

TENANT FARMING FORUM

(NFUS, RICS, SEBG, SRPBA, STFA)

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Limited Partnerships and 1991 Act Tenancies

Because of the complexities of agricultural, partnership and taxation law, and the need to include personal and family considerations in the decision making process, it is essential that professional advice is taken by those contemplating changes in limited partnership arrangements.

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 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date has not yet been reached, it should be possible for the parties to agree to have the dissolution notice withdrawn with a view to agreeing some other way forward in consideration of the issues raised in this paper.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 are unsuitable and cause:

- 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 to specifically 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.

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 (SDLT)** - Incidence 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.**

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- **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. 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.

While the parties may consider that a 2003 Act letting vehicle is appropriate, the incidence of SDLT may mean that an extension of the duration of the limited partnership is the most cost effective way in which to proceed