

## What you need to know about the Modern Limited Duration Tenancy



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The Modern Limited Duration Tenancy, introduced by the Land Reform (Scotland) Act 2016 will replace the former Limited Duration Tenancy and from 30 November, it will no longer be possible to create a new LDT. While MLDTs are very similar to LDTs, there are a number of practical differences which landlords and tenants will need to know.

By now, many farmers will be aware that, from 30 November 2017, there will be changes to the fixed duration tenancies available to landlords and tenants. Limited Duration Tenancies (LDTs) will no longer be an option and any new leases with a duration longer than 5 years will form a Modern Limited Duration Tenancy (MLDT). Any existing leases will continue unaffected. However, for those entering into a new fixed duration lease, what are the practical differences between the existing LDT and the new MLDT and what do you need to know about the new MLDT?

### What will qualify as an MLDT?

Agricultural land which is let under a lease on or after 30 November 2017 for a term of not less than 10 years will be known as an MLDT. This will be the case as long as the land under the lease is not let to the tenant during the tenant's continuance in any office, appointment or employment held under the landlord, and provided the lease does not constitute a traditional secure 1991 Act tenancy or a repairing tenancy.

### If I have a different type of tenancy can I convert to an MLDT?

Although a secure 1991 Act tenancy does not automatically constitute an MLDT, it is possible to convert it into one. To do so, the term of the lease must be at least 25 years and

the landlord must have satisfied all compensation claims which are due to the tenant at the end of the 1991 Act tenancy.

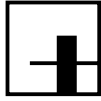
It is also possible to convert an LDT into an MLDT. The term must be at least the same length as the unexpired term of the LDT if the term is longer than 10 years, or alternatively a minimum of 10 years. In this situation, tenants' improvements are carried forward and will be subject to compensation from the landlord at the end of the MLDT.

If a Short Limited Duration Tenancy (SLDT) with a term of five years has expired but the tenant continues occupation of the land with consent of the landlord, the SLDT automatically converts into an MLDT. This creates an MLDT with a term of 10 years with the start of the 10 years being backdated to the beginning of the SLDT.

Finally, it is also possible to enter into an agreement between the landlord and tenant to convert the SLDT to an MLDT should both parties be inclined to do so.

### What are the key features of the new MLDT?

Many of the key features of the new MLDT will be familiar to farmers. For example, the new MLDT still has the same minimum term of 10 years as the LDT. However, some



features of the LDT have been tweaked, or new features created to reflect the changing landscape in agricultural tenancies and agriculture in Scotland as a whole.

## Termination and the 'new entrant'

Under the new MLDT, the familiar options for termination of the tenancy remain. These are termination by agreement, termination on expiry of the term of the lease and termination by irritancy.

On expiry of the term, if notice is not given, the MLDT will continue for a further seven years subject to the ability to terminate early by agreement. In respect of irritancy, it remains for the parties to provide the grounds for irritancy. However, under an MLDT the tenant must be given notice of the landlord's intention to irritate the lease and be given 12 months to remedy the breach.

This period can be extended by agreement or by application to the Land Court. If the breach is not remedied within that period then the landlord must give a further notice at least two months before the expiry of the 12 month period. However, irritancy cannot be enforced for failing to adhere to the rules of good husbandry if the breach is caused by the carrying out of a government aided conservation scheme, or as a result of an agreement made under any enactment, such as a management agreement. Additionally, clauses requiring the tenant to live on the tenanted land are unenforceable and cannot be a ground of irritancy under the MLDT.

One of the key features of the MLDT is the introduction of a fourth option to terminate by way of break clause. The break clause allows the parties to terminate the lease after five years.

In order to make use of a break clause, the tenant must be classed as a 'new entrant'. Guidance in classing a tenant as a 'new entrant' is not included in the legislation itself, but in separate regulations released by the Scottish Ministers. These regulations can be found at [http://www.legislation.gov.uk/ssi/2017/300/pdfs/ssi20170300\\_en.pdf](http://www.legislation.gov.uk/ssi/2017/300/pdfs/ssi20170300_en.pdf).

These regulations do not give a definition of who actually is a 'new entrant', but rather who does not qualify as a 'new entrant'. A tenant will not be a 'new entrant' if during the five years preceding the MLDT they have been:

- a tenant under an LDT;
- a tenant under an MLDT;
- a tenant under a secure 1991 Act tenancy;
- a small landholder;

- a crofter;
- a tenant under an SLDT for 3 years or more; or
- if they own more than 3 hectares of agricultural land.

The policy intention behind limiting the use of MLDTs to 'new entrants' is to exclude those individuals who are already experienced farmers. The intention is to allow groups of individuals who are not entirely new to farming but who perhaps have not had the opportunity to farm for themselves or with any permanence or scale to qualify.

The tenant who wants to use the break clause must serve notice at least one year and not more than two years before the break date. They do not need to provide any reason for the termination. Conversely, the landlord must serve written notice in the same time scale, but must state their reasons for doing so. These reasons can only be that the tenant is not using the land in accordance with good husbandry or is failing to comply with the terms of the lease.

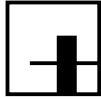
The break provision means that an MLDT could potentially be long enough to allow those farmers starting out to become established and progress their business, but still remain short enough so as not to discourage landlords from leasing their land. This is in line with the Scottish Government's recognition that encouragement of younger farmers to stay within the sector is key to securing a sustainable future for agriculture in Scotland.

## Fixed Equipment

Some further changes are included in the provisions on fixed equipment. Although the usual provisions about the landlord providing the fixed equipment still apply, the schedule detailing the fixed equipment and the physical condition of the equipment now needs to be prepared within 90 days as opposed to the six month period that was allowed under an LDT. Parties can now also agree who is to be responsible for the renewal or replacement of fixed equipment which gives greater freedom for negotiation between the parties.

## Rent Review

The provisions in respect of rent review remain the same as they were under the LDT. They allow substantial freedom of contract between the parties. Nonetheless, it remains the case that parties cannot contract out of the tenant's ability to initiate a rent review. Nor is it permitted to provide for rent review to be upwards only. Where the MLDT is silent on the topic of rent review, the lease will be subject to the new 'productive capacity test' when it is introduced. This is a way of calculating fair rent on the basis of the productive capacity of the holding, farmed by a hypothetical tenant,



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using the landlord's fixed equipment and taking account of a budget. The productive capacity test is not expected to be introduced until 2019.

It may be some time before the industry is able to properly evaluate how Modern Limited Duration Tenancies will operate in practice. It is hoped this new tenancy will encourage both landlords and tenants to enter into tenancy

arrangements that work for both parties, and go some way to encouraging new entrants to enter and stay within the agricultural sector.

If you have any questions about the Modern Limited Duration Tenancy or any other agricultural tenancies please contact Emma Robertson, Stuart Greenwood or Hamish Lean in our Rural Property and Business Team.

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