor carries out operations of husbandry as agent for the landowner.
- Always have written agreement – essentially an agreement for provision of services governed by a commercial contract.
- Beware of unintended consequences
  - Tax implications – e.g. effect on availability of APR for Landowner in particular re farmhouse; extent of “farming activity”
  - Subsidy implications – e.g. minimum activity rules, cross compliance, GAEC



# Share Farming Agreement

- the landowner provides the farm land and buildings, fixed equipment and machinery, major maintenance of the buildings and his expertise,
- the share farmer provides labour, field and mobile machinery and his expertise,
- other costs such as seed, fertilisers and feed are shared.
- Written Agreement required
- Care needs to be taken to ensure lease is not created.



# Phased Entry?

## New Entrant's position

- Good expertise in a particular area and availability of own machinery
- Good technical ability and some business and experience
- Some capital but limited experience

## Option

- Contract Farming
- Share Farming
- Annual/seasonal lets





## Phased Entry?

### Owner's Position

- Wants some active involvement
- Wants a level of policy control but limited day to day involvement
- Does not want to farm actively

### Possible Option

- Share Farming
- Contract Farming Agreement
- Grant SLDT/MLDT



## Tenancy Reform – What's in it for New Entrants?

- There are attempts to create provisions for new entrants and those progressing through farming BUT
  - Many details yet to be made public
  - Little to suggest Landlords will be more willing to lease land under new provisions than under existing fixed duration tenancies
  - Many provisions are too far up the ladder to be of immediate use to true new entrants
  - Most immediate opportunities are likely to come from contractual rather than tenancy options



## Questions?

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