

TYPES OF AGRICULTURAL TENANCY

1991 Act Tenancy
Grazing or Mowing Tenancy
Short Limited Duration Tenancy
Limited Duration Tenancy

THE NATURE OF AN AGRICULTURAL TENANCY

In basic terms, a tenancy is the letting of land or buildings or both by their owner to an occupier who pays rent in money or money's worth in exchange for exclusive possession.

An agricultural tenancy is such a letting where the property which is let is agricultural land. Agricultural land is defined as land used for agriculture for the purposes of a trade or business. Agriculture is defined as including (but is not limited to) horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.

Agricultural land in this context includes buildings. Indeed, an agricultural tenancy can be of a building or buildings only (ie, without including bare land), although this obviously does not apply to a Grazing or Mowing Tenancy where the grazing or mowing of land on which a building is constructed is not possible.

All agricultural tenancies in Scotland are governed by either or both of the Agricultural Holdings (Scotland) Act 1991 and the Agricultural Holdings (Scotland) Act 2003. It is, however, important to note that the terms of these Acts do not apply if –

- the occupier pays no rent in money or money's worth (in which case there is no tenancy),
or
- the lease lets land to a tenant during his continuance in any office, appointment or employment under the landlord.

TYPES OF AGRICULTURAL TENANCY

There are four types of agricultural tenancy. To establish what law applies to any agricultural tenancy, it is necessary to determine which type of tenancy is involved. The 1991 Act applies only to 1991 Act Tenancies. The 2003 Act applies to Grazing or Mowing Tenancies, Short Limited Duration Tenancies and Limited Duration Tenancies, but parts of it also apply to 1991 Act Tenancies

1991 Act Tenancies

These are agricultural tenancies which either –

- were entered into before 27 November 2003, or
- are entered into on or after 27 November 2003, where the lease is signed before the tenancy starts and where the lease expressly states that the 1991 Act applies to it.

Grazing or Mowing Tenancies

These are agricultural tenancies where the land is let for grazing or mowing only and for a specified period of the year not exceeding 364 days.

When a Grazing or Mowing Tenancy has ended, the land may only be let again for the same purpose to the same tenant provided one clear day elapses between the tenancies.

If, with the landlord's consent, the tenant under a Grazing or Mowing Tenancy continues to occupy the land after the tenancy period has ended, the tenancy is automatically converted to a Short Limited Duration Tenancy of 5 years or any shorter period which may be agreed between the landlord and tenant.

Short Limited Duration Tenancies (SLDT)

These are agricultural tenancies where either –

- the letting is for not more than 5 years and which is not –
 - a Secure 1991 Act Tenancy, or
 - a Grazing or Mowing Tenancy
- or
- a Grazing or Mowing Tenancy has been converted to a SLDT.

If, with the landlord's consent, the tenant under a SLDT of less than 5 years continues to occupy the land after the tenancy period has ended, the tenancy period is automatically extended to 5 years or any shorter period which may be agreed between the landlord and tenant.

If a lease for a SLDT is entered into where –

- the same land was let to the same tenant under a previous SLDT, and
- the period of the previous SLDT had ended and the tenant had vacated, or the landlord and the tenant had agreed to end the previous SLDT before its period had expired, and
- the new SLDT starts less than 1 year after the previous SLDT had expired or had been ended

then the expired period of the previous SLDT is aggregated with the period of the new SLDT. If that aggregation results in a period of more than 5 years, then the tenancy is automatically converted to a Limited Duration Tenancy of 15 years.

Limited Duration Tenancies (LDT)

These are agricultural tenancies which are either –

- a letting of land for a period of not less than 15 years which is not a 1991 Act Tenancy, or
- a SLDT which has been converted to a LDT, or
- a letting of land which is not a 1991 Act Tenancy and which purports to be for a period of more than 5 years and less than 15 years (lettings in this category are deemed to be for a period of 15 years).

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For more information please contact Robert Scott-Dempster 0131 225 1677
robert.scott-dempster@gillespiemacandrew.co.uk
Gillespie Macandrew LLP, 5 Atholl Crescent, Edinburgh, EH3 8EJ
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