

**CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS
SCOTTISH AGRICULTURAL ARBITERS AND VALUERS ASSOCIATION**

**THE TENTH SCOTTISH
AGRICULTURAL LAND OCCUPATION SURVEY
FOR THE YEAR TO 30TH NOVEMBER 2021**



CONTENTS

- 1. Introduction**
- 2. Comparison and Perspective**
- 3. Overview, Key Points and Questions**
- 4. New Lettings**
- 5. Tenancies that Ended**
- 6. Net Movement in the Size of the Tenanted Sector**
- 7. Succession to Tenancies**
- 8. Analysis of Units Let in 2021**
- 9. New Lettings and New Entrants**
- 10. Other Agreements**

Appendix – A Survey of Private Negotiations over Termination of Tenancies

**Jeremy Moody
Secretary and Adviser**

March 2022

**Central Association of Agricultural Valuers,
Harts Barn Farmhouse,
Monmouth Road, Longhope,
Gloucestershire. GL17 0QD**

**Telephone 01452 831815
E-mail jeremy@caav.org.uk**

THE AGRICULTURAL LAND OCCUPATION SURVEY FOR SCOTLAND 2020

1. Introduction

1.1 This is the tenth annual Agricultural Land Occupation Survey to be held in Scotland. It has been conducted by the CAAV and SAAVA by circulating members and others with forms for information to be returned on land that had been let in 2021, land where tenancies ended in 2021 and on other arrangements such as contract farming and grazing agreements that had been established in the year. It has not been used to monitor crofting. We are grateful to all who have helped with this.

1.2 This report reviews the statistics yielded by the Survey and offers an initial analysis and commentary for discussion and review. As the tenth such Scottish Survey, this allows comparison with the figures from the previous Surveys which are retained in brackets where relevant.

1.3 It has inevitably taken some time for a sufficient history of data to allow conclusions as to trends. This work has been complicated by market reactions to the implementation of the Basic Payment Scheme (particularly for arrangements in the years 2014 to 2016), the discussion of and changes to Scottish land tenure, the United Kingdom's protracted departure from the European Union and now the discussion of new Scottish agricultural policies.

1.4 The Relinquishment and Assignment provisions of the Land Reform Act were implemented from February 28th 2021. The CAAV published *Relinquishment and Assignment* in February 2021 as a professional guide for those involved in or looking at this work. While it may be that only one full application has so far been made to the Tenant Farming Commissioner in a process that requires much information, those provisions provide a backcloth for discussions thought to be underway between landlords and tenants. The Appendix to this report sets out the results of a survey of members' current experience of these informal discussions.

1.5 This Survey, like the CAAV's Agricultural Land Occupation Surveys for England and Wales since 1977, primarily monitors changes in occupation and so the flows in and out of the tenanted sector and the nature of those changes, rather than the overall size of the let sector. Thus, the analysis is undertaken primarily in terms of the units let or not let as each represents a decision in the relevant circumstances. Overall acreages are given where this may lend perspective. That is particularly important in Scotland where the large acreages of some hill units can affect the appearance of the figures, especially for aspects with only a small number of units reported.

1.6 This Survey covers a total of 84 units on 13,501 acres with changes involving decisions about the letting or occupation of agricultural land in Scotland in the year to November 30th 2021, so including the main late November Martinmas 2021 tenancy date. As some units in Scotland can cover very large areas, changes in acreage may be less significant as a barometer of decisions than changes in the numbers of units. Numbers of units and total acreages from 2013 are shown in Table 1.1.

Table 1.1 Number of units and total acreage reported

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Number	132	53	107	176	142	128	257	130	84
Acres	107,254	25,424	46,279	62,201	35,179	38,665	26,023	34,657	13,501

- 1.7 The units reported in the Survey comprise (previous two year's data in brackets):
- 21 (32, 45) where tenancies were reported to have been let in the year, covering 4,121 (4,645, 7,124) acres. 8 (12, 4) were MLDTs. By previous tenure:
 - 15 (23, 24) were of units where a tenancy had ended
 - 5 (4, 16) followed grazing arrangements
 - 0 (0, 0) followed a contract farming arrangement
 - 1 (1, 5) moving from in hand or newly acquired
 - 2 (4, 0) successions to existing tenancies on 476 (867, 0) acres
 - 12 (18, 8) tenancies that ended and the land was reported as not re-let covering 4,457 (9,595, 785) acres of which (including holdings with multiple outcomes):
 - 2 (3, 2) were taken in hand
 - 4 (1, 3) went to grazing agreements
 - 2 (8, 1) were put on a contract farming agreement
 - 3 (1, 1) were sold
 - 4 (0, 0) were sold to the sitting tenant
 - Other than those replacing tenancies, there were 0 (6, 10) new contract farming agreements covering 0 (784, 1,788) acres
 - 48 (64, 89) further new grazing agreements covering 4,113 (16,763, 15,962) acres

1.8 Emphasising a theme of recent years that bare land lettings are now predominant in Scotland, only 2 of the 21 new lettings included a house while 8 of the tenancies that ended and were not relet included a house. Both successions included a house.

2. COMPARISON AND PERSPECTIVE

2.1 Throughout this analysis, it has to be understood that any single year's Survey can only be a snapshot. Trends will only appear as successive Surveys are held. In any one year, there may be some apparently striking results which later Surveys would put into perspective. This is especially so when reporting on relatively limited numbers.

2.2 Comparison is particularly made with the results of recent CAAV Scottish Surveys for 2019 and 2020 and also those from the CAAV's Agricultural Land Occupation Survey for England and Wales, which has been conducted since 1977. Where relevant, comparative figures are given to aid discussion of what might otherwise appear plain figures.

2.3 Reference can be made to the overall stocks of tenancies and tenanted land published by the Scottish Government and drawn from returns to the annual June Census.

2.4 In considering the relevance of comparison with England and Wales and the issues that bear on lettings decisions:

- Scotland shares a common taxation regime with England and Wales – capital taxation is often important to private owners' decisions and its pressures are the same throughout the United Kingdom
- the EU's direct payments regime (previously the Single Payment Scheme and now the Basic Payment Scheme) applied throughout the United Kingdom in 2021 but with different arrangements in each territory of the United Kingdom with England just beginning its phasing out in 2021. In 2015, Scotland implemented its regime in a more complex way than elsewhere with payments issues seeing bridging loans for some years. It did move, as required by the EU, to the same area basis for allocating entitlements as in the rest of the UK with standard area payments rates reached throughout Great Britain by 2019. That makes matters more similar to the position in England and elsewhere, especially in Payment Region 1 with its full allocation excluding many "naked" acres with consequent greater effects on land occupation. Scotland's initial temporary siphon on without-land transfers of entitlements no longer applies with its impact on land occupation matters.
- Even with Scotland's Stability and Simplicity paper of 2018, many farmers and owners in all areas of the UK have perceived uncertainty about future agricultural policy with resulting caution. The outline of future Scottish policies, geared to climate change goals, began to appear from later 2020 but were perhaps not widely evident and were anyway not defined in detail. The legislative reversal of the removal of Less Favoured Area Support Scheme payment came within the Survey period.
- Scotland is in the same markets for agricultural inputs and produce as England and Wales – any sense of farm profits improving or deteriorating might at the margin be expected to lead to greater or lesser interest by owners in farming directly or through contractors equally across the United Kingdom. Energy prices and their effect on fertiliser prices only became issues later in the Survey period after letting decisions would have been taken, and pre-dating the consequences of Russia's invasion of Ukraine in February 2022

- the new Modern Limited Duration Tenancy (MLDT) was introduced in late 2017 under the Land Reform (Scotland) Act 2016. Despite the change of label and the limited opportunity for an initial 5 year break clause, this is not seen as a substantive change
- any differences in the patterns of land holding and farming structures and practice
- there are differences in both the background land law and agricultural tenancy law, with the further point of the Scottish regime being significantly more complex
- the unfolding of land reform legislation (including the background sensitivity to discussion of the possibility of a tenant's absolute right to buy, even though it is not in the recent legislation) is a specifically Scottish feature within a climate of debate that does not apply elsewhere in the United Kingdom, again likely to prompt caution for landowners

There may always be other influences at work.

Only this sort of analysis will begin to engage with those questions.

3. OVERVIEW, KEY POINTS AND QUESTIONS

3.1 **Overview** – Now beyond the distortions created by the move to the Basic Payment Scheme and the fresh allocation of entitlements in Scotland, 2021 again saw a very low level of activity with a let sector that only appears to be sustained by the incentive that Basic Payment gives for claimants to stay in place, doing little for the vibrancy or economic health of farming. That is all the more concerning with the need for agriculture to rise to the challenge of productivity and competitiveness made more urgent by Brexit.

3.2 Within the let sector, bare land lettings remain very much in the ascendant, though not to the extreme extent seen in 2019.

3.3 With inheriting owner-occupiers and the continuing scale and strength of the seasonal grass lettings market as a major means for flexibility, Scotland could appear to be more closely resembling Ireland as a country of short-term non-tenancy arrangements between owners and farmers. In Ireland, the problems of that model are now leading to more pressure there for tenancies.

3.4 With the political risks seen in letting in Scotland, owners withdrawing from farming are often more comfortable with non-tenancy arrangements for a complex of motives including a closer sense of control over their land, consistency with retaining a business status, less demand for investment, taxation issues and a reluctance to be seen as a landlord. Some aspects of that are summarised by the comment of the Scottish Government's Agricultural Holdings Law Review Group describing letting as being seen now as a high risk, low reward activity. That seems unlikely to attract owner-occupier farmers to let their land where they become weary of continuing farming, yet the tenanted sector cannot solely rely on estates.

3.5 **After a long period of steady decline, this Survey follows the previous three in reporting a rough, if slightly deteriorating, balance between land flowing into the let sector and land leaving it, with very small volumes of land on each side, illustrating the low levels of activity in this sector. The net loss of 3,780 acres** following the net loss of 8,640 acres (influenced by one tenancy ending) in 2020 and the net gain of 2,466 acres in 2019 and the net losses of 78 acres in 2018 and 289 acres in 2017. Those figures are to be compared with the net loss in 2016 of almost 28,000 acres and about 12,000 acres in 2015, just over 1,000 acres in 2014, almost 10,000 acres in 2013 and over 37,000 acres in 2012 (see Table 6.1).

3.6 Overall, this and the previous three Surveys are consistent with recent figures from the Scottish June Census Surveys which point to the let agricultural sector being on the edge of a recent plateau at risk of renewed decline. The 2021 June Survey showed for areas under tenancy:

- a marginal fall in the let area to 1,266,477 hectares (but 1,365, 932 in 2011)
- a 1.2 per cent fall in rented holdings without crofts to 5,940 units (but 6,516 in 2013)
- a 2.7 per cent fall in the number of 1991 Act tenancies to 3,821 on 606,748 ha (but 5,086 in 2013 and 793,558 ha in 2014 – data for 2013 not given – a 24 per cent reduction in area since 2014)

- a further 368 holdings are on Limited Partnership 1991 Act tenancies with 97,888 ha, also down

but, as those figures were always going to decline over time, there are increases in SLDT and MLDT lettings with new totals of:

- 1258 SLDTs (648 in 2013) on 152,496 ha – a 6.6 per cent decline in 2020 (111,624 ha in 2014)
- 918 MLDTs (389 in 2013) on 261,587 ha for both LDTs and MLDTs (the LDT area in 2014 was 104,501).

3.7 While those figures point to an increased usage of the new tenancies within a smaller let sector, their total area is still not yet 60 per cent of the reduced surviving full 1991 Act sector with the overall let sector at 22 per cent of the farmed area. In England and Wales, the two sectors are roughly equal and with even subdued letting activity holding the formal let sector at around a third of the farmed area.

3.8 The CAAV survey for 2021 saw **57% of the let holdings that fell vacant reported as re-let (57% 66%, 83%, 84%) but the proportion of that area re-let was lower than the long run trend (if above 2020) at 40% (28%, 81%, 87%, 87%, 35%)**. As in 2016 and last year, a noticeable break is seen from the historic pattern for those landowners who were still landlords to be predominantly content with re-letting; neither legislation nor taxation was generally sufficient to dissuade them.

3.9 With little new land entering the let sector – 1,010 acres in 2021 (1,109 acres in 2020) - that attrition will see it continue to shrink.

3.10 **The average size of a new tenancy was 196** (145, 183, 302, 325, 663, 231, 273, 279, 266) **acres**, consistent with 2020 but lower than has been the longer trend. The higher figure for 2016 reflected a small number of much larger units alongside smaller lettings.

3.11 **The average length of a new tenancy was an increased 7.24** (6.50, 3.57, 4.56, 3.68, 7.49, 5.47, 5.99, 6.69, 6.66) **years** but sharply polarised between the minority of MLDT lettings of between mainly 10 years but up to 25 and 30 years and SLDTs for periods of less than a year up to the 5 year ceiling. The average is one of two very different outcomes.

3.12 The normal pattern of length of tenancy reflecting the previous tenure continued despite the apparent break in 2019, but the variability perhaps confirms that this Survey is reporting on what has become a residual market with little activity. **In 2021, land let previously on longer tenures was generally re-let for longer terms than land that had been previously let on shorter term or other arrangements.**

3.13 **52% (75%, 93%, 81%, 78%, 68%, 65%) of lettings in 2021 were of bare land and 10% (15%, 7%, 19%, 12%, 24%, 22%) included a dwelling – the balance includes buildings but no dwellings. While it has been conventional to think of Scottish agricultural holdings as fully equipped, the results in this Survey continue to highlight the dominance of bare land units in the number of new lettings in Scotland.** That appears to be a significant point for the larger policy debate as it shows a persistent majority of lettings to be of ancillary land,

not of self-contained farms or core steadings. This has been a natural part of the restructuring for any industry under economic pressure and it will not be readily reversed.

3.14 No newly let but previously unlet holdings included a dwelling. Previous surveys had shown that the small fraction and number of newly let units that included a house were distinctively larger than other lettings with an average size of 437 (456, 1,058, 667, 1,535) acres compared with the average bare land letting of 75 (161, 123, 267, 325) acres. There are no examples this year.

3.15 Issues over housing are likely to become more difficult with the cost, work and disruption of meeting increasing Minimum Energy Efficiency Standards, the extension of the requirements of the Repairing Standard to agricultural housing from 28th March 2027 and the further extension of the residential tenancy regime to this housing foreshadowed by the current consultation on residential lettings. Where this requires significant expenditure on farmhouses and cottages, it may prompt a commercial review of their positions by both landlords and tenants.

3.16 2 of the lettings (1, 11, 5, 4) were reported as being to new entrants (one by a public sector body under the FONE programme). **While 10% of the small number of lettings, this was 33% of the even smaller number where the farmer changed** (9%, 65%, 33%, 20%, 0%, 50%, 20%, 18%, 23%). While the best explanation of 2016 appeared to be seen in the context of 2015's incentives for new entrants with the introduction of the Basic Payment Scheme, the low figures for 2020 and 2021 seem at least in part to be a function of the very limited letting activity overall and perhaps also of the caution in current circumstances. The longer term picture given by the CAAV's Surveys for England and Wales shows that new entrants generally take some 20-30% of those lettings that are not re-lettings to the previous tenant. The figures can suggest an openness to letting to new entrants such that, were there more lettings, there would be more opportunities for them as well as for existing farmers. The decline in lettings has reduced that opportunity. The 2 lettings to new entrants, neither including a house, were both SLDTs for 3 and 5 years, so for an average of 4 years (10, 5.13, 7.62, 7.5, -, 11, 11.25, 10.66, 9.8). The average area let was 151 acres (367, 317, 120, 822, -, 680, 730, 545, 351), unusually lower than the general average.

3.17 While, overall, continuing to confirm the present stasis of a tenanted sector that does not attract significant new land for letting, there are potential indications of its precarious condition in the face of accumulating uncertainty over agricultural and land policies. The patterns of behaviour noted above (including a lower proportion of units re-let so reducing the level of activity and some drift to contract farming) have echoes of what was seen with the prospect of both the Single Payment and Basic Payment Schemes, with caution further limiting and distorting activity.

3.18 Questions – While recognising that each year's Survey is only a snapshot, this analysis raises questions

- if the let sector is to expand, that is most obviously achieved by attracting private owners who do not currently let to do so. With the historic move to owner occupation in the twentieth century, what would now encourage a significant

number of weary or retiring farmers to let their land rather than remain farming, sell it or find other arrangements with other farmers?

- are owners who were willing to let now more reluctant? If so, why?
- what are the consequences of an increasing fraction of bare land holdings?
- with the general interest in encouraging new entrants, how is this done within a shrinking sector when existing farmers (including recent new entrants) also need expansion opportunities?

3.19 One Estate's View - With estates, rather than smaller owners or farmers, still responsible for a significant fraction of lettings in Scotland, these comments were offered by one estate as a long-term landlord in 2019 and stand repetition. With no changes in lettings to report for 2019, 2020 or 2021, it said:

- "we are potentially on the edge of some big changes in the tenancy sector locally"
- "our tenants have aged and those I have had conversations with have no obvious successors who wish to take on the tenancy"
- "over half the tenants, all on 1991 Act tenancies, have no obvious or likely successor"
- "almost all the remaining tenancies already have a younger generation active in the business"
- "the combination of the tenants' Amnesty and Brexit may be putting the future into sharper focus for these tenants, probably prompting them to open conversations about leaving or giving up parts of tenancies"
- "there is a demand for more grazing with no one wanting to give up grazing currently taken."

3.20 Looking Ahead – If that perspective is remotely representative, it points to the potential for significant issues for the near future of the 1991 Act sector with a lack of successors and expected economic pressures that will require existing tenants and successors to operate effective businesses. The answers to the question of what happens when tenancies end is likely to be a function of how attractive letting might be as an option in Scotland, the quality of potential farmers whatever the arrangement with an owner and the alternatives such as forestry or measures in response to climate change. The same challenges will also face retiring owner-occupier farmers who consider letting some or all of their land.

3.21 Some will, no doubt, "hunker down" to retain a home but it could become increasingly challenging for the holding to provide an income under such an approach. The relinquishment and assignment option that has been implemented earlier in 2021 under the Land Reform (Scotland) Act might not offer as much money to the outgoer as may be needed or imagined. Where the landlord is willing to make a relinquishment payment, it will, for any given land quality and location, reflect the size of the holding in question and the remaining life expectancy of the tenant. Thus, payments will be less to older tenants on smaller holdings than to younger tenants on larger holdings.

3.22 Providing positive answers for that would be aided by a framework of policy and land tenure that is more supportive of a business-like approach and that enables the changes that create opportunities for such businesses.

4. NEW LETTINGS

4.1 This section reviews the 21 tenancies reported as having been created in 2021.

Table 4.1: Number of tenancies created

Year	2021	2020	2019	2018	2017	2016	2015
No. of tenancies created	21	32	45	26	63	25	40
Total area (acres)	4,121	4,645	7,124	8,564	20,517	16,673	9,234
Average size (acres)	196	145	183	302	325	663	231
Average length	7.24	6.50	3.57	4.56	3.68	7.49	5.47

4.2 Type of Letting – This is reviewed below when considering the lengths of the tenancies granted but, predominantly shorter term and bare land, they range from 9 months to 30 years. Of the 21 lettings, 8 were MLDTs (this form of tenancy superseding the LDT from 30th November 2017, though with little substantive difference).

4.3 By Type of Owner – Table 4.2 again demonstrates the fundamental role of private landowners in letting farmland. 14 of the 21 lettings were by private owners and 7 by a combination of traditional institutions and government bodies.

Table 4.2: Type of owner

	2021	2020	2019	2018	2017	2016	2015	2014	2013
Private landowner	14	22	22	24	59	24	36	19	50
Traditional institution and government bodies	7	9	22	2	3	1	2	-	-
Financial institution		-	1	-	-	-	2	-	-
Not known		1	-	-	1	-	-	-	7

4.4 Where Have the New Tenancies Come From?

4.4.1 Table 4.3 looks at the units that were let in the Survey period by the way in which that land had previously been occupied, whether let (and, if so, on which sort of tenancy), previously in-hand or on a contracting or grazing arrangement.

Table 4.3: Previous Tenure of Land Let in 2021 - Comparison with 2020 Survey

	2021			2020		
1991 Act	4	4}	19%	1	3}	9%
1991 Act Ltd Partnership	0	}		0	}	
LDT	2		10%	5		16%
SLDT	10		48%	17		53%
Small Landholders	0			0		
Grazing Arrangement	5		24%	4		12%
Contract Farming				1		3%
Vacant	1		5%	1		3%

4.4.2 As in previous years, some units are reported to have been let when not having been let in any way before – 1 in 2021, 1 in 2020, 5 in 2019, 4 in 2018 and 12 in 2017. At 5% (3%, 11%, 15%, 19%), that appears to revert to figures seen during the advent of the Basic Payment with its disruption (5%, 2.5%, 5%) rather than 2013 and 2012 (20%, 14%).

Table 4.4: Acreages of New Units Let by Previous Tenure

	2021	2020	2019	2018	2017	2016	2015	2014
AHA	1,006	512	0	91	8,833	3,462	1,825	1,096
AHA LP	0	0	1,000	2,126	193	1,065	792	0
Total AHA	1,006	512	1,000	2,217	9,026	4,527	2,617	1,096
LDT	243	913	1,046	451	317	6,140	2,437	60
SDLT	1,862	1,960	1,503	4,857	8,413	3,967	1,769	518 ³
Grazing	697	121	612	261	200	687	1,089	-
Contract Farming	0	0	0	0	0	340	-	-
Vacant	313	988	5,997	778	2,561	-	-	-

4.4.3 11 (24, 42, 21, 46) of the 21 (32, 45, 26, 60) lettings for which fixed equipment was known were bare land. Even though, at 57% of lettings decisions, this is lower than recent years (75%, 93%, 81%, 77%), this again shows the decline in the letting of equipped units. Covering 1,527 acres (2,164, 1,367, 2,576, 12,291), they accounted for 37% (47%, 19%, 33%, 60%) of the let area.

4.4.4 Comparison with England and Wales shows that they have a much higher level of short term activity, perhaps as the limited Scottish use of the new forms of tenancy (SLDT, LDT and the new MLDT) contrasts with the wide use of FBTs in England and Wales as well as the large volume of Scottish pasture handled on short grazing arrangements that might in a different regime be let for more than a year. That limited use of the new forms of tenancy has seen a smaller volume of shorter term lettings develop and then lead to new tenancies as they are re-let. The re-letting of land on FBTs is the largest part of the English market in a way that has not developed in Scotland to the same extent, even for SLDTs.

4.4.5 Nonetheless, it appears that the high proportion of bare land lettings is now a confirmed feature of the Scottish agricultural lettings market, as also in England and Wales. Experience shows that bare land is more likely to be let for shorter terms and so, in Scotland on SLDTs as well as grazing tenancies. In practice, the boundary between the two may be obscure on the ground for arrangements of less than a year, largely turning on their terms and the facts of the case - including whether it is the owner or the grazier who is claiming Basic Payment.

5. TENANCIES THAT ENDED

5.1 This section looks at those units where a tenancy ended in 2021 and records whether it was re-let (and if so, in what way) or taken in hand, put to another arrangement or sold.

Table 5.1: Tenancies that Ended - 1991 Act (including Limited Partnerships), LDTs and SLDTs by number

NB Some holdings were split after the tenancy ended

Number	2021		2020		2019		2018		2017	
	No	%	No.	%	No.	%	No.	%	No.	%
Total	28		40		36		23		49	
Re-let	16	57%	23	57%	24	66%	19	83%	41	84%
Sold	3	11%	1	2%	2	6%	-		-	
Sold to tenant	4	14%	-		1	3%	-		1	2%
In hand	2	7%	3	7%	2	6%	2	9%	4	8%
Contract Farming	2	7%	9	22%	-	-	2	9%	1	2%
Grazing	3	11%	1	2%	3	8%	-		2	4%
Share Farming	-		4	10%	-		-		-	
Forestry	-		-		4	11%	-		-	
D/K			-		-	-	-		-	

Table 5.2: Tenancies that Ended - 1991 Act (including Limited Partnerships), LDTs and SLDTs by area

Area	2021		2020		2019		2018		2017	
	No	%	No.	%	No.	%	No.	%	No.	%
Total	7,707		12,725		5,713		8,642		23,567	
Re-let	3,111	40%	3,531	28%	4,615	81%	7,525	87%	20,517	87%
Sold	1,136	15%	20	0%	227	4%	-	-	-	-
Sold to tenant	1,147	15%	-		9	-	-	-	317	1%
In hand	816	11%	4,915	39%	126	2%	397	5%	2,436	10%
Contract Farming	606	7%	2,279	18%	-	-	720	8%	253	1%
Grazing	891	8%	279	2%	163	3%	-	-	43	-
Share Farming			1,701	13%						
D/K					573	10%	-	-	-	-

5.2 Those figures suggest a weakening of the general tendency that had been seen in Scotland as elsewhere for previously let units to be re-let. The pattern is perhaps similar to that around the introduction of the Basic Payment. Repeating the picture of 2020, this now seems less the chance of single year's figures and more a mood of caution ahead of future support policy changes in Scotland.

5.3 The broader political climate for land tenure decisions and, more specifically, the discussions around the development and enactment of the Land Reform (Scotland) Act 2016

is also likely to have been in the minds of many owners. It is noted that the Agricultural Holdings Law Review Group's interim report in 2014 observed that being an agricultural landlord had become seen as a high risk, low reward activity.

5.4 A number of agreements, whether short tenancies, grazing or other arrangements, appear to be "holding" operations as where the owner is considering options, reacting to a change in family circumstances, ahead of development or in advance of an intended letting.

5.5 Those points made, an overall review of the picture points to:

- the overall low numbers and level of activity involved
- the larger number of lettings of smaller areas of land
- letting now being predominantly an activity for bare land. While there are lettings of traditional units with dwellings and buildings, often of larger areas, they are now only a small part of the market.
- some reversion to the patterns seen around the introduction of the Basic Payment in 2014 to 2016. CAAV surveys then and for 2003 to 2006 with the Single Payment showed that changes in support have an impact on land tenure arrangements as owners and farmers move to protect themselves or seek advantage.

The dominant theme though is the very limited letting activity.

5.6 However, activity continues in the letting of seasonal grazing arrangements (commonly tenancies under Scottish law) as reported at section 10.2 below. In that, Scotland could be seen to be becoming much more like Ireland with its enormous reliance on seasonal agreements and the potentially associated problems for land management that have now led to a desire there to recreate a tenanted sector.

6. NET MOVEMENT IN THE SIZE OF THE TENANTED SECTOR

6.1 This analysis looks at the flows of land into and out of the tenanted sector. It starts with the acres that the Survey reports as added to the let sector in the year – land that had not been let that is now let. The land lost from the let sector in the year is then recorded – that is the previously let land that has been taken in hand, put to contract farming or grazing arrangements, or sold. The result is a net figure of the overall acreage gain or loss for the sector and thus a barometer of its health, albeit one potentially obscured in Scotland by the very large areas of some units.

Table 6.1: Net Movements in the Area of the Scottish Tenanted Sector

	2021	2020	2019	2018	2017
Fresh Let					
Vacant (inc purchased)	+313	+988	+ 2,952	+ 778	+ 2,560
Ex Contract Farmed	-	-	-	-	-
Ex Grazing	<u>+697</u>	<u>+121</u>	<u>+ 612</u>	<u>+ 261</u>	<u>+ 200</u>
Total Fresh Let	+1,010	+1,109	+ 3,564	+ 1,039	+ 2,760
Less Losses from Previously Let					
<i>Ex AHA/AHA Ltd Partnership</i>					
ex AHA to In-hand	550	4,299	-	397	2,363
ex Small Landholders to In-hand	-	-	110		
ex AHA to Grazing	30	-	39	-	-
ex AHA to Contract Farmed	80	2,508	-	720	253
ex AHA LP to Contract Farmed	-	-	-	-	-
ex AHA LP to Grazing	-	-	-	-	-
ex AHA LP to In Hand	265	379	-	-	73
ex AHA LP to Other	-	-	-	-	-
ex AHA to Other	-	-	-	-	-
ex AHA Sold on End of Tenancy	636	-	150	-	-
ex-AHA Sold to Sitting Tenant	786	-	9	-	317
ex-AHA to Compulsory Purchase	-	-	-	-	-
Total AHA/LP Losses	2,347	7,341	308	1,117	3,006
<i>ex LDT/SLDT</i>					
ex LDT/SLDT to In Hand	-	237	16	-	-
ex LDT to Grazing Arrangement	335	-	-	-	28
Ex LDT/SLDT to Share Farming	-	1,702			
ex SLDT to Contract Farmed	526	449	-	-	-
ex SLDT to Grazing Arrangement	722	-	124	-	15
ex LDT/SLDT to Other (forestry)	-	-	573	-	-
Sold on End of Tenancy	500	20	77	-	-
Sold to Sitting Tenant	<u>360</u>	-	-	-	-
Total LDT/SLDT Losses	2,443	2,408	790	0	43
Total Losses from Previously Let	4,790	9,749	-1,098	-1,117	-3,049
Net Loss to the Tenanted Sector	-3,780	- 8,640	+2,466	- 78	-289

6.3 The final figure showing a net loss of 3,780 acres is consistent with the outcomes of the previous four surveys with their apparent pattern of a rough balance between land leaving and entering the let sector, but on the edge of attrition. More than half the larger net loss in 2020 was accounted for the one tenancy being taken in hand. This does not at present look like the substantial losses seen in the first few surveys from 2012 to 2016. It is consistent with the data issued by the Scottish Government drawn from annual censuses on the overall size of the let sector showing its decline having reached a more stable point at a reduced level with an increased use of the new forms of tenancy.

6.4 Again, the real theme is of the very low volumes of land involved – indeed, a very low level of activity overall. The picture continues of a tenanted sector attracting very little new land and so vulnerable to the chance of whenever the inevitable losses of land to other uses or more direct control by a cautious owner arise. The survey of termination negotiations reported in the Appendix indicates some appetite for tenants to leave if suitable terms are offered. It is not a picture of a healthy sector.

6.5 In broad terms, the let sector in England and Wales, having grown in the years after the 1995 reforms, has stood still since Single Payment entitlements were allocated (carried over in England for the Basic Payment Scheme) – area payments being seen as a force for stasis in land occupation. This Survey may well now be showing a similar effect in Scotland following the allocation of Basic Payment entitlements on an area basis combined with the division of Scotland into three payment areas.

6.6 A new feature of the 2021 Survey is the increased number of land sales, both on a tenancy ending and to a sitting tenant – that latter trend being consistent with the current negotiations over termination reviewed in the Appendix to this report. That is a change from the preceding Surveys which, with the exception of 2016, have shown very few sales of previously let land in Scotland. Owners have preferred to retain land rather than capitalise on the access to value offered by the end of a tenancy or a deal with a sitting tenant. Whether 2021 indicates that that has changed is for future Surveys. The sitting tenant purchases of all or part of holdings could be consistent with a greater appetite by tenants either to be bought out or, as here, buy the landlord out of at least part of the holding, some with semi-retirement in mind. One Survey response noted that some tenants appeared to be canvassing succession to open a discussion about being bought out.

6.7 There will always be some land lost each year to the let sector as, for example, land going to development or forestry as well as where the landlord wishes to farm or sell the land. Even maintaining the present size of the let sector requires the letting of new land that had not been let. Reversing the decline of the let sector demands a much stronger pattern of fresh lettings. That is a matter of choice for landowners. It is not simply a matter for the large estates or public bodies but also for smaller owner occupiers. Perhaps the sharpest way to pose the question in terms of unlocking land for letting is to ask what would encourage a significant number of weary or retiring farmers to let their land rather than sell it? What would make letting attractive in comparison to the other arrangements for a landowner or retiring farmer to work with another farmer?

7. SUCCESSIONS TO TENANCIES

7.1 These are analysed separately as they do not represent choices about land occupation made by the owner but rather the use of existing legal rights created by the law in respect of existing agreements.

7.2 2 successions were reported in 2021, following 4 last year which followed two years with no reported activity. Both units had a house. Both followed the tenant's death.

Table 7.1: Succession tenancies

	2021	2020	2019	2018	2017	2016	2015	2014
Number of successions	2	4	0	0	1	0	9	11
Total area	476	867	-	-	81	-	2,792	1,525
Average unit size	238	217	-	-	81	-	310	139

8. ANALYSIS OF NEWLY LET UNITS

8.1 General

This section more closely analyses the units let in 2021, particularly by size and length of letting. Unfortunately, the information collected this year is again too limited to provide sufficient data for analysis by enterprise.

8.2 Size of Unit and Fixed Equipment

8.2.1 The average area for these lettings was 196 (145, 183, 302, 325, 663, 231, 273, 279, 266) acres, markedly larger than the 2020 average figure for England and Wales of below 70 acres (which reflects the larger number of small areas of bare land let there). Scotland's 2016 figure was influenced by a small number of very large lettings.

8.2.2 While historically Scotland did not have the same high proportion of smaller, bare land lettings that are seen in England and Wales, the Survey again confirms the trend of recent years towards just that pattern, with bare land lettings, large and small, now predominating. In summary:

- bare land lettings accounted for 57% (75%, 93%, 81%, 77%) of lettings decisions and 37% (34%, 79%, 33%, 60%) of the let area, averaging 139 (75) acres
- there were 8 lettings of land with buildings on 47% (19%) of the let area but not a house (3 last year, 1 in 2019, none in 2018 but in 2017 these were 12% of lettings and 17% of the let area)
- the 2 (5) units with dwellings accounted for 10% (15%, 7%) of lettings and 16% (47%, 19%) of the let area, averaging 330 (437) acres.

8.2.3 Table 8.1 below indicates the different character of fully equipped lettings from the predominant bare land lettings.

8.2.4 One clear conclusion from the accumulated evidence of these Surveys since 2012 is that for discussion of new agricultural tenancies to be effective it should recognise that they are now typically of bare land, including some with large areas. The older model of letting fully equipped, potentially self-contained farms, more typical of those existing tenancies governed by the 1991 Act, is now a minor part when it comes to current lettings. Wider pressures on housing are only likely to compound this structural change.

Table 8.1: Analysis by Size of Holding (previous year in brackets)

Size	Bare land	With buildings	Fully equipped
Under 25 acres	1 (5)	0 (0)	0 (0)
25-49	2 (4)	0 (0)	0 (0)
50-74	1 (5)	0 (0)	0 (0)
75-99	2 (1)	1 (0)	0 (0)
100-124	0 (2)	3 (0)	0 (0)
125-149	2 (2)	0 (0)	0 (0)
150-199	2 (1)	2 (2)	0 (0)
200-299	1 (1)	0 (0)	1 (1)

300-999	1 (0)	2 (1)	1 (3)
Over 1,000	0 (0)	0 (0)	0 (0)

8.3 Length of Tenancy Granted

8.3.1 This Survey reports the lengths of term for which new lettings were granted. In practice, this may on occasion understate the true length of occupation that may be achieved where some tenancies, notably MLDTs, run on beyond their granted terms. Equally, there will be a few tenancies which, for whatever reason, come to an end before their granted term expires.

8.3.2 Unlike England and Wales (and Northern Ireland), Scotland does not offer complete freedom of contract over the length of a tenancy. While it has been possible since 2003 to let land on a variety of terms, each with different legal effects, it remains a curiosity that it is illegal in Scotland to enforce a letting for a period of between 5 and 10 years.

8.3.3 The terms granted for the new tenancies reported to the Survey ranged from as short as 9 months to a maximum of 30 (40, 15, 13, 35, 35, 35, 25, 25, 38) years. In 2021, the longer lettings were rearrangements of 1991 Act tenancies suiting both parties rather than fresh lettings.

8.3.4 Use of the Reduced Length for Longer Lettings (MLDTs, previously LDTs) – Consistent with the June Census data noted in the Appendix, this Survey found more use of MLDTs. Of the 8 (12, 4, 7) MLDTs reported, 6 (11, 2, 4, 8, 6, 8, 3, 7, 8) units were let for the minimum term of 10 years and only 2 (1, 2, 3, 1, 3, 3, 3) for a longer term (25 and 30 years) – in 2019 none were let for a term of more than 15 years. The discussion below of new entrants does not suggest that the MLDTs are being used for their new entrant break clause option.

8.3.5 That continues to show that the 2011 amendment to allow LDTs for a term of 10 years (previously 15 years) is still overwhelmingly used where the MLDT (LDT) structure is adopted. It is not possible to tell from the data how many of these:

- would have been let anyway but at 15 years
- would have been let as SLDTs instead and so now have a longer term
- would not have been let

without the change. However, the last decade has seen more use of LDTs and now MLDTs. The June Census data shows them to have increased from 259 in 2010 and 289 in 2011 to 710 in 2017 and now a combined total of LDTs and MLDTs of 918 in 2021.

8.3.6 However, that is consistent with analysis suggesting that, where the law sets a minimum term then that figure tends to set a norm for owners who are willing to let, creating its own pressure for parties to use it. This was an important part of the English debate on tenancy reform since, where no minimum term is set, the parties have to judge the matter themselves.

8.3.7 2 (8) of the MLDTs were of bare land (242 (744) acres), 4 (1) had buildings (826 (512) acres) and 2 (3) had houses (none in 2019 but 4 in each of 2017 and 2018) on 660 (724) acres. While there had been no fully equipped units let in 2019, they had accounted for 3,489 acres

in 2018 and 2,188 acres in 2017. In 2018, 3 (2) were of bare land covering 690 acres (4,433). Those earlier figures had been consistent with the general correlation found between scale of fixed equipment and length of term that had not been shown in 2019.

8.3.8 Re-Letting of SLDTs - Of the 14 (20, 27, 14) SLDTs that ended, 4 (3, 8) were not re-let (none were not re-let in 2018). The decision made in the remaining 10 (17) cases saw:

- 3 (3) re-let as an MLDT for 10 years – each expressed as giving the tenant greater security after the SLDT, one having been a new entrant on taking the SLDT
- 2 (4) re-let for 5 years
- 1 (1) re-let for 3 years
- 0 (4) re-let for 2 years
- 0 (4) re-let for a year
- 0 (1) reported as re-let on a year to year basis
- 4 (0) re-let for less than a year (9 months each).

8.3.9 Overall Average Term – As shown in Table 8.2 below, the pattern may have returned to that for 2016 and earlier. The average length of a new letting has risen to 7.24 years. On excluding lettings for less than a year (grazing/mowing tenancies and seasonal or interim SLDTs), with all the difficulties of knowing which arrangements should be counted and which not, the figure then becomes 8.8 years

8.3.10 Table 8.2 shows the comparison with the average length of letting in England and Wales. These figures reflect the high proportion of smaller, bare land units and the typically low proportion of tenancies with houses that are let there. CAAV Surveys have shown that the lengths of lettings for units by levels of equipment are similar to those in Scotland. Thus, much of the apparent difference in the summary averages between the Scottish figures and those for England and Wales is accounted for by the different mix of types of holding. However, for 2018 and 2019 these historically different patterns appear to be converging.

Table 8.2: Average term lengths for new lettings

NB The English figures for 2021 are not yet available

No Scottish lettings were reported in 2021 as being from year to year.

	2021	2020	2019	2018	2017	2016	2015
<i>Scotland</i>							
All lettings	7.24	6.5	3.57	4.56	3.68	7.49	5.47
Excl yr-to-yr	-	6.8	4.20	4.90	6.66		
<i>England and Wales</i>							
All lettings	n/a	3.42	3.21	2.90	3.97	4.48	3.83
E + W > 1 year	n/a	4.83	4.75	4.14	4.98		

8.3.11 That difference is now explored in more detail.

8.3.12 Patterns in the Length of Letting - As has been found in England and Wales, the terms granted typically vary with the previous form of tenure and the level of fixed equipment. In individual cases, this will reflect the circumstances and attitudes of each owner as well as the holdings in question.

8.3.13 Term by Previous Occupation (Numbers of Units) - However, the historic tendency for units that had previously been let under the 1991 Act to be let for longer terms (with an equivalent pattern in England and Wales) was again shown in 2021 (though it had not been apparent in 2019).

Table 8.3: Previous Tenure and New Type of Tenancy

	≤5 years (SLDT)						10 years + (MLDT)					
	2021	2020	2019	2018	2017	2016	2021	2020	2019	2018	2017	2016
AHA	1	-	-	1	-	-	3	1	-	-	4	4
AHA LP	-	-	1	2	1	4	-	-	-	1	-	-
LDT	-	-	1	1	-	-	2	5	3	-	2	2
SLDT	7	14	18	11	31	6	3	3	1	3	2	1
Total	8	14	20	15	32	10	8	9	4	4	8	7
VP	1	1	5	3	11	-	-	-	-	1	1	-
GA	5	1	16	2	10	3	-	2	-	1	-	-
CF	-	-	-	-	-	1	-	-	-	-	-	-
Total	6	3	21	5	21	4	-	-	-	2	1	-

Table 8.4: Length of Tenancy by Previous Tenure

	2021	2020	2019	2018	2017	2016
Ex 1991 Act	27.5	40.00 ¹	-	5.00 ¹	15.00	18.75
Ex 1991 Act Ltd Partnership	-	-	5.00 ¹	5.67	5.00 ¹	4.50
Ex LDT	10.00	10.00	10.50	10.00 ¹	10.00 ¹	10.00
Ex SLDT	4.60	4.25	3.31	3.35	2.53	4.79
Ex Grazing Arrangement	3.00	6.25	3.00	6.67	3.55	3.67
Ex Contract Farming	-	-	-	-	-	5.00 ¹
Ex Vacant Possession	2.00	5.00	3.60	5.50	2.67	-

¹ – only one unit

8.3.14 Term by Level of Fixed Equipment – The average term by the extent of fixed equipment on a holding showed the normal pattern whereby the length of term increases with the level of fixed equipment as shown by previous Surveys and again consistent with that from England and Wales. 2019's figures were an aberration.

Table 8.5: Length of Tenancy (years) by Fixed Equipment

	2021	2020	2019	2018	2017	2016	E/W 2020
Bare land	3.57	5.40	4.31	3.32	2.42	6.16	2.86
Land with buildings	9.75	16.00	5.00	-	6.29	7.50	5.22
House and land	17.50	7.40	3.00	9.80	10.52	11.25	9.84

9. NEW LETTINGS AND NEW ENTRANTS

9.1 How Many Tenancies are Taken by New Entrants? - One question regularly asked is the extent to which new tenancies are taken by new entrants.

9.2 Beyond a very narrow (and, in practice, unilluminating) definition based on the first time a prospective farmer takes land, it is very difficult to define a new entrant. Scotland has attempted it statutorily for the break clause provisions of MLDTs but that endeavour with its formal complexity does not assist this Survey. Accordingly, respondents were simply asked:

- whether they considered the tenant of a new letting to be a new entrant
- whether the unit had been re-let to the person who had farmed it before.

9.3 Of the 18 (22, 43, 20) cases where the question was answered, 2 (1, 11, 5) lettings were to someone perceived as a new entrant. Looking more appropriately at where the tenant changed, of the 6 (9, 17, 12) cases where the new tenant had not previously farmed the land, 2 (1, 11, 4) were let to a new entrant: 33% (9%, 65%, 33%).

9.4 This avenue of entry is evidently limited by the number of opportunities to win tenancies. Experience shows that more opportunities overall yield more new entrants taking lettings, even with the caution that an owner might have about letting a farm to someone seen as a new entrant. Past Scottish surveys have found that, typically, 20% to 30% of the lettings where the land is not let to the same farmer as before are taken by new entrants (with similar figures seen in England and Wales). While that proportion is positive, it has, in reality and as here, only been out of a very small number of actual cases. In 2021, it was a reduced proportion out of a reduced number of opportunities. One was a letting under the Scottish Government's Farming Opportunities for New Entrants (FONE) programme (2019 had seen 9 such lettings) and just one (0, 2, 4) came from the private sector that is the necessary long term source of potential lettings for the let sector to grow.

9.5 While this survey sees more use of MLDTs (as also shown by the Scottish Government's June census data), this is not evidence of them being used for the 5 year break clause available where the letting is to a new entrant as both the lettings here were SLDTs. One expiring SLDT initially let to a new entrant was re-let in 2021 as an MLDT.

9.6 2016 saw no lettings to new entrants reported but this appeared to be a "time-shifting" effect. Many new entrants appeared to have been brought forward into 2015 with the access to free entitlements and the Young Farmer top-up possible for the new Basic Payment Scheme – and without the then siphon on without-land transfers of entitlements. Despite the recovery of the usual pattern since then, the picture for 2021, like 2020, is of few lettings overall and consequently almost none for new entrants – of an inert sector.

9.7 More generally, those figures also touch on the question of what would be desirable levels of entry to the let sector. If, over time, between a fifth and a third of lettings to farmers who did not previously have that land are to new entrants: is that about right? or too low (and perhaps a policy issue)? or even high enough to wonder about what it is really saying? What would be happening in the sector, if all such new letting relationships were with new entrants?

Would that mean existing farmers (including recent new entrants) were not getting expansion opportunities? And then, if not, why not? Would it suggest that new entrants, having entered, were then not progressing? There is probably no optimal answer but such discussion, informed by data, allows this to be part of larger debate about the structure of the sector. If the sector is shrinking or inactive and relatively few new lettings are offered, that narrows opportunities for all, especially those trying to start farming on their own account by means other than purchase.

9.8 Length of Term for New Entrants – With just 2 SLDTs, the average length of letting to a new entrant was 4 (10) years. Over the years the average length of letting to a new entrant has been longer than the overall average. The 2019 average had been pulled down by the FONE lettings; without them the smaller sample from private owners would have been 7.5 years. The Surveys before 2016 showed new entrants having lettings for longer than average terms, a picture also seen in England and Wales.

Table 9.1: Lettings to new entrants

	2021	2020	2019	2018	2017	2016	2015	2014	2013
Average term	4.00	10.00	5.13	7.62	7.50	-	11.00	12.50	10.66
Average size of holding	151	367	317	120	790	-	680	730	545
% of average area	77%	229%	173%	40%	243%	-	294%	267%	195%

NB 2020 had just one letting.

9.9 Average Size – 2021 (as in 2018) saw a change from the usual position whereby new entrants have tended to take larger than average holdings. The average area at 151 acres was some three quarters of the average letting in 2021.

10. OTHER AGREEMENTS

10.1 Contract Farming

10.1.1 Returns to the Survey reported 2 new agreements covering 606 acres: an average area of 303 acres.

10.1.2 Both were reported as replacing 1991 Act lettings.

Table 10.1: Contract farming agreements

	2021	2020	2019	2018	2017	2016	2015	2014	2013
No. of agreements	2	14	11	6	3	13	10	8	11
Total area	606	3,397	1,938	5,961	1,953	32,141	12,510	17,051	5,554
Average area	303	243	176	993	651	2,493	1,251	2,131	505
Average length	3	1.9	2.2	3.6	2	3.36	3.46	6	2.36
Previously:									
- Contract farming	-	4	8	3	0	5	3	5	5
- In-hand	-	1	2	1	2	3	4	-	3
- Tenancy	2	8	1	2	1	4	-	-	-
- Grazing arrangement	-	1	0	0	0	1	-	-	-

10.1.3 Both were to the person who had previously been the tenant of the land in a rearrangement of their agreements. Thus, neither were to a farmer perceived to be a new entrant.

10.1.4 Both were for initial 3 year terms.

10.2 Grazing Agreements

10.2.1 This sector will overlap with the significant number of seasonal grazing lets reported as tenancies, with potentially little distinction in how tenancies for less than a year are reported.

10.2.2 Table 10.2 shows that 52 new grazing arrangements were reported on 5,200 acres – an average unit of 100 acres. While, with recent figures, these are higher than on some earlier Surveys, it is probable that these Surveys do not generally capture the larger grass lets markets but rather collect data on situations where grazing arrangements have arisen on managed estates, typically where letting is an option to be considered or where other issues have driven the decision.

Table 10.2: Grazing arrangements – number and area

	2021	2020	2019	2018	2017	2016	2015	2014	2013
No. of agreements	52	64	89	90	65	114	32	8	40
Total area	5,200	16,763	15,851	23,150	9,217	8,004	9,031	310	1,607
Average area	100	262	178	251	142	70	282	39	40
With same farmer	50	62	83	86	62	100	25	6	34

10.2.3 50 (62) were with the same farmer as before – unsurprising in the context of seasonal grazing land being made available for many years to neighbours.

10.2.4 The great majority of these replaced previous grazing arrangements (48 (61) lets, or 92%) as shown in Table 10.3. Two replaced SLDTs, one a 1991 Act tenancy and 1 an LDT. None replaced a contract farming agreement and none were previously in-hand.

Table 10.3: Grazing arrangements – previous tenure

	2021	2020	2019	2018	2017	2016	2015	2014	2013
Previously:									
Grazing arrangement	48	61	83	88	60	105	28	6	33
Contract farming agreement	-	1	-	1	-	-	-	-	-
In-hand	-	-	-	-	2	3	4	-	-
1991 Act tenancy	1	-	-	-	1	4	3	-	5
SDLTs	2	2	2	-	-	6	-	-	1
LDTs	1	-	-	-	-	-	1	-	-
Purchased land	-	-	2	-	3	-	-	-	-
Vacant	-	-	-	-	-	-	-	1	-
Unknown	-	-	-	-	-	-	-	1	1

10.3 Share Farming and Other Agreements

No returns to the Survey reported any new share farming or other agreements. The 2020 Survey, had as a new development, reported 4 cases on 1,702 acres where share farming of some form had been put in place, all for dairy operations and all replacing tenancies.

APPENDIX

Survey of Voluntary Discussions of Tenancy Termination in Scotland

This Survey was prompted by references to informal discussions between landlords and tenants over negotiated termination of tenancies alongside the formal Relinquishment and Assignment provisions of the Land Reform Act 2016 implemented from 28th February 2021. The outcome is an illustrative picture of the discussions that are underway rather than a comprehensive account.

With the survey work, using Survey Monkey, undertaken in January 2022, 15 CAAV and SAAVA members made substantive returns by the end of the month of whom 11 (73%) respondents had been involved in discussions with clients over a negotiated tenancy termination. The other 4 (27%) indicated that they had not had any such discussions since 1st March 2021. Accepting that members involved in discussions were, having something to say, more likely to reply than members who were not, this nonetheless indicates a level of general discussion to be noted. Members not involved in landlord/tenant work would not have cases on which to report.

Those 15 responses recorded 77 discussions of which 29 (38%) had been initiated by the Landlord and 48 (62%) initiated by the tenant – roughly a two to one ratio showing a level of tenant motivation in such discussions while a discussion might not be opened by the landlord if the tenant was thought unlikely to be interested.

When the responses were made this January, agreement had been reached in 14 (18%) of these cases. A further 52 (68%) were thought likely to reach agreement at some point.

10 of the 11 respondents answered whether the statutory route had been considered or not, with 5 answering ‘yes’ and the other 5 ‘no’.

This picture is now considered in more detail, using the questions put in the survey.

What are the Main Reasons for Tenants to Considering Ending the Tenancy?

The majority of responses indicated that retirement was the main reason. Some also stated that there was no successor to take on the farming business. The financial incentive to retire featured in two answers. One respondent stated change of lifestyle as the reason.

Where a Tenancy is being Brought to an End, What is Expected to Happen to the holding?

The principal prospective use for most holdings after the tenancy ended were:

- taking the farming back in hand (either to be directly farmed by the landlord by using contractors
- being re-let though a comment was made to the financial commitment involved in negotiating an agreed end to a tenancy in order to re-let.

The evidence of the survey is that where a termination has been agreed, land is neither being sold nor put to forestry in any volume.

Main Use for Holding	Number of Responses
Farmed in hand	10
Farmed with contractors	2
Re-let	7
Forestry	1
Sold	1
Assignment	1

With holdings being divided between future uses, 5 saw some land moving to forestry alongside the main use and in one case some of the land was re-let.

What were the Main Stumbling Blocks or Issues in the Negotiations?

Some tenants were perceived to have over-optimistic expectations of the payment that could realistically be made. Managing expectations featured in the majority of responses.

Other barriers included:

- the landlord's lack of available capital for a payment to be made
- the tenant's desire to keep on farming, albeit with activity reducing over time.

Has the new Legislation Enabled More Tenants to Consider Negotiating an End to their Tenancy?

Strikingly the majority of responses were neutral on this (9 out of 13) while:

- one respondent indicated that the new legislation did enable more tenants to consider a negotiated end to their tenancy
- conversely, another respondent indicated the opposite opinion.

Overall, that may suggest that other economic and social factors are more important. It might be that the legislation itself is also a function of those underlying pressures.

What have been the Benefits for either Landlord or Tenant from a Negotiated Agreement for Termination (as opposed to the statutory Relinquishment regime).

Flexibility over timescales and process featured in the majority of responses, as well as lower costs. Other responses saw benefit in maintaining good relationships between the parties, leaving the statutory route in reserve should negotiations fail.

A feature of the statutory procedure is the tenant's loss of control over timing should the landlord move to buy the relinquishment, bearing on everything from housing to the farm sale and end of tenancy claims.

Are any Deals likely to see Settlements including elements other than Payment?

The potential to transfer the farmhouse and sometimes other land and assets to the tenant (in lieu of a monetary settlement) featured in the majority of responses.

--0---0---0--