

Private residential tenancies in rural areas



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From 1 December 2017, all new residential property leases in Scotland are subject to a new letting regime. Under the new regime, it is no longer possible to enter into a new Assured Tenancy or new Short Assured tenancy and all new residential lets (unless exempt) will be private residential tenancies (PRTs). The exception to this rule is that existing Short Assured Tenancies can be renewed in certain circumstances where the parties and the property remain the same. One of the key features of a PRT is that it is open-ended. A comprehensive overview of the features, legislation and practical aspects of the PRT is available [here](#) in our client briefing. To complement this client briefing, we have identified a number of issues which may need considered and number of aspects of the PRT and the model tenancy agreement which may need modified in view of the different characteristics of residential properties in rural areas. These issues should be fully considered prior to entering into a PRT to ensure that the PRT sufficiently covers these unique needs.

Does my rural property or the prospective tenant meet the necessary requirements?

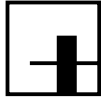
Amongst a number of other requirements, in order for a tenancy to meet the requirements of a PRT, the tenant must occupy the property as their only or principal home. In rural areas, tenancies of residential properties are often offered to estate or farm workers. If the employee/farm worker does not intend to live in the property full time and retains a principal home elsewhere, the tenant may not be able to enter into a PRT. If an estate owner or farmer is entering into a PRT with an employee as a tenant they must identify whether the tenant intends to live in the property full time.

There are a number of types of property which are excluded from being let under a PRT. One of these is property which is let with 2 acres or more of agricultural land. Additionally, a tenancy that is a relevant agricultural tenancy, such as a 1991 Act tenancy, an MLDT or a repairing tenancy amongst others cannot be a PRT. These two requirements are particularly relevant to those in rural areas.

Also, a let property cannot be a PRT if it is occupied by the person responsible for the control of the farming of the let property. This includes tenants, tenants' agents and employees. Instead, the landlord and tenant would need to enter into an agricultural tenancy.

Do model PRT clauses meet the needs of those in rural areas?

The model PRT is largely geared towards an urban residential property. As such, the model PRT agreement will need adapted to adequately address the differing needs of residential properties in rural areas. Firstly, it is relatively common for residential properties on estates to share access with the main estate house, the estate office or the land. The PRT will need to regulate vehicular and pedestrian access over private roads and any shared drives. The landlord may also need to reserve a right of access for general estate purposes including access for farm and forestry vehicles.



The PRT imposes obligations on the tenant to maintain the communal ground and garden in a reasonable manner. This obligation may need extended in rural areas as the requirements in the model PRT may not go far enough to cover the maintenance obligations which are necessary for larger areas of rural land. Fencing obligations may need considered if there are animals roaming on adjacent properties.

Similarly, the PRT has a standard prohibition against any pets or animals on the let property. In rural areas, it may be more common for occupiers to have dogs and other animals. This standard clause may need to be adjusted when drafting a PRT if the tenant wishes to keep any animals on the let property.

Rural properties are often served by private water supplies and septic tank drainage. Consideration will need to be given to the operating, maintenance and repair cost of these utilities. In respect of the private water supply, the landlord may be obliged to have a water test carried out to warrant the quality and quantity of the supply or conversely they may wish to contract out of such responsibility.

What if I need a property I let under a PRT for an employee?

Under a PRT, the landlord can only evict a tenant if they meet one of the 18 eviction grounds. There is no ground for eviction on the basis that the property is required for an employee. This may be particularly problematic for rural and estate clients who often offer properties on the estate to employees. If there is any possibility that the let property may be needed for an employee in the near future, the landlord should reconsider entering into a PRT. This may lead to an increased use of licences to occupy in estate settings. However, care should be taken to ensure where licences to occupy are used that what is created is not actually a PRT.

Landlords may also be nervous to enter into PRTs as they are open-ended and therefore may screen prospective

tenants more thoroughly to find tenants they want to let to indefinitely. There is already a lack of housing in rural areas and it is a concern that the open-ended nature of the PRT and the increased security of tenure for tenants could deter landlords from leasing in rural areas altogether, and result in an increased number of holiday lets instead of longer term lets.

Succession of PRTs

It is relevant to both those in urban and rural areas to know what happens to the tenancy on the death of the tenant. A PRT ends on the death of the tenant unless the tenant is survived by a partner or family member. If the partner or family member wishes to take on the tenancy, the property must have been their only or principal residence for a period of 12 months immediately prior to the tenant's death. The family member must be at least 16 years old at the time of the tenant's death.

Succession can only happen once i.e. when the successor tenant dies the PRT will end. Importantly, when the tenant of a current Short Assured Tenancy or Assured Tenancy dies, a partner or family member can succeed but the tenancy will now convert to a PRT. As tenancies in rural areas tend to be of a longer duration, landlords should be aware that they may automatically and unintentionally become party to a PRT if their tenant dies during the tenancy.

PRTs have significantly changed residential tenancies in Scotland. However it is important that those who are considering entering into a PRT adequately consider the issues particular to rural areas to ensure that all eventualities are covered before the tenant takes entry. The benefit of a PRT and the model tenancy agreement is that it is easily adaptable to cover the above issues and to meet the needs of those in rural communities.

If you are considering entering into a private residential tenancy in a rural area, please make contact with our rural property and business team.



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