

# **Limited Partnerships - Planning for the Future**

## **Recommended Guidance for Limited and General Partners**

published jointly by the  
**National Farmers Union of Scotland**  
**Scottish Land and Estates**  
**Scottish Tenant Farmers Association**

in association with  
**The Scottish Government's Independent Adviser on Tenant Farming**

**June 2015**

## Introduction

Farms let through a combination of a Limited Partnership and a 1991 Act lease (commonly referred to as “Limited Partnerships”) became popular in the 1990s as a way of letting a farm for a fixed period without creating a long term secure tenancy that might be difficult to terminate. In such circumstances the landlord or his agent was usually the limited partner, and the farmer was the general partner. A Limited Partnership was created so that it would either dissolve automatically on a specific date or following service of a dissolution notice. In these latter cases statutory requirements give the general partner three years notice of termination.

Limited Partnerships were a consequence of prevailing legislation at the time, and in many respects they have served the industry well. Skilled and productive farmers have gained access to land on reasonable terms, resulting in mutually beneficial business relationships with landlords up and down the country. The fixed duration of contract provided a degree of certainty on which to base investment decisions, and sustainable productivity of the land in question has generally been good. Their modern replacement (the LDT) reflects these strengths.

The Agricultural Holdings Legislation Review Group (AHLRG) received several submissions highlighting the growing number of Limited Partnerships that have completed their primary period or are approaching their dissolution date without arrangements being in place to ensure a continuing long term approach to land management. Sustainable production can begin to fall in these circumstances as uncertainty impacts on investment. The AHLRG recognised the concern, and explored the possibility of legislation to convert these remaining Limited Partnerships into LDTs.

After careful consideration the AHLRG concluded that retrospective legislative actions of this nature are unlikely to be helpful in relation to wider confidence within the sector. Instead it noted that *“this is an area where strong leadership from industry bodies and major landowners would be extremely helpful”*, and recommended a new initiative on Limited Partnerships, developed jointly by the NFUS, SL&E and STFA, similar to that produced in 2014 in response to uncertainty around rent reviews.

This guidance fulfils the terms of that recommendation.

## Basis of the Guidance

This guidance has no statutory basis and is built on an assumption of reason and reasonableness among all involved. Its fundamental purpose is to eliminate cases of short term unsustainable land management that may result from uncertainty where a Limited Partnership is continuing on a short term basis. The guidance describes a recommended process whereby partners are encouraged to enter into a structured dialogue with a focus on ensuring sustainable management of the land.

The guidance builds on thinking originally developed by the Tenant Farming Forum (TFF) and published as an advice note. This included advice on how to address circumstances where Limited Partnerships are approaching their dissolution date, and it noted (as did the AHLRG) the importance of medium term certainty in underpinning confidence, investment and productivity. In particular it summarised the key issues that both parties should consider in conducting a review of a Limited Partnership, and this guidance builds on the TFF advice to develop a more comprehensive and structured process.

The three industry bodies recognise that many partners have already addressed the issues being tackled here, and that many Limited Partnerships have already been extended or replaced by a new LDT. This guidance relates only to Limited Partnerships which are nearing or have passed their term date, and it is explicitly concerned with eliminating a risk of short-termism inherent in these situations.

## **The Process in Practice**

The guidance consists of a simple step by step process that can be initiated by either partner. It creates a structured dialogue leading to agreement on extending the partnership, creating a new LDT, or another sustainable arrangement (which might include management in hand). The process includes the option of involving a third party to facilitate dialogue, and where apparently irresolvable disagreement occurs the industry bodies strongly encourage the use of professional mediation.

The main steps of the recommended process are summarised in appendix A and are as follows –

### Step 1 – Initiating a Limited Partnership Review

Either the limited or general partner may initiate a review. They should do so in writing, but normally only after a preliminary informal discussion. The initiating letter should set out the reasons for wishing a review, spelling out the benefits to both parties that are anticipated.

### Step 2 – Farm Inspection and Discussion

Within one month of the review being initiated the two parties should meet on the farm to discuss options for change and ensure a mutual understanding of each other's priorities and aspirations. This should include an assessment on the ground of the full spectrum of arrangements whereby longer term sustainable land management might be ensured.

### Step 3 – Written Proposal

Within two months of step 2 the partner who initiated the review should submit to the other partner a written proposal for change. This should set out the proposed new arrangement in as much detail as possible, including (as appropriate) rent arrangements, treatment of fixed equipment, dilapidations and tenant's improvements. Where way-go payments are involved these should be specified.

### Step 4 – Written Response

Within two months of step 3 the other partner should respond in writing, either accepting the proposal or suggesting modifications (or an alternative). Where a collaborative relationship already exists between the two parties an agreement will normally be reached fairly quickly, but allowance should be made for further informal on and off farm discussion between the two parties.

### Step 5 – Further Discussions

In most cases the time allowed for steps 2, 3 and 4 above should be sufficient for amicable agreement to be reached. In a small number of situations the complexity of issues involved, and/or the nature of interpersonal relations, may require a more prolonged discussion. This should last no longer than the time required for a second iteration of steps 2, 3 and 4, and to assist with this it may be helpful to involve in the discussion a third party who is respected by both partners.

### Step 6 – Professional Mediation and Resolution

In the rare cases where further discussions fail to produce agreement it is likely that professional mediation will be required, at shared cost. Step 6 should involve further discussion as in step 5, but facilitated by a professional mediator with a knowledge of the issues involved. On occasions mediation

may not be agreed to, or indeed the process may fail to provide an acceptable solution. It is expected that in such circumstances, and throughout the step by step process, the limited partner will follow the commitments in the SL&E Landowner's Charter (copy attached at appendix B).

### **Ensuring Success**

Some 400 Limited Partnerships are still in effect in Scotland. The industry bodies will measure the success of this guidance by monitoring the proportion of these that are, as they approach their end date, either extended or replaced by new arrangements which ensure sustainable long term land management. With this in mind the industry bodies will work with landowners, tenants, RICS and leading land agency firms to ensure widespread adherence to the guidance, including staff training, modifications to professional codes of practice, and the introduction of robust quality control systems.

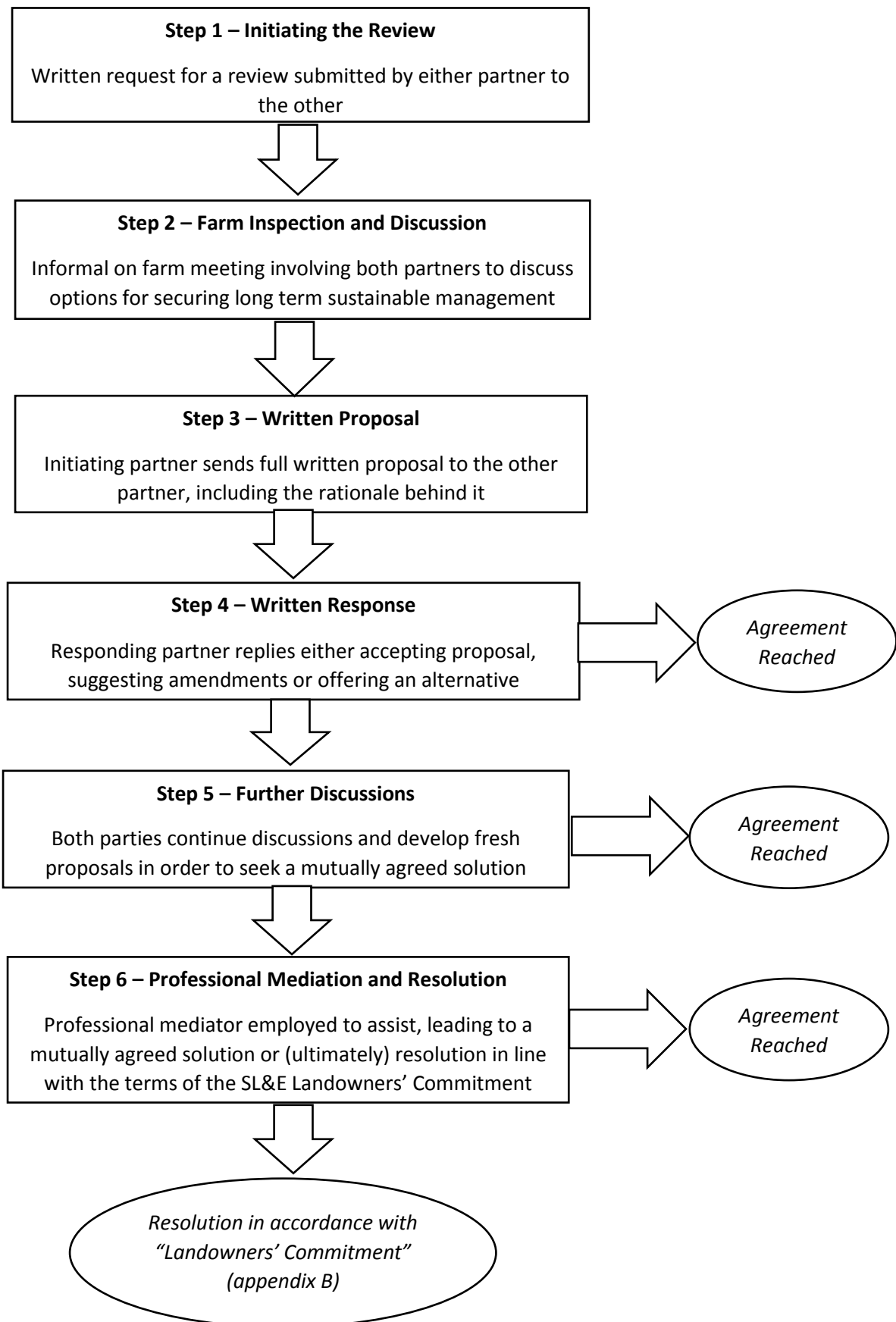
### **In Summary**

NFUS, SL+E and STFA are concerned about current uncertainty and potential short termism arising from the number of Limited Partnerships that are continuing on the basis of insecure arrangements. Recognising that the AHLRG has encouraged industry led action to address this, the three organisations have decided to jointly launch recommended guidance designed to ensure a managed transition to more stable and secure arrangements across the country.

The guidance asks all limited and general partners who are in short term arrangements to follow a simple step by step process in order to agree a mutually beneficial way forward that ensures long term sustainable management of the land. The process includes use of professional mediation where agreement proves difficult to find. Support for and adherence to the guidance will be sought from all interested parties, and will be subject to ongoing review by the three signatory organisations.

Statutory provisions continue to apply and partners' rights are unaffected. The guidance seeks simply to provide robust encouragement and an effective framework process in order to address a matter of significant public interest identified in the AHLRG report.

**Appendix A – Flow Chart Illustrating the Guidance in Practice**



## **Appendix B - Landowners' Commitment**

Published by Scottish Land and Estates ([www.scottishlandandestates.com](http://www.scottishlandandestates.com)) on behalf of its members

We undertake to manage our land based businesses in line with the following principles -

We will be:

### **Open**

- Take reasonable steps to ensure that ownership of land is visible.
- Ensure that landowners or their named representative are accessible and contactable.
- Openly condemn bad and illegal practice where it exists.
- Communicate estate plans to those who will be affected by them.

### **Inclusive**

- Have regard to community aspirations as part of estate planning.
- Provide the wider estate community with an opportunity to contribute to relevant decision making.
- Proactively welcome responsible public access.
- Promote enjoyment of rural Scotland.

### **Enabling**

- Work with tenants and the wider community to encourage and support enterprise and business development where this fits with estate or farm objectives.
- Work with the community where appropriate to assist in the delivery of its social, economic and environmental aspirations.
- Act as a catalyst and conduit for inward investment.
- Provide opportunities for people to connect with the land through education, employment and recreation.

### **Responsible**

- Treat everyone with courtesy, politeness and respect, and act with integrity across land based business activities.
- Act sustainably, economically, socially and environmentally.
- Adhere to all relevant codes of practice and regulatory requirements.
- Ensure employees and contractors conduct business in accordance with the principles contained within the Landowners' Commitment as well as any appropriate professional standards.
- Be aware of how landowners' actions and decisions affect those who live and work in rural Scotland and those who visit for enjoyment.