



**I**n order to streamline the system for the Farm Retirement Scheme, the Conveyancing Committee has agreed a basic checklist with the Department of Agriculture of the legal documentation which must be filed with any application for the pension. Where particular situations are not covered by the checklist then practitioners should contact the Department for clarification of the requirements.

In relation to the Scheme itself where practitioners are unsure as to whether a particular farmer is eligible to join the Scheme the Department will accept submissions in advance and will advise as to whether or not on the facts a person is eligible.

When the Scheme was launched in January the Department issued the “Scheme of Early Retirement from Farming” which includes definitions and guidelines and the application form for the pension. They also issued a basic guideline booklet. Since these were issued the Department has been looking at the Scheme on an ongoing basis. This has resulted in certain changes to the Scheme itself and to requirements under the Scheme. Practitioners dealing with the Scheme, therefore, need to be in regular contact with their Farm Development Office in order to obtain current Department Practice in relation to the Scheme.

The Conveyancing Committee has had meetings both with the Department of Agriculture and the IFA in relation to the Scheme. One of the concerns of the IFA was the question of the knowledge which Solicitors had of the Scheme and the fees which were being charged.

In relation to fees it was pointed out to the IFA that in order to qualify for the pension, legal work, other than applying for the pension itself, had to be done in order to meet with the requirements. The legal fee would depend on what work had to be done. For example, there may be two farm transfers involved; a transfer and lease; two leases; title perfection where titles have not been kept up to date; and in certain instances Administration and Probates, Deed of Family Settlement, Deed of Appropriation and possibly Deed of Disclaimer. In cases where the transferee already has a holding there may be one less lease or one less conveyance to be done. The work done may also require the updating of wills. In that regard it was pointed out that Solicitors would be happy to detail their charges and other expenses to their client before commencing any work on the Scheme.

The Committee’s advice to practitioners is that they should not undertake to do a Farm Retirement Scheme case unless they’re prepared to fully familiarise themselves with the system. In certain instances any delay may result in a permanent loss to an applicant and Solicitors should be aware of this before undertaking the work.

Where co-ownership (either joint tenancies or tenancies in common), intestacies, and testacies are involved practitioners should check in advance with the Department of

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Agriculture as to how the Scheme will apply. In certain circumstances different options are available.

The Scheme entitles persons who are in joint management of the holding to apply for the pension. The Department will advise as to whether a person is in joint management.

While leases at full market value are stamped at 1% of the annual market rent, this is not so in the case of a nominal rent. Under Section 102 (ii) of the Finance Act 1992 stamp duty is payable on the premium value of the lease where the rent is less than the market value. In such cases there is no reduction in the stamp duty rate where the parties are related.

There are also Capital Acquisitions Tax implications where the rent reserved under the lease is less than the market rent. The lessee is deemed to get a gift each year. This gift is the difference between the market rent and the rent reserved.

The AIB in conjunction with the IFA and with the op-operation of the Conveyancing Committee have brought out a revised version of the Farming Master Lease. This is a lease drawn up to cover almost all situations pertaining to agricultural property and practitioners should, if they are using it, select the clauses appropriate to the particular case.

**Guideline Conveyancing Checklist**

**1. Registered Land**

(i) *Where the transfer of title to Transferee has not yet been registered.*

- Certified copy of Original Transfer (with Map) duly stamped by Revenue together with a copy of the relevant Folio/s (and File Plan if available) or Land Registry Search and a map of the holding.
- Dealing Number.
- Undertaking of Transferee to furnish certified copy of Folio/s as soon as registration is complete. If same is not submitted within one year, Department will review the matter).
- Confirmation of the areas transferred (as per title)

(ii) *Where the transfer of title to Transferee has been registered*

- Certified copy of the relevant Folio/s (and file plan if available) or Land Registry search and a map of the holding.

**2. Unregistered Land**

- Certified copy Deed/s of Assignment/Conveyance (and a map of the holding)



duly stamped by the Revenue and registered in the Registry of Deeds.

- Confirmation of the areas transferred as per title.

**3. Leases**

(i) *For leased land to be reckoned as eligible under the Scheme, leases must:-*

- have a residue of at least FIVE YEARS remaining at the date of the transferor's retirement or at the date of the enlargement, whichever is the later. Where necessary such residue should be extended to cover the period of the pension.
- be duly executed and stamped by Revenue. (There is no registration requirement). The lease should accompany the application.
- have Land Commission consent (Section 12) (Leasing Application Form).
- stipulate the Annual Rent and operative date.
- state the area, have map attached and give Folio Numbers where applicable.
- every lease submitted under the Scheme, whether it is from the Transferor or by way of enlargement must be "backed up" with copies of the relevant Folio/s (and file plan if available) or Land Registry Search and Map.
- indicate any restrictions as to land use.

(ii) Lessors of ANY AND ALL Leases entered into under the Scheme must be the registered owners of the lands in question or the legal personal representative of the said owner.

**4. Land Commission Land**

Certificate from the Land Commission confirming the status of the land in question. This will set out the full detail of the said lands.

**5. General**

It should be noted that the various Undertakings or Certificates may be embodied in the deeds or given separately given the particular circumstances ..... i.e. Family Home, Section 12, Compliance with the Scheme.

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