SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

# A GUIDE TO – Joint Ventures with New Entrants


Produced by the Scottish Land Commission, in conjunction with partner organisations:

SAC CONSULTING

NFU Scotland

The James Hutton Institute

# INTRODUCTION

A steady flow of new entrants is crucial to the ongoing vitality, resilience and competitiveness of the agricultural sector and rural regions in Scotland. New entrants and fresh business models bring innovations which are of importance for the entire agricultural community and are likely to increase the productivity and sustainability of the sector.

This guidance has been produced by the Scottish Land Commission, in conjunction with partner organisations and informed by new research that explores options that could increase the availability of land to new entrants in Scotland.


# WHO IS THIS GUIDANCE FOR?

This document provides detailed information for those who currently own, tenant, and manage land in Scotland and who are considering the future of their business (e.g. farm or estate), in particular those who:

- Are seeking to move towards retirement or scale-back their active farming operations.
- Face barriers to succession planning or retirement due to financial or familial uncertainties.
- Wish to retain their land asset but ensure that the land is used productively.
- Wish to pass on their experience and support a new generation of farmers/land managers.
- Are looking for new business opportunities or to engage someone with particular skills or knowledge.

This document provides summarised information for those who may wish to consider opportunities for involving new entrants in their business through Share farming, Contracting, Partnerships, Tenancies and Short-Term Leasing/licensing.

Those reading this guidance document are strongly advised to obtain independent legal and financial advice relevant to their particular circumstances before acting upon any of the information presented.

# IDENTIFYING OPPORTUNITIES

## Alternative models of working with new entrants to agriculture

For existing farmers the following models for new entrant land availability might address a range of personal, financial and social motivations. They may be seen as opportunities for business development or provide a pathway allowing a gradual process towards retirement or succession.

Those who run a farming business are invited to answer the following questions before considering which opportunity might be best suited to their needs:

- How would you describe yourself? (e.g. owner-occupier farmer/estate owner/tenant/other).
- Do you rent out land? (e.g. whole farm tenancies/seasonal lets).
- What are your main farming activities and assets? (e.g. assets such as machinery)
- What other assets/businesses do you have on the land you manage? (e.g. assets like residential and commercial buildings, or other enterprises such as tourism enterprises).
- Do you have farm employees?
- Do you have an identified successor for your farm/land business?
- Do you have any other sources of personal income?
- What do you wish for your farm/land on your retirement?

# SHARE FARMING

Share farming represents a form of cooperation whereby parties join resources to operate the farm together, but operate as independent businesses, therefore each accepting full commercial risk as well as production gains. It is the independence of the two businesses that distinguishes this from a partnership structure: without a proper agreement, the activities of the two parties may amount to a partnership. Typically the existing farmer provides land (retaining tenure as landowner or tenant) and other fixed assets and the new entrant provides labour and other variable inputs. Each party gets a predetermined share of farming outputs, and a 'farm plan' forms the basis of agreement between parties. Legally, share farming is very similar to contract farming.

Share farming agreements govern the asset contribution and profit split of share farming arrangements. Depending on which assets from each party within the agreement are used within the share farming operation, the share of the income and expenses are divided up to give a return on the assets or work put into the enterprise. The share farming arrangement will define the share of income and expenses derived from the enterprise attributable to each party.

Each party in the share farming arrangement will account for their own share of the income and expenses within their own annual tax return. There should be no 'combined' share farming profit and loss account, as it is the individuals within the share farming agreement that account for their part individually.

© Crown / Matt Cartney

## Benefits and opportunities for existing businesses:

Share farming offers an opportunity to step back from the day-to-day, physical aspects of farming, and provides an option for existing farmers to reduce their level of involvement whilst maintaining interest and status, including tax benefits due to retaining control of the land asset. Parties are not tied to the requirements of a tenancy or partnership agreement.

Share farming may also be considered an opportunity for farmers who wish to expand their farm business, but have financial limitations (e.g. with regard to affording land rent) or do not wish to enter tenancy agreements themselves. There are positive examples within the dairy and sheep sectors in Scotland, with learning transferred from an established share farming system in New Zealand.

Share farming provides an opportunity for farmers to transfer skills and knowledge to new entrant farmers, ensuring the ongoing legacy of their farming career and enhancing the experience of new entrants to agriculture.

## Issues for existing businesses:

This option is considered less appealing to existing farmers where farm profitability is low. Share farming agreements can vary considerably and 'share farming' agreements need to be carefully defined legally to suit individual circumstances.

## Impact on increasing land available for new entrants to agriculture:

Share farming provides a mechanism for new entrants to develop experience and learn from an existing farmer, whilst also gaining access to the land resource. It can also provide a longer-term option than other joint venture models, as both parties have a joined interest in the viability and success of the farming enterprise.

Share farming may also be a route open to tenant farmers to work with new entrants as it is very unlikely to be considered sub-letting, however, there may be other conditions attached to the tenancy that could limit the opportunities.

### Examples of share farming arrangements:

Share Farming – A Different Approach for Owner and Operator
www.fas.scot/news/ne-case-study-share-farming/

© Crown / Bob Gray

# CONTRACT FARMING

Contracting involves the outsourcing of operational activities on a piece of land (by "the farmer"), whereby an agreement is put in place for activities to be undertaken by another party ("the contractor"). The extent of the operational activities contracted can of course vary considerably. Both Farmer and Contractor operate legally separate businesses.

Note the expression "Contract Farming" is not the same as hiring a contractor at a fixed fee to do a specific job (e.g. spraying). In most 'contract farming agreements, both parties also stand to make some extra income if things go well. Typically a separate account of the income and expenses of the enterprise is kept and an annual set of accounts produced each year for each business.

Generally the contractor would provide labour and machinery and is remunerated with a contract fee, and a share of profits (or divisible surplus) associated with farming on that land. The farmer receives a basic fee and a share of the profit each year, normally shown as income within their current farming business accounts. The profit split of the enterprise is set out in the contract farming agreement.

## Benefits and opportunities for existing businesses:

Contract farming offers opportunities for all types of agricultural enterprises, but has traditionally been suited to the arable sector. Whilst there is perhaps less experience of contract farming with regard to livestock in Scotland this is changing and examples exist of successful business arrangements using livestock hire agreements.

Contract farming provides a suitable opportunity for a range of landowners, from those who wish to outsource the practical farming work on their land in its entirety, to those who wish to down-scale their active involvement by getting a contractor to do only certain types of work. From a management perspective, this form of venture requires the landowner to retain full involvement in policy and decision-making as far as his aspect of the business is concerned.

For tax purposes, this form of agreement allows the landowner to retain their status as the 'working farmer'. The proportion of profit gained from the enterprise is disclosed annually within the benefiting parties' tax returns.

## Impact on increasing land available for new entrants to agriculture:

New entrants may use this as an opportunity to access knowledge and experience held by the existing farmer. It is less likely to constitute the 'first rung' on a farming career ladder for individuals entering agriculture, due to the need for capital investment (e.g. machinery to undertake the contract), or previous agricultural training.

In instances where a farming successor is not in place, relationships and trust built around this type of arrangement may underpin new entrant career progression (e.g. expanding area of contracting activities, moving to share farming, or creating new partnerships or tenancies, etc.).

### Examples of contract farming:

Three young entrepreneurs making a success in pig farming
www.fas.scot/downloads/case-study-craig-grant-neil-ironside-and-derek-robson/

Contract Farming – Mutual benefit for Farmers and Contractors
www.fas.scot/downloads/case-study-colin-and-jo-macfadyen/

© STFA

## SHARE FARMING VS CONTRACTING – The Key Differences

- Share farming requires parties to work closely together to achieve mutual benefit, whereas contracting establishes fixed roles and responsibilities and doesn't require such a close relationship.
- Inputs for share farming can be contributed by either party – and may change as the enterprise evolves – a value for which needs to be agreed by the parties in terms of contribution to the business. A contracting arrangement is usually clear about who is responsible for providing each input, and their value, from the outset.
- Share farming doesn't provide parties with any guaranteed income, whereas contracting does through agreed fees.
- In contracting the farmer usually bears the main financial risk – but share farming spreads the risk between parties.
- At the start of every year shares in the sharing farming enterprise held by each party can be adjusted to reflect circumstances and/or allow one party to gradually reduce their holding, perhaps as a route to retirement. A contract arrangement would usually (but need not) operate identically for every year it runs.

# PARTNERSHIPS

Partnerships can provide different ways of cooperation and interaction between existing farmers and new entrants committed and legally bound to run the farming enterprise together through a single business. Partnerships are governed through a partnership agreement which sets out the share of assets and profits. Two (or more) owners of a business constitute a partnership. One cannot be a 'sole partner'. Each partner is taxed on their share of the partnership profits.

Accounts profits are adjusted for various items such as private use items, depreciation and capital allowances to come to the taxable profit. For individuals, each partner has a personal tax allowance which is set against annual taxable profits before the charge to tax is calculated.

## Benefits and opportunities for existing businesses:

Farm partnerships can be used to formalise succession, and to share both responsibility and reward in a farming business. A partnership allows for older and younger generations to be actively involved in the farm business together, and to share experience and knowledge. Uptake in partnership arrangements is most often amongst families, but the mechanism may also be considered an option for non-family succession.

A new partnership presents an opportunity for pooling resources in a way that benefits both parties. Typically the existing landowner would input capital assets and the new entrant might input labour, new knowledge or skills. The land used by the partnership business may be owned by one or more of the partners, by the business itself, or by third parties, and the partnership only has a right to use the land, e.g. as a tenant. The existing farmer can retain full ownership of assets and may decide to transfer all or some of assets at later points in the partnership. The duration of a partnership can be defined by the partners whilst drawing up the agreement document, but is often open-ended, with provisions for partners to retire or resign.

## Issues for existing businesses:

A significant level of trust is required to underpin a farming partnership, as well as the necessity of written agreements and sound legal advice. All partners are usually responsible for all the partnership's obligations. However, the flexibility of farm partnerships is a motivation for both farmer and new entrant.

## Impact on increasing land available for new entrants to agriculture:

This type of option is unlikely to represent the first rung on the farming career ladder (unless bringing in a younger member of a family), but may represent a progression where trust has been built through another type of arrangement (e.g. share or contract farming, tenancy, employer-employee relationship).

© SLC

# TENANCY, LEASE OR LICENCE – TERMINOLOGY

"Tenancy" and "Lease" are commonly heard terms in the agriculture sector – and often used interchangeably – but what exactly do we mean, and is there a difference?

Technically and legally speaking anyone taking on a lease becomes a tenant – whether that's for a farm, a piece of land, a flat, or a business property – if you hold a lease, you are a tenant and the right the tenant gets from being party to the lease is called the "tenancy".

However, for the purpose of this guidance when we refer to "tenants" or "tenancies" we're referring to the distinct mechanisms provided under the various agricultural holdings acts, specifically:

- Short Limited Duration Tenancies (SLDT) (can last up to 5 years)
- Modern Limited Duration Tenancies (MLDT), and the Limited Duration Tenancies (LDT) they are replacing
- "1991 Act Tenancies" or "secure tenancies"
- Limited Partnership Tenancies (are no longer available but some still exist)
- Repairing Tenancies, under the Land Reform (Scotland) Act 2016 – once the legislation is brought into force.

Please note this list does not include crofting tenancies or those contained within the Small Landholders Acts as while they may be of interest, the guidance is not designed to cover these.

We'll use "Short Term Leasing" and "Licensing" for some other arrangements, generally those lasting one year or less.

# TENANCIES

Agricultural tenancies are a common and well-established mechanism for providing access to land for new entrants to agriculture. The basic principle of an agricultural tenancy is the letting of an area of land for agricultural use by a landowner to a tenant for their exclusive use as far as agriculture is concerned at an agreed rent. A number of tenancy options exist in terms of duration, conditions for renewal, and release from contract. Agricultural tenancies are tightly regulated in Scotland.

## Benefits and opportunities for existing businesses:

Under an agricultural tenancy, the landowner receives a regular income from the leasing of their land to the tenant, and retains ownership of the land, but is usually not involved in the farming or management of the land for the duration of the tenancy agreement.

Tenancy agreements can provide a simple option for landowners who want to scale-back or cease active farming, by renting part or all of their land to a suitable tenant. It is also possible to include machinery and associated farm buildings within a tenancy agreement. A tenancy can provide financial security to the landowner and ensure maintenance of the land.

Under the new Modern Limited Duration Tenancy (MLDT), which is based on a minimum duration of 10 years, a break clause may be included in the agreement where the tenant is a new entrant. This allows for landlords to end the tenancy agreement after 5 years if management of the land is considered unsatisfactory. The MLDT also offers relative freedom of contract with regard to tenancy duration (beyond 10 year minimum) and responsibilities for "fixed equipment"

*continued page 10*

on the land. “Fixed Equipment” means broadly all the non-natural features on the land used for farming like buildings and fixed machinery, fences, ditches, tracks, boreholes, shelter belts etc.

### Issues for existing businesses:

Letting land through agricultural tenancies provides a secure income to farms and estates, which can support a farmer or landowner who wishes to retire. The formalised approach to letting in Scotland provides clear rights and responsibilities to both the tenant and landlord. However, presently opportunities for new secure tenancies are extremely rare, and more generally there has been a decline in the land rental market in Scotland. There are however a number of recent examples of land being let on SLDTs and LDTs (now changing to MLDTs).

### Impact on increasing land available for new entrants to agriculture:

There is a crucial role for tenancies in increasing access to land for new entrants, contributing to a productive and profitable agricultural sector in Scotland. Entering a tenancy agreement provides a secure mechanism for individuals to develop a business and experience through independent management of a piece of land. The MLDT has been designed specifically to support new entrants into agriculture.

Longer-term tenancy agreements provide a more secure opportunity for business investment and for a tenant to gain experience, networks, and contribute to the local economy/community.

New and existing tenants may also be able to take advantage of other joint venture opportunities such as share farming or contracting to grow their business, in addition to their tenancy.

**Examples of tenancies created for new entrants to agriculture:**

Committed to a big move gives a young family a farming opportunity
www.fas.scot/downloads/case-study-andrew-lorna-prentice/

Pragmatism Coated with Enthusiasm and Determination
www.fas.scot/downloads/case-study-michael-fiona-burns/

Being proactive looking for land
www.fas.scot/downloads/case-study-james-tamara-sinclair/

© STFA

© SLC

## SHORT TERM LEASING/LICENSING

In this sense, “leasing” just means taking a short term tenancy. The tenant under a short term lease is legally just as much a “tenant” with a tenancy as under a longer lease, but for a shorter time or with different rights. The law allows short term leases of two main sorts. These are ‘grazing or mowing’ (sometimes called ‘grass park’) leases, which must last for 364 days or fewer, and Short Limited Duration Tenancies for maybe a single growing season.

A “licence” will always allow more limited rights than a lease. In particular a right to share occupation with somebody else, landowner or not, is a “licence”. If you do have exclusive use of land and/or buildings, and are paying money to use it, then you are almost certainly legally a ‘tenant’, not a licensee, whatever the documents might say.

### Benefits and opportunities for existing businesses:

Short-term agreements such as grazing or mowing leases, where a long term arrangement such as a tenancy is not appropriate or desired, or licences for agricultural use, might also offer an opportunity for making productive use of marginal/derelict land, or as a ‘meanwhile use’ option between crops or before land use change (e.g. development). They are also a low risk option for landowners if managed carefully (see below).

### Issues for existing businesses:

Depending on how the short-term leasing / licencing agreement is drawn-up and how the land and associated buildings will be used, a different type of agricultural tenancy may be inadvertently created as compared with what the parties intended – at which point the licensee becomes a tenant and may obtain additional rights and protection relating to occupancy of the land. For example, the term of a grazing or mowing lease must be for no more than 364 days, and allowing the tenant to remain on the land  at the end of this period will lead to the lease becoming a Short Limited Duration Tenancy (SLDT), with a minimum length of 5 years. Both parties to any arrangement must be clear on what they intend and document it properly.

### Impact on increasing land available for new entrants to agriculture:

Seasonal grazing or mowing leases, and indeed licences are a useful tool for new entrants to gain access to land in the short-term, allowing them to build numbers, experience and business capability before taking on something more permanent rather than as a long term structure to establish a new farming enterprise.

**Examples of licensing arrangements:**

Where There’s a Will There’s a Way: Seasonal Grazing and Combining Several Jobs Can Work
www.fas.scot/downloads/case-study-stewart-wilson/

© SLC

# OTHER RESOURCES/ SOURCES OF FURTHER ADVICE

The key source of advice regarding new entrant access to land to agriculture is provided by the Farm Advisory Service (FAS), through its New Entrants to Farming Programme.

www.fas.scot/topic/new-entrants/

The case studies linked from this document are presented in a growing case study database on the FAS website.

www.fas.scot/new-entrants/case-studies/

Information about agricultural tenancies and legislative updates are provided by the Scottish Government.

www.gov.scot/Topics/farmingrural/Agriculture/agricultural-holdings

Further advice is available from the Tenant Farming Commissioner.

www.landcommission.gov.scot/tenant-farming

Please also refer to codes of practice, research reports, and discussion papers published by the Scottish Land Commission.

www.landcommission.gov.scot

SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

## Contact us


tfc@landcommission.gov.scot

0300 244 4452

www.landcommission.gov.scot


Find us on:

V1 June 2018