



**NEW FARM
RETIREMENT
SCHEME**

Under the rules of the last Farm Retirement Scheme it was possible for a solicitor to advise a client as to whether or not the client was eligible to obtain the retirement pension. This is not the case under the new scheme. Among other things, the criteria for qualification are different and require computations of income to be done both in respect of the transferor and transferee.

Information also has to be given in relation to livestock numbers, age of livestock and the like. The information which the parties give in relation to livestock will have to be fully correct. It will have to correspond with the information already given by the transferor and transferee to the Department in respect of such matters as area aid, livestock premiums etc..

Warning

Paragraph 16.4 on page 11 of the scheme states "the applicant and his/her agricultural advisor/agricultural consultant/solicitor must complete a checklist certifying that all the required documentation has been included and conforms with the requirements of the Scheme. It is the responsibility of the agricultural advisor/agricultural consultant/solicitor to ensure the accuracy of the documentation validated by them in relation to the application. The Department shall not accept any responsibility for errors or omissions contained therein. Accordingly, intending participants should only engage the services of appropriately indemnified/insured individuals or companies." .

This is a most unusual clause to put in a document of this nature and the Committee can only assume that any application filed which has even a most minor error may be rejected.

It is the considered opinion of the Conveyancing Committee that solicitors should not involve themselves in advising as to a client's eligibility for the Scheme or in the completion or filing of the application forms but should deal solely with the transfers or leases involved. The solicitor should furnish the transfer or lease to the client's agricultural advisor who should look after the completion and lodgement of the forms.

When preparing the transfer or lease, the solicitor should advise the client that there is no guarantee that the pension will be paid, or if paid, that it will continue to be paid and that if payment is discontinued that pension previously paid to the client may have to be repaid to the Department.

The final paragraph on page 16 of the application form states "the transfer/lease of land must not be limited in any unacceptable way. A simple retention by a family member(s) of a right of residence in the dwellinghouse is acceptable, as are rights of support and/or family financial settlements. Where a deed incorporates a revocation clause, the transfer can not take effect until the clause has been deleted. The date on which the revocation



clause is deleted becomes the effective date of transfer."

Other than what is stated in the paragraph the word "unacceptable" is not defined. Unless the Department defines this, a solicitor should advise the client that there can be no guarantee that the transfer or lease prepared complies with the Scheme.

Under the previous Scheme the position of the retiring farmer was not prejudiced if the farming transferee breached the terms of the Scheme. This is no longer the case. Paragraph 2 on page 3 states "transferor should note that if the transferee does not comply with his/her obligations under the Scheme, their pension may be revoked and they may have to repay what they have already received by way of pension".

There are income and other requirements to be met by a qualifying transferee. A transferor has no way of verifying the correctness of these. If on an audit, it transpires that the transferee was not qualified, the transferor may lose the pension and may have to pay back pension monies already received. In particular, in voluntary transfer cases, a transferor will need to be satisfied that sufficient rights have been retained in the transfer deed to protect against the pension not being payable.

Miscellaneous Points

Contradiction

Paragraph 5.6 on page 6 states that the applicant must "have farmed an area of not less than 5 hectares of eligible lands, as owner/joint owner, lease holder, joint lease holder and/or tenant in common, at the time of the signing of the transfer/lease documents". Clearly this would exclude any joint manager. The joint manager is defined at paragraph 3.15 on page 4. This excludes a joint manager who does not own or lease land.

Paragraph 5.11 (which contradicts paragraph 5.6) states that "an applicant, who is not the owner/lease-holder of the agricultural holding involved, will only be admitted to the scheme if he/she is in actual joint management of the holding with the owner/lease-holder. Where joint management is being availed of, legal evidence of entitlement must be supplied to support the application".

On page 15 the Regulations refer to "lands leased in" by the transferor prior to the 1st January, 2000 which qualifies for pension purposes. Among the requirements for this is that the lease must have been witnessed by a solicitor. There is no general requirement in law for leases to be witnessed by solicitors. This is a lease which would have been executed almost a year before the current scheme came into existence and there is no way that the people involved in drafting and executing the lease at the time could have known that there would be a requirement in the future that it be witnessed by a solicitor. Any leases executed

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since the Scheme came in to existence also have to be witnessed by a solicitor.

Also on page 15 mention is made of "an entailed holding". Apparently the intention had been to refer to settled land.

Farming Transferees

There is an age limit and there is a training requirement. If born before the 1st January, 1975 one set of rules applies and if born after that date the applicant must have done at least 180 hours of courses.

Under Paragraph 7.4 applicants must have an upper non-farming income of not more than 100 units in the tax year prior to the application being received in the Department. In certain cases their spouses' non-farming income can be taken in to account.

Under Regulation 7.8 the transferee must meet a viability threshold of at least 50 income units of which at least 20 income units must be derived from farming the owned land.

The transferee must undertake to follow good farming practice and reside within seventy miles of the farm.

Paragraph 7.12 states "where it is not possible for the original transferee to comply with condition 7.9, the pension lands may be reassigned to another eligible transferee for the remaining period of the pension." The Committee is unclear how this paragraph could be implemented and in particular what would happen if the retiring farmer had sold his/her holding .

Under 7.16 an application will not be accepted until a transferee can establish that she/he has reached the minimum viability threshold required under the scheme. It is certainly not for Solicitors to determine whether someone has achieved this. Also in these cases Area Aid documentation and a declaration will also be necessary.

Paragraph 10 deals with the calculation of income units.

Leases

Under Clause 3.16 leases must be for the period for which the pension is granted or where the pension is for less than a five year period the lease must be for five years. This is a big change from the old scheme. On the other hand paragraph 7.13 talks about the leased lands being "disposed of to a party who is not another eligible farming transferee". This appears to be contradictory.

Legal Requirements



The legal documentation which has to be supplied is as set out on the three pages attached hereto.

Phasing Out of the Scheme

Paragraph 12.2 page 10 sets out that people entering the scheme in the current calendar year will get the pension until their sixty-ninth birthday; people entering the scheme prior to the 31st December, 2002 will get it to their sixty-eighth birthday; people entering the scheme prior to the 31st December, 2003 will get it to their sixty-seventh birthday and people entering the scheme before the 31st December, 2004 will get the pension until their sixty-sixth birthday.

The Ending of the Scheme

Paragraph 1.5 (page 3) states that the Scheme will cease on the 31st December, 2006. As Practitioners are aware, the previous Scheme was ended in a most unsatisfactory manner. It can only be assumed that there will be a repeat of this in 2006. Because in transfer cases the transfer deed will have to be both stamped and then lodged in the Land Registry and a dealing number obtained before the client's agricultural advisor can lodge the application form, from mid 2006 onwards Solicitors should advise their clients that they can not guarantee that they will have the legal work in place so as to enable the retiring farmer to have a valid application lodged on or before the 31st December, 2006. While it is a rare event, there is always the risk that the Revenue might refer a deed to the Valuation Office before they stamp it. This would increase the timescale involved. Assuming that the current timescales apply, Solicitors should not, in 2006, attempt to do a transfer for Farm Retirement purposes within three months of the deadline. This will also apply to a lesser degree in relation to any applications within the last 3 months of each calendar year as a full years pension can be lost if a valid application is not lodged before the 31st of December.

Practitioners should keep a copy of this Practice Note. In appropriate cases copies should be given to clients as it would help to outline the client's position in relation to the Retirement Scheme.

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Legal Documentation Required from a Transferor

The following evidence of ownership/leaseholding is required for Early Retirement (ERS 2) 2000. (Copies of these documents certified as true copies of the original by a solicitor will be acceptable. Please note that originals cannot be returned).

A. Lands Owned by the Transferor:

- (i) For Registered Land, up to date Folio(s) (including maps) showing the transferor as registered owner/joint owner/tenant in common or where registration has not been completed, a stamped Deed of Transfer in the name of the transferor solely or jointly with an accompanying Dealing Number and relevant up to date folio(s) and map(s).
- (ii) For Unregistered Land, a stamped Deed of Conveyance/Indenture plus map(s), executed in the name of the transferor solely or jointly and memorialised in the Registry of Deeds.
- (iii) A transferor entitled to benefit from the estate of a deceased person must provide documents showing the deceased's entitlement as per (i) and (ii) above.

In addition, the following documents must be provided:

- (a) In a case of probate (i.e. where there was a will) he/she must produce:
 - (i) a Grant of Probate and
 - (ii) a Deed of Assent signed by the executor(s)
- (b) In the case of an administration (i.e. where there was no will) he/she must produce:
 - (i) a Grant of Letters of Administration
 - (ii) a Deed of Assent signed by the administrator(s).
- (iv) The title to some of the land allotted by the Irish Land Commission (I.L.C.) has not yet been registered in the Land Registry. In these instances the following is acceptable evidence of ownership:-
 - (a) A letter of confirmation of the allotment from the Land Commission/ Department's Lands Division
 - (b) Where the land was allotted to a previous owner, the transferor's



beneficial entitlement to this land must be clearly specified in the Deed(s) of Transfer or Deed(s) of Assent. A stamped Deed of Transfer, Grant of Probate or Letters of Administration under which the land was transferred to the applicant is also required.

B Entailed Holding:

Land held with a life interest must be specified on the relevant legal document.

C. Lands "Leased-in" by the Transferor Prior to 1st January 2000 Which Qualifies for Pension Purposes:

Ownership documents i.e. folio(s) with map(s)/ Deed(s) of Conveyance/Indenture of the lands with map(s), the subject of the lease must be provided. In addition the lease shall be for the period of the pension, and must:

- (i) be accompanied by a map
- (ii) be stamped by the Revenue Commissioners
- (iii) have the Department's Lands Division consent pursuant to Section 12 of the Land Act 1965
- (iv) state the operative dates of the lease
- (v) state the annual rent
- (vi) state the area, giving folio number(s) and county
- (vii) have the signature of the lessor and lessee duly witnessed by a Solicitor (the Solicitor's name and office address should be given.
- (viii) allow for sub-leasing

D Lands Rented/Let by the Transferor :

Details of lands "rented in", or "let out" in the year the application is received by the Department must be provided. Rental agreement, auctioneers certificate, as appropriate, showing the acreage and rent involved duly signed and dated will be acceptable as evidence.

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Legal Documentation Required from each Transferee

The following evidence of ownership leaseholding by the transferee of pension plus other lands farmed is required for Early Retirement (ERS 2) 2000 (copies of these documents certified as true copies of the original by a solicitor will be acceptable and please note that originals cannot be returned).

A. Pension and/or other Lands Owned by Transferee:

- (i) For Registered Land, up to date Folio(s) (including maps) showing the transferee as registered owner/joint owner tenant in common together with a stamped Deed of Transfer for the pension lands or where registration has not been completed, a stamped Deed of Transfer in the name of the transferee solely or jointly with an accompanying Dealing Number and relevant up to date folio(s) and map(s).
- (ii) For Unregistered Land, a Stamped Deed of Conveyance/Indenture plus maps(s), executed in the name of the transferee solely or jointly and memorialised in the Registry of Deeds.
- (iii) A transferee entitled to benefit from the estate of a deceased person must provide documents showing the deceased's entitlement as per (i) and (ii) above. In addition, the following documents must be provided:
 - (a) In a case of probate (i.e. where there was a will) he/she must produce:
 - (i) a Grant of Probate and
 - (ii) a Deed of Assent signed by the executor(s).
 - (b) In the case of an administration (i.e. where there was no will) he/she must produce:
 - (i) a Grant of Letters of Administration
 - (ii) a Deed of Assent signed by the administrator(s).
- (iv) The title to some of the land allotted by the Irish Land Commission (I.L.C.) has not yet been registered in the Land Registry. In these instances the following is acceptable as evidence of ownership:-
 - (a) A letter of confirmation of the allotment from the Land Commission/Department's Lands Division
 - (b) Where the land was allotted to a previous owner, the applicant's



beneficial entitlement to this land must be clearly specified in the Deed(s) of Transfer or Deed of Assent. A stamped Deed of Transfer, Grant of Probate or Letters of Administration under which the land was transferred to the applicant is also required.

B. Pension and/or other Lands Leased by the Transferee:

Ownership documents i.e. folio(s) with map(s)/Deeds of Conveyance/Indenture of the lands with map(s), the subject of each lease must be provided. In addition the lease(s) shall be for the period of the pension, and must:

- (i) be accompanied by a map(s)
- (ii) be stamped by the Revenue Commissioners
- (iii) have the Department's Lands Division consent pursuant to Section 12 of the Land Act 1965
- (iv) state the operative dates of the lease
- (v) state the annual rent
- (vi) state the area, giving folio number(s) and county
- (vii) have current folios and folio map(s), or a memorialised Deed where the land is unregistered.
- (viii) have the signature of the lessor and lessee duly witnessed by a Solicitor (the Solicitor's name and office address should be given)

C. Lands Rented/Let by the Transferee:

Details of lands "rented in", or "let out" in the year the application is received by the Department must be provided. Rental agreement, auctioneers certificate, as appropriate, showing the acreage and rent involved duly signed and dated will be acceptable as evidence.

Note:

The transfer/lease of land must not be limited in any unacceptable way. A simple retention by a family member(s) of a right of residence in the dwelling house is acceptable, as are rights of support and/or family financial settlements. Where a Deed incorporates a Revocation clause, the transfer cannot take effect until the clause has been deleted. The date on which the revocation clause is deleted becomes the effective date of transfer.

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