# GETTING NEW TALENT INTO THE INDUSTRY

## A Guide to Methods for a Phased Entry into Farming

## Produced by the Tenant Farming Forum

**Prepared by:**
**Peter Cook**
**P & L Cook and Partners**
**John Grieve**
**The Rural Development Company**

**January 2009**

**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; the Scottish Tenant Farmers Association and the Scottish Association for Young Farmers Clubs. It has an independent Chairman, Professor T Jeff Maxwell, OBE FRSE**

# 1. Introduction

The aim of this guide is to give new entrants some ideas on how they might get established, and to give landowners and farmers some ideas on how they can bring fresh talent into their businesses, and operate land in a range of ways which best suits their objectives.

The target audience for this guide is broad: potential new entrants, farmer's sons and daughters who want to build their own businesses, landowners of all types (estates, active farmers, retiring farmers, part-time farmers, new investors and amenity buyers). We feel that both sides (those who want to get into farming and those who occupy the land) need a better understanding of the range of options for how they could work together for everyone's benefit.

The Scottish farming industry has a labour crisis; it cannot attract and keep good people. This guide highlights some mechanisms which could attract those missing people.

This guide has been developed from research commissioned by the Tenant Farming Forum (TFF), on "Options for Phased Entry to Farming". This research grew out of a previous TFF study which identified a wide range of mechanisms by which land was being operated and businesses established and expanded. These were found to be both poorly documented and poorly understood by the wider industry.

By definition, getting into any industry from scratch, while competing with lots of well established businesses, is difficult. Individuals will find their own way, but hopefully this guide provides some ideas and options. In an ideal world, the progression from incentivised employment contracts, to share and contract farming, and on into tenancies (for example a 5 year SLDT and then a longer term LDT) or equity arrangements and business partnerships, would help create the "ladder" which no longer exists in the tenancy and land ownership systems. The ultimate aim of promoting these "phased entry" mechanisms is to help individuals build up the expertise, capital and networks which increase the chances of securing a tenancy.

The following table might help you decide the type of arrangement you need to study in more detail;

| | Situation | Best Options |
|---|---|---|
| **Owner** | | |
| | Don’t want to farm at all, want minimal day to day involvement and legal clarity | SLDT or LDT |
| | Want to be actively involved in a growing farming business, but lack expertise or time or fitness | Share farming |
| | Want a level of control at farming policy level and a relatively fixed income, but don’t want day to day involvement | Contract Farming Agreement |
| | Face short term decisions and uncertainty over policy direction, but want to maximise returns in meantime | Annual lets |
| | Farming actively, but need a motivated workforce to develop the business | Incentivised employment contracts |
| | Want to expand or specialise, but need to bring in motivated management expertise, new skills and capital | Equity arrangements and Partnerships, including Limited Liability Partnerships |
| | | |
| **Prospective Farmer** | | |
| | Little capital, experience or track record | Employment and Incentivised employment contracts |
| | Some capital, but little experience and track record | Annual lets |
| | Good expertise in one area of farming, plus track record and machinery (e.g. through contracting) or access to buildings | Contract Farming Agreements<br>Or<br>Contract Growing |
| | Good technical and some business track record and experience, plus accumulated some capital | Share farming |
| | Well established track record and significant capital | Formal tenancies<br>or<br>Equity arrangements/ Partnerships |

Parties interested in the options described in this guide should always seek legal and technical advice before setting up any arrangement.

Sources of advice include solicitors, RICS qualified land agents, the NFUS and STFA legal services and suitably experienced advisers and consultants.

# 2. Options for a Phased Entry into Farming

## 2.1 Incentivised Employment Contracts

### Description

This is simply an employment contract which pays bonuses or provides other benefits, in return for achieving performance above pre-agreed levels. A wide range of these types of contract have been used in Scotland and elsewhere. We could classify them as follows.

- Payments for physical or financial performance above a pre-agreed level e.g. a payment to the shepherd for each lamb sold above a 160% lambing percentage
- Physical benefits or rights for a good employee e.g. right given to a shepherd to keep a number of his own ewes with the farmers flock
- Contracts designed to give an employee flexibility to develop their own interests, independent of the employers farm e.g. flexi-time, annualised hours

### Examples

- Shepherd paid a bonus on basis of lambing percentage weaned e.g. £x for every lamb over 160% lambing percentage
- Pigman paid bonus on basis of weaners per sow per year
- Cattleman paid on basis of number of calves weaned.
- Dairyman paid bonus on basis of somatic cell count target. In one example dairyman paid a percentage of the premium the business received on every litre based on cell count and bactoscan, which increased his salary by 8%.
- Dairyman paid on basis of a range of performance indicators; milk sold, calving percentage, quality premiums.
- Dairyman paid x pence per litre sold (his only source of payment). Employee also responsible for organising and paying relief milking.
- Two salaried tractormen on arable farm. Employer owns 2,000 acres and operates another 600 acres on a Contract Farming Agreement. The tractormen get 5% of the net margin of the contract farmed land as a performance incentive.
- Employee allowed to use the farm machinery to grow some crop on his own behalf on seasonally rented land.
- Employee allowed to finish a small number of cattle alongside the owners stock. Also examples where an employee has kept a small pedigree herd on the unit, with the agreement of the farmer.
- Hill shepherd paid incentive on basis of grouse numbers, so in his interests to ensure good habitats.
- Farm manager paid a salary top-up based on farm profit achieved, based on management rather than tax accounts. In one case the manager was paid £32,000 basic with top-ups of 10% of the first £10,000 of farm profit, 12% of the next £12,000, and 15% of the next £20,000 and so on.

- Employee on an arable unit paid on an annualised hours basis. This means that his hours are used up in the long working days of the spring and autumn peaks, leaving time free in the winter for building his own business interests or for another job.

**Pluses**

- Can allow a modest build up of capital and trading/breeding stock
- Incentive provides a benefit for the farmer and helps retain the worker on the unit
- Helps develop business skills and gives the employee an incentive to learn more about technical improvement
- Access to employers land provides first step on the ladder
- Employee and family have a house and a base from which to expand or move to a better opportunity
- Encourages the employee to be entrepreneurial
- Allows the farmer a chance to get to know a potential share farming partner e.g. a farmer approaching retiring age, or wishing to put effort into an off farm business.

**Limitations**

- Experience suggests the incentive only works well if the performance payment is for something the employee can directly control. Can be big disincentive if bonus reduced or wiped out by factors outwith his or her control.
- Where does it lead? For example growth is limited by the scale of the incentive payment or the number of stock the employer will allow. There is no continual progression, unless the farmer will move on to a more comprehensive share agreement
- Potential conflict of interest (actual or perceived) – put more effort into own stock than employers?
- Subsidy and regulatory complications? For example the employees herd might need its own health and movement records. In general this is resolved by the owner taking responsibility for the whole herd or flock.

## 2.2 Share Farming

### Description

The basic principle is that two (or more) parties each provide different inputs and then share the profit on the basis of their respective contribution and the risk each carries. Usually the relationship is between an owner who provides land and infrastructure (buildings, fencing, drainage, roads, drier, perhaps some machinery, variable levels of livestock) and covers related fixed costs (electricity, insurance, etc) while the other party provides labour, variable levels of machinery, livestock, input costs and management. Note the contrast with Contract Farming (see 2.4) where the "contractor" may effectively make all the input decisions, but does not pay for the inputs.

An agreement is drawn up which states everyone's responsibilities and which sets out the profit split – say 50:50 or 60:40 or 70:30 depending on each party's material contribution and management input. The profit shares vary as with all partnership agreements. The parties, however, each run their own separate businesses with their own VAT registration, accounting and tax assessments.

There are some examples, especially in England, of large businesses which have been established in this way. They were fairly common until the introduction of headage and area payments, which made clarity over who was actually the farmer and subsidy recipient more important. This led to a switch to Contract Farming Agreements, Farm Business Tenancies or in-hand farming.

### Examples

Share Milking
This type of share farming is widespread in New Zealand (37% of NZ dairies used these agreements in 2002), where it has existed since the late 19$^{th}$ century. In NZ its roots are thought to be an amalgamation of a Scottish concept of share farming which was melded with American share cropping agreements in the 1880's. Why did it evolve? Shortage and cost of labour – a similar situation to Scotland at present. Share milking herds are larger than average and research shows they are the most efficient with higher than average returns. The sector has a high profile e.g. there is a "Sharemilker of the Year" competition.

This mechanism has allowed new entrants to build up capital, ownership of stock and even eventually farm ownership, though this is less common today due to the increase in farm size and value. The lack of similar share milking arrangements in the UK may reflect the higher capital requirement, the greater supply of labour (at least in the past), the multi-enterprise nature of many farms, and employment legislation which might class a contract milker as simply an employee.

Sharemilking is a contractual agreement where one party (the farm owner) provides the infrastructure required for dairying, and the other (the share milker) provides the physical labour, management skills and variable levels of machinery and livestock.

As this is contract law, there could be an infinite range of agreements, but in New Zealand there are two basic types which dominate.

Under the "50% agreement" the share milker owns the herd, plant and mobile equipment, and is responsible for milk harvesting and all related expenses, general farm work and maintenance. For this the sharemilker gets 50% of the milk income and proceeds of stock sales. The farm owner supplies the fixed equipment. The sharemilker is usually responsible for management decisions. Around 65% of New Zealand agreements (in 2002) were of the 50% type. Typically these agreements are for 3 years. There is no standard contract form. The one developed by Federated Farmers of NZ is the most comprehensive and widely used.

Under the "Variable Order agreement" the sharemilker does not usually own the livestock and has minimal plant and equipment. Sharemilkers expenses are only those related to milking. The percentage of income received by each party is negotiated and the farm owner is more involved in farm management decisions. Agreements are signed annually.

Note that the Variable Order sharemilking agreement is covered by the Sharemilking Agreement Act 1937 (partly to ensure it is regarded as self employment and not employment). The 50% agreement is simply covered by contract law.

The aim of most share milkers has been to move from the "Variable Order" type through one or two steps to the "50% agreement" and then ideally to farm ownership, or at least business ownership.

<u>Arable Share Farming</u>
The following describes one agreement.

| Landowner provides: | £ | Incoming share farmer provides: | £ |
|---|---|---|---|
| Land and buildings based on rental value | 24,000 | Labour and machinery, based on contract rates | 36,000 |
| A house at rental value | 4,000 | Management input | 3,000 |
| Grain stores | 2,000 | Office admin | 800 |
| Insurance of crops | 1,000 | | |
| Management input | 5,000 | | |
| A 20% share of the machinery required, costed as an interest charge on its value | 800 | | |
| Total Contribution | 36,800 | Total Contribution | 39,800 |
| Share of total contribution (£76,600) by both parties | 48% | Share of total contribution (£76,600) by both parties | 52% |

In this example the two parties have agreed to split the input costs, crop sales and subsidy income using the above percentages.

The landowner owns part of the machinery used in the agreement, and the share partner intends to buy this over time.

**Pluses**

- Shares risk
- A way of bringing in new expertise, youth, ambition – it is a route for a new entrant who has built up specific enterprise expertise as an employee elsewhere
- A way for the occupier to remain involved, but reduce physical workload
- Allows some withdrawal of working capital by the occupier
- Can be done just for one enterprise within a larger whole, rather than for entire farm business
- Flexible (contract law) and can be progressive, with share farmer taking on more of the risk and getting more of the return over time. Share milker can move from an incentivised milker position, to an increasing ownership of cows and equipment, and then to farm ownership or equity partnerships.
- Landowner has a better chance of getting the farmhouse included as a farm asset for Inheritance Tax purposes in this type of agreement, than in a Contract Farming Agreement.
- People turnover. Allows young people to get a start and allows older people or those wanting to do something else to gradually move out.
- Often operated by young couples – brings new people into an area.
- More suitable since decoupling. The SFP is separate from the enterprise which is being share farmed.
- A way for a farmer to introduce a new enterprise in which he lacks expertise
- The owner has the tax benefits of being a farmer
- Unlike straight contract arrangements, this mechanism has more potential for growth and improvement, because there is a bigger incentive for both parties to increase profits. Share milking has been central to the innovation and technical improvement in NZ dairying.

**Limitations**

- Needs to be set up correctly to ensure the share agreement is confined to the specific farming enterprise, and avoids the whole business and the land and property being drawn into it, and avoiding any chance that it might be construed as a lease.
- Could be legally and technically complicated, but needs a good clear contract to avoid disputes, for example clarity on who maintains buildings.
- Unlikely to be any house provision, given rental value in the open market
- The share farmer does not have an asset against which to raise capital
- People Risk. Is the share farmer any good? Is the farm owner a crook?
- Would it suit mixed farming enterprises? Best suited to single enterprise farming, which is unusual in Scotland?
- Culture shift. Retiring farmers need to be happy about bringing in an outsider to run the business; needs a business rather than emotional control focus.
- Need a lot of farms doing this to create the ladder?
- Subsidies complicate the picture. Who gets them? How do they transfer over time? Must be clarified in the agreement.

- Is there enough profit to share?
- Is there sufficient cash flow to sustain the share farmer (especially outwith the dairy sector)?
- For a landowner a Contract Farming Agreement would be simpler, but in that mechanism there is less opportunity for growth and improvement.

## 2.3 Equity Arrangements and Partnerships

### Description

This is relatively simple, yet very rare. Several individuals contribute capital to the ownership of a farm or a farm business. Each stake is represented as a number of shares if this is a company, or partner's capital if this is a partnership. The ownership structure often does not match the management responsibility. For example one of the partners may manage the business, while the others simply have an ownership share. The owners receive a share of the profit in relation to their stake, while the working owner also receives a wage. In many respects this is not dissimilar to many family farms where one sibling actively farms, the others are equity partners but less active in management of the business.

While standard partnerships open individuals to unlimited liability, since 2001 there has been the option throughout the UK of using a Limited Liability Partnership (LLP). These were introduced to meet the needs of the professions (solicitors, accountants, etc), but are now being used in agriculture, with several successful examples, especially in English arable areas. Under the LLP the members have limited liability (reduced risk to personal wealth from creditors claims), but still have the flexibility of partnership agreements.

In the UK most partnership examples involve established farmers combining their farming businesses, but not the ownership of their land. Likewise expansion by these corporate or partnership businesses has been through contract or tenancy arrangements. In New Zealand and Australia there are more examples of equity arrangements being formed to buy farms and, as land prices have risen worldwide, this has become the way for someone like a sharemilker to get into land ownership.

Note the distinction between these arrangements and share farming. In the latter each party maintains a separate business and bank account. In the former, the parties form one business with one bank account, etc.

### Examples

There are a number of good examples at www.sharetofarm.com and www.profitwithoutsubsidy.co.uk

Arable examples:
There are several good arable farming examples, especially in England:
Two medium sized arable businesses faced with difficult investment decisions, which have combined their farming operations into one company, allowing investment in larger machinery, reducing production costs per hectare. Having got their costs down through economies of scale, they then managed to compete for contract farming agreements and tenancies locally, greatly expanding their farming operations.

Several farmers in the Borders decided not to compete with each other over a vacant tenancy in the area, but grouped together and now operate the farm as an arable farming group.

Livestock examples:
Two dairy farmers in Cheshire. One was too small to make a living, the other required major investment in buildings. Jointly they formed a farming company pooling resources and investing together in a new set of buildings at one site whilst the other site was sold for development. The partners are now looking for a third partner to expand the business.

Young farmer in an upland area, scale and scope of the business limited by high wintering costs and lack of buildings for expansion, now sends his cows to a lowground farmer for the winter. This has freed up time and silage land allowing an expansion of the herd. The owner of the wintering unit receives extra income which helps justify his staff and machinery investment. Now the two farmers are cooperating on bulk buying inputs, and may move toward a partnership or company structure.

Employee of a large Scottish mixed farming business, progressed from stockman to grieve and to effectively management of the business as the owner grew older. Now is the majority partner, along with non-farming family members, in the farming business which tenants the unit. This example shows what is possible in terms of progression from employee to business partner, and shows what is possible for the owner in terms of bringing on someone to eventually run the farming business, while still protecting their ownership of the property assets.

**Pluses**

- The logical progression from incentivised employment contracts and share farming
- Shares risk
- A way to get a foothold in land or business ownership
- Shareholding provides a means for the ambitious young person to progressively build up their total shareholding, and, if the business is a landowner, to gain from capital appreciation of land (which most other mechanisms don't)
- Allows potential combination of retiring farmer, property investor and new entrant to work together and all achieve benefits
- Can be a good model for growth; Could combine an ambitious farmer looking for expansion, the enthusiasm and skills of a young new entrant looking for a start in ownership, and the capital of an investor looking for long term capital appreciation and old buildings for development
- A mechanism for the retiring farmer to release capital and still maintain an interest in farming
- Offers considerable flexibility to match different solutions to a range of different circumstances, needs, opportunities and resources
- Potentially brings a range of expertise across different disciplines
- A means to achieve greater scale and associated benefits e.g. lower production costs
- Risk can be reduced by using an LLP

**Limitations**

- Often more attractive for a farmer to combine with another like-minded farmer, not a new entrant
- Corporate structure not well understood in farming
- No limited liability if a standard partnership model is used – individual could therefore be liable for all the debts of a partner. Need to look at LLP option.
- Legal and accounting costs
- People risk; are the roles of all the shareholders or partners clear and compatible? Are all the necessary skills and competencies present? Are the people compatible characters?
- Needs a lot of trust, transparent operation and good clearly written and robust agreements
- The balance of control/ independence
- Transfer of shareholdings to others (but can be protected against)
- New entrant still needs a lot of capital to get a decent share. However, mechanisms like paying bonuses and part of salary as shares, rather than cash, can help to progressively build this up.
- An owner with a small share in the farming partnership may not be viewed as an active farmer by the tax authorities.

## 2.4 Contract Farming Agreements

### Description

These are well established throughout the UK. They operate in both livestock and crop situations, but are much more widespread in the latter. They have been attractive because they are covered by contract law (and hence avoid tenancy legislation) and because they allow the landowner to be classed as a farmer (with the tax and subsidy ownership benefits that brings) without actually having to do the physical farming.

In a CFA, the farm occupier (landowner or tenant) provides the land, buildings and fixed equipment and, crucially, continues to pay all the costs and receives all the income. The "contractor" provides all the labour and machinery and effectively does all the farming. The two parties meet regularly to agree the farming policy. A separate bank account is set up by the occupier (usually called the No.2 account) and from this all the costs for the farming covered by the agreement is paid, and into this all the sale proceeds and relevant subsidies are paid.

The occupier receives a pre-agreed "retention" or "first share". The contractor receives a payment (contractor's basic fee) for all the work done on the farm, at pre-agreed contract rates. The profit (or divisible surplus) which is left after these payments are made, and all the costs and incomes are accounted for, is then split between the occupier and contractor, typically 20:80. The contractor gets the big share of the divisible surplus to act as an incentive to improve profits.

The overall aim is that the occupier gets a reasonable and fixed return, while the contractor has the incentive to gain from a good profit (but a lower return if the profit is poor). The occupier carries the greater risk, because even if there is a large loss, the contractor's basic fee is still paid.

There is complete flexibility over what land and buildings and fixed equipment are included in the agreement. Some agreements include SFP and other subsidies, others do not.

A typical 200-acre arable contract farming agreement (no SFP included) could be structured as follows.

| | No 2 Account £ | Owners income £ | Contractors income £ |
|---|---|---|---|
| Output – grain and straw sales | 70,000 | | |
| Variable Costs (seed, fertiliser, sprays, sundries) | 31,400 | | |
| Farm Gross Margin | 38,600 | | |
| Fixed costs paid under the agreement (buildings insurance, building upkeep, electricity, water rates, lime, ditch maintenance, admin costs for the agreement, bank interest on the No 2 account) | 4,000 | | |
| Contractors Basic Fee | 16,000 | | 16,000 |
| Farmers Retention | 12,000 | 12,000 | |
| Divisible Surplus | 6,600 | | |
| Contractor share of surplus @ 80% | 5,280 | | 5,280 |
| Farmers share of surplus @ 20% | 1,320 | 1,320 | |
| Totals | 0 | 13,320 | 21,280 |
| | | Plus SFP | |

Livestock CFAs are more complicated, especially where they involve breeding stock. A decision must be made as to who provides the breeding stock. If provided by the contractor they are then generally leased to the occupier as he/she must be seen to be the farmer for taxation purposes.

**Examples**

Two brothers decide to retire from farming, but want to retain ownership and control of their land as a major development is taking place next to the farm, which may expand onto their land in the future. They know and trust a keen young neighbouring farmer and so have set up an arable farming CFA with him. There is grass in the rotation, but this is not included in the agreement, and instead is let for grazing annually. The grass moves around the farm so each years agreement involves a slightly different area of land.

A farmer with health problems wants to scale back his farming and concentrate on a small sheep flock. His cows and arable land are entered into a CFA with a neighbour who is farming on a large scale. The contractor buys the cows (and leases them back), releasing capital for the farmer.

An estate decides to move out of in-hand farming. It already has a number of CFAs on its arable land. The stockman is keen to farm in his own right and has negotiated a CFA which includes the suckler herd, the cattle buildings and their permanent grazing land. The estate are keen to keep cattle on the farm under this type of agreement, as it gives them some control over the appearance of the estate, and returns fertility to the arable land. The estate retains ownership of the herd at the outset, but the stockman intends to gradually buy over the cows. The stockman uses savings and a bank facility to buy the

farm's feeding machinery. His house on the estate is outwith the agreement and as a result he has negotiated to stay there and pay a modest rent.

Upland estate moving out of in-hand farming. Shepherd moves from being an employee to being a contractor. Shepherd buys the flock and leases it back to the landowner. This gives the incentive to improve the flock quality and gives the shepherd an asset to sell at the end of the agreement. The shepherd receives a basic fee for work done with the flock and a high proportion of any surplus left after payment of a retention to the estate. The shepherd is also free to develop any other aspect of his own business.

**Pluses**

- Allows the occupier of the farm to receive a fixed return and still be classed as a farmer with the inherent tax and subsidy benefits (for example the occupier clearly gets the SFP entitlements)
- Allows the contractor to prove themselves to the owner, and could lead to a longer term agreement or tenancy
- It is not a partnership and does not involve the associated risks or burdens
- Allows the occupier to contract farm one part of the business e.g. crops, while he concentrates on other parts e.g. livestock, diversification.
- A fairly low cost route to expansion for a well equipped farmer, contractor or new entrant
- Can be used as a way for a new entrant to build up ownership of livestock, but must be careful to avoid creation of a partnership.
- Covered by contract law so very flexible. Flexibility means this can be made to suit many different situations, can exclude parts of the farm or buildings, etc.

**Limitations**

- No obvious progression
- Generally very short term, with notice requirements built in to the agreement
- Difficult to build up capital
- The contractor needs to be able to manage the whole business covered by the agreement immediately
- Often no house included or available
- Well established and well equipped farmers and contractors can offer rates at marginal cost and are therefore very strong competiton for new entrants
- Record keeping must be good and independent, especially where stock are involved and end of year valuations are required. Payouts are partly based on annual performance, not on pre-agreed rates.
- Getting less attractive for the owner as the farmhouse is more likely to be scrutinised for Inheritance Tax reliefs.
- A contractor operating a single agreement with one owner could be construed as an employee

## 2.5. Contract Growing

### Description

This term covers a wide range of crop and livestock sub-contract systems. The farmer provides labour, skills and variable levels of facilities (buildings and machinery). A large grower or a processor provides the livestock, possibly feed and other stock inputs, plants/seeds/crop inputs, and usually a blueprint or management input.

### Examples

The most common Scottish example is contract pig rearing. Typically in these contracts the contract grower provides labour, buildings, feeders and straw. The company provides the pigs, the feed, any vet and med, a production blueprint and selection of the finished pigs. The grower gets a fixed payment per pig per day. Some contracts include performance bonuses e.g. for low losses, or payment on the kilograms produced.

Other areas where contract growing are popular include calf rearing, dairy beef, dairy heifer rearing, wintering breeding sheep or cows, poultry (e.g. organic chickens), mushrooms, and soft fruit.

### Pluses

- Very little capital required – often just access to a shed
- A way of learning about an enterprise
- Low risk for the entrant
- Need little expertise
- Scope for incentive payments reflecting good performance
- Can be an entry into providing more lucrative services for a large business e.g. rearing weaners or breeding gilts

### Limitations

- Low return. Typically pig rearing contracts may only be attractive if you put a high value on the dung and have low cost straw. Unlikely to suit a new entrant.
- Highly dependent on the company. If they decline, your business stops.
- Typically companies are looking for people who can handle large numbers, hence big sheds, and lots of straw. Not likely for a new entrant.
- Limited prospect of progression into full scale farming as unlikely to provide a step toward access to land

## 2.6 Annual Lets

### Description

A long established way for businesses to secure extra resource as and when required and for retiring farmers to generate an income whilst remaining on the farm. A traditional way for young people and new entrants to build up a small livestock or cropping enterprise, or to expand from a small base. Also used by estates on substantial areas to generate income from upland grassland after a move out of active farming.

Well established grass roups are held by most auction companies for grass available for grazing or cutting between May and November. There are also many private deals with neighbours, and arrangements through land agents and consultants. Rates set in £ per acre.

There is a separate market for winter grazing (usually for lambs and ewes), usually set in pence per head per week, on lowland beef and dairy farms once cattle have been housed.

On the cropping side lets are also normally for less than one year. Carrots might be the exception to the less than one year rule. Widely used for potato, pea and bean lets as specialised growers seek clean land. Also increasingly available for combinable crops.

Typically there is no written agreement, though standard formats are available and advisable.

There is a wide range of other informal approaches including:

- land available rent free for cropping while owner collects SFP
- land available rent free or at token rent if dung is returned
- discounted rent as owner keeps straw

Despite land being let annually and for part of the year, some land has been rented in this way by the same business for many years.

### Examples

Very widespread across Scotland. There are examples of large businesses seasonally renting an area many times in excess of their home unit, though they have been renting the same land, seasonally, for many years. These are often cattle and sheep grazers. Most established businesses, however, are seasonally renting a relatively small area of grass or cropping land to augment their permanently occupied land. There are examples of substantial sheep and cattle businesses which have been built from scratch on seasonal lets, eventually securing a tenancy to take the business to the next step in its development. Sometimes this has been a farmers' son, building up their own business and capital, before eventually taking over the family farm. On the cropping side there are examples of potato and vegetable businesses which have been entirely based on seasonally renting land from other farmers.

**Pluses**

- Simplest and fastest way to gain access to land
- High degree of flexibility for both parties
- Much simpler legal agreements (compared to CFAs or share farming agreements)
- Can get access to land for 12 months of the year
- Rates (especially for grass) are not always high, as a significant area is available and demand will vary with profitability and needs of the livestock sector
- Some grass has been let on an annual basis to the same person for decades, so it is not always short term
- No complications of buildings, maintenance, etc
- Flexibility to change policy annually

**Limitations**

- Quality very variable (low incentive for either party to apply lime, P, K)
- Can be fragmented geographically with associated costs and management difficulties
- Usually no subsidy entitlements
- Expensive – represents a marginal cost to established farmers who are well placed to compete
- No buildings, house
- No continuity – very short term, could secure it one year and lose it the next
- No chance to improve and invest
- Needs a next step if it is to be a route into farming

## 2.7 Formal Tenancies

### Description

The ultimate aim of the "phased entry" mechanisms described earlier, is to improve the chances of securing a formal tenancy or other form of secure tenure through the accumulation of contacts, expertise, track record and experience.

Four types of formal tenancy operate in Scotland:

- Limited Partnerships;
- 1991 Act tenancies (so called "secure" tenancies);
- Short Limited Duration Tenancies (SLDTs); and
- Limited Duration Tenancies (LDTs).

Limited Partnerships were a mechanism to avoid creating security of tenure and as a result of the Agricultural Holdings Act 2003, the potential for new tenancies lies within the new SLDT and LDT tenancy types.

The SLDT at present has a maximum term of 5 years and the LDT a minimum of 15 years. The continuation of an SLDT beyond 5 years with the same tenant, automatically creates a LDT. A good description of these tenancy types can be found at; http://www.tenantfarmingforum.org.uk/resources/000/240/962/TenantFarmingForumGuidetotheAgriculturalHoldings_Scotland_Act2003.pdf

### Pluses

- There is greater security of tenure in these formal tenancies, due to their clear and legally binding term lengths, than in any of the other options listed in this guide.
- The new tenancy types (SLDT and LDT) allow more flexibility in operating a rural business, due to the new provisions to allow diversification.
- Tenants and landlords have the benefit of a formal clearly defined method and basis for reviewing rents and for settling disputes, as set out in the legislation. In comparison the setting of rates and settling of disputes in any other mechanism (CFAs, share farming) depends on the quality of the specific agreement alone.
- Business planning and risk management are simplified by the low variability of rents over the term of the lease. In non tenancy arrangements, rates of remuneration between the parties will follow the market and are likely to be much more volatile.
- A short SLDT lease gives the tenant a chance to prove themselves to the landowner, financiers, suppliers and customers.
- SLDTs are being widely adopted by traditional estates, mainly replacing Limited Partnerships.
- Much more likely to include a house and buildings than other agreements.

- Formal tenancy agreements have clear provisions for compensating outgoing tenants for their investment in the unit, which may not be the case in non tenancy mechanisms.

**Limitations**

- Little flexibility in terms (max 5 years or min 15 years), unlike CFAs, share farming, etc which can have any term the parties agree.
- Lower flexibility in relation to fixed equipment, incentives, landowner involvement, setting remunerations, and settling disputes than other mechanisms for operating land.
- Less attractive from a tax point of view for the landowner.
- No new 1991 Act tenancies ("secure" tenancies) are being offered.
- The 5 year SLDT limit. The same tenant cannot have two contiguous SLDTs, so cannot have a succession of 5 year leases without creating complicated and costly mechanisms to get round the legislation. This may increase uncertainty for the tenant.

## Acknowledgements

Many thanks to

- Peter Cook of P & L Cook and Partners, Roquharold, Kemnay, Inverurie, Aberdeenshire, AB51 5NY.

  Email cooknewton@btopenworld.com or telephone 01467 623222

- John Grieve, The Rural Development Company, 4 Manse Lane, Tannadice, Forfar, DD8 3TA

  Email john@rural-development.co.uk or telephone 01307 850470

for the research and preparation of the material that made this Guide possible.

## Tenant Farming Forum Contact Details

C/o Kate Scott
NFU Scotland
Rural Centre – West Mains
Ingliston
Newbridge
Midlothian
EH28 8LT

Tel 0131 472 4124

info@tenantfarmingforum.org.uk