

# **AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003: Take up of new letting vehicles**

December 2004

## **OVERVIEW**

Concern is being expressed from a number of quarters at the slow take up of the new lease types available of Short Limited Duration Tenancies (SLDT) and Limited Duration Tenancies (LDT) – particularly the latter. This paper highlights some of the factors which may be having an influence on the rate of take-up.

## **ISSUES WHICH IMPACT ON LETTING**

### **1. Availability of land**

Most landowners who run their own in-hand farming units will operate to the optimum size for that type of business. Optimum size will be influenced by a number of elements:

- **Capitalisation** – returns need to complement investments made previously in plant and fixed equipment
- **Profitability** – it is important to remain competitive in the market, particularly in a climate of reducing farm subsidies and the prospect of revised world trade agreements
- **Good land retention** – where less productive land has been absorbed into FWPS and RSS schemes, retention of the balance is all the more important

The new letting vehicles of LDTs and SLDTs can only be used:

- if landowners reduce the size of their own in-hand operation; or
- if land coming back from a departing tenant is re-let.

Owing to the security associated with 1991 Act leases, the annual national turnover of tenants is usually low. However, additional factors are also affecting the supply of land to let at present:

- **CAP Reform** – because future payments are being assessed in Scotland on a historical basis, the letting and ownership markets have paused while details of how the new regulations will operate are being absorbed and their impact has become clear;
- **Single Farm Payment** - with support being decoupled from production, some tenants who may normally have considered retiring and giving up their tenancies may be content to carry out the minimum cross compliance work in order to secure an income stream in future years.
- **Termination of limited partnerships** - which now must follow a statutory route, effectively extending their term.

### **2. Changing structures**

Whilst in the past, farms were generally self-sufficient in terms of manpower, equipment and so on, today the formerly rigid boundaries of the farm unit have given way to more efficient methods of production. Large specialist producers can be spread over many farms while pool arrangements for both labour and equipment promote flexibility and effectiveness of operation.

### 3. Joint venture trading

These changing structures have promoted alternatives to letting and provide greater flexibility for both parties. Mature, well-tried, commercial arrangements, including share cropping and contract farming, are now available to landowners. These carry only normal trading risks and are less exposed to changes which may be based on considerations other than the purely commercial. They also offer tax advantages over other occupational arrangements.

### 4. Weakened confidence

Landowners had shown an unwillingness to grant 1991 Act leases which might grant security of tenure for an uncertain length of time. Improved returns from farming coupled with more favourable tax treatment also encouraged many landowners to farm land in-hand rather than reletting when land became available. However, the use of Limited Partnership tenancies in the early 1980s became an attractive option to in-hand farming and resulted in additional land being let. Case law confirmed these Limited Partnership arrangements as perfectly legal. The move to free up the rental market by providing letting vehicles free of security of tenure was supported by all stakeholders and was reflected in the White Paper published by the Scottish Executive in May 2000 for reform of Agricultural Holdings legislation. However, the subsequent introduction of retrospective provisions granting a pre-emptive right-to-buy for 1991 Act tenancies and to General Partners in Limited Partnership tenancies together with other adverse measures weakened confidence considerably and led to fears being aroused over further erosion of property rights in future.

## REINVIGORATING THE LETTING MARKET

As with most commodities, the market in land is cyclical. However, measures which help to restore confidence in the letting market are urgent and essential particularly in view of the potential increase in the availability of land to let following the introduction of the SFP in 2005.

These might include:

- **Scottish Executive** – A greater sympathetic understanding of the importance of confidence in the letting market, backed up by measures to underpin it, could help to allay uncertainty - for example, a rejection of absolute right to buy on ECHR grounds and assurances on its intention to retain, for the long term, the present list of exempt transfers.
- **The Tenant Farming Forum** – The commitment of Forum members to acknowledge and find ways to resolve difficulties and continue to work constructively, bringing forward solutions to inject confidence into the sector.
- **Political parties** – Efforts should be taken to inform MSPs about the importance of the rural business structure on the sustainability of rural businesses and thereby communities. They should be encouraged to support measures to underpin commercial confidence in the sector.
- **Professional advisers** – in the light of measures outlined above, they should re-assess their risk assessments and communicate to their clients accordingly.