

TENANT FARMING FORUM

(NFUS, RICS, SEBG, SRPBA, STFA)

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Tenant Farming Forum – A Guidance Note*

Limited Partnerships and 1991 Act Tenancies

Background

Letting by the combination of a Limited Partnership and a 1991 Act lease, where the landlord or his representative is the limited partner and the farmer the general partner, became a popular way of letting land in permitting a Lease for a fixed period. The procedure gave the market what it required at that time, otherwise large areas would not have been let.

With the availability under the 2003 Act of Short Limited Duration Tenancies (SLDT) and Limited Duration Tenancies (LDT) which provide for fixed term tenancies, existing Limited Partnership arrangements should be reviewed to establish if they remain fit for purpose or could be improved upon by the parties moving to one of the new letting vehicles or by making adjustments to the existing partnership deed. Limited Partnerships should only be used in the future where other letting vehicles are not suitable, and where appropriate in specific circumstances, professional advice having been taken.

Limited Partnerships with dissolution notices issued

There are special circumstances where a notice of dissolution has already been served by the limited partner between 16 September 2002 and 30 June 2003 inclusive, where Section 73 does not apply, and results in the general partner being able to claim a secure 1991 Act tenancy unless on an appeal to the Land Court by the limited partner this right is set aside. In cases where the dissolution date has not yet been reached, it should be possible for the parties to agree to have the dissolution notice withdrawn with a view to agreeing some other way forward in consideration of the issues raised in this paper.

The Tenant Farming Forum is committed to help promote a healthy farm tenanted sector in Scotland. Its membership comprises the National Farming Union of Scotland; the Royal Institution of Chartered Surveyors in Scotland; the Scottish Estates Business Group; the Scottish Rural Property and Business Association and the Scottish Tenant Farmers Association. It has an independent Chairman, Professor T Jeff Maxwell, OBE FRSE

Limited Partnerships beyond their primary period

Some Limited Partnerships are now continuing from year to year subject to agreed notice arrangements. These may have the following consequences:

- Uncertainty of tenure
- Hinder long term development of the holding
- Restrict investment
- Maintain a shorter tenure term than envisaged by the rest of the 2003 Act

The 2003 Act did seek to address this by providing an opportunity for general partners on receiving a dissolution notice to claim in their own name, and within 28 days, a 1991 Act tenancy but subject to Section 73 of the 2003 Act. The landlord can terminate this new tenancy by seeking an Order from the Scottish Land Court, or by implementing the notice procedure under the 2003 Act applicable to LDTs. Depending on the notice period for ending the limited partnership, as set out in the partnership deed, or if on a year to year basis, the combined notices regarding the termination of the partnership and then the lease could give the general partner a minimum of between two and three years notice of the lease, and occupation, coming to an end.

Ending a Limited Partnership

Since the Limited Partnership was created specifically to secure an end date, the Partnership will either dissolve automatically on a specific date or following service of a dissolution notice. Notwithstanding the provisions in the partnership deed, it is open to the parties to agree any variation to the original terms of the Partnership including an extension of the period of the Partnership and arrangements for termination. Agreeing arrangements in advance may be the most satisfactory solution for both parties rather than relying only on the statutory basis and creating uncertainty in the process. Again professional advice should be sought.

Consideration of the way forward

In establishing a review of a Limited Partnership arrangement by the parties, the following should be considered:

- **The reasons for the initial formation** – Some were formed because the limited partner only wished to let for a specific period and had a long-term use in mind that required vacant possession – e.g. for a son leaving full time education or for future development. Others were only created to avoid security of tenure and lack of long-term flexibility and a diminished asset value.
- **Current objectives of the parties** – The general partner may find it important to secure an extended period of tenure through to a particular event or date. Equally, the limited partner's circumstances may have changed.
- **Current impact on the farming business** – A short tenure period is detrimental to the business of the tenant and, by association, the interests of the landowner where there is a willingness to let the land.

- **Stamp Duty Land Tax** - Liability on the formation of a new lease depends on the rental value of the holding and the duration of the lease – a tax which is not payable if the Limited Partnership is extended.
- **New duration lease terms** – an SLDT can be for no more than 5 years and a LDT can be for no less than 15 years (25 years if following a 1991 Act lease to the same tenant). In a limited partnership arrangement, the general partner can register under the 2003 Act for a pre-emptive right to buy should the holding be presented for sale. This right does not attach to the new letting vehicles.
- **Political perceptions** - SLDTs or LDTs, as approved by the Scottish Parliament, are a more politically certain method of letting than continuing in Limited Partnerships which are seen from some angles as a device to circumvent legislation.

Guidelines for change

- In a self-terminating partnership arrangement, it may be that the terms are still appropriate to the limited partner and no action will be considered or necessary. There is no need to offer any further style of tenancy on termination.
- Consider agreeing to change the partnership deed to avoid uncertainties.
- If a new letting vehicle is to be used, the maximum and minimum letting periods must be considered if the new termination date is important e.g. the tenant's retirement date. If a SLDT maximum is too short and a LDT minimum is too long, then consideration should be given to agreeing to extend the duration of the limited partnership to the target date and making the partnership self-terminating on that date without notice.
- It should be appreciated that when ending the lease associated with the limited partnership, there will be a formal waygo, with the compensation provisions in the 1991 Act (Sections 33 etc.) as amended by Sections 43 and 44 of the 2003 Act being relevant, and compensation payments being crystallised. It is possible, by agreement, to delay any financial payment to the tenant by recognising and incorporating tenants improvements in the new agreement under the provisions of Section 16, whether it be a SLDT or LDT.
- While the parties may consider that a 2003 Act letting vehicle is appropriate, the incidence of Stamp Duty Land Tax, if applicable, may mean that an extension of the duration of the limited partnership is the most cost effective way in which to proceed.
- When discussing and arranging the continuation of Limited Partnerships, it would be an appropriate time to address the issues raised by Section 60 of the 2003 Act, in particular where the tenant was made responsible for the renewal of fixed equipment. Section 60 offers the opportunity for tenants to seek to nullify pre-2003 post lease agreements by following a prescribed procedure. That fixed procedure has to follow a determination of rent under Section 13 of the 1991 Act, by the Land Court, and that, on that date, the buildings or other fixed equipment are in a reasonable state of repair or that they are in a no worse state of repair than they were at the time the original post-Lease Agreement was completed. The change in the relationship is likely to have implications on the rent but this can only be adjusted to the new circumstances at the next review date and it is therefore in the interest of both parties that these issues are discussed and the uncertainties of the fixed procedure removed by agreement.

***Caveat**

This guidance note reflects information reviewed at the time of its publication. Accordingly, account must always be taken of any relevant changes in law, policy or circumstances since that time. It is for general information only, and must never be relied upon as any substitute for appropriate professional advice, which should always be taken in any situation in which financial or other interests may be at stake. No liability can be accepted by TFF or any other member of TFF for any mis-statement in it or omission from it.