



The Scottish  
Government  
Riaghaltas na h-Alba

# Agriculture, Fisheries and Rural Affairs

## Scottish Agricultural Tenure Evidence Review



social  
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# **SCOTTISH AGRICULTURAL TENURE EVIDENCE REVIEW**

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Scottish Government Social Research  
2014

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# 1 EXECUTIVE SUMMARY

- 1.1 Data on land tenure in Scotland is reliant on the June Agricultural Census which, whilst having a statutory basis for holding occupiers to complete is not universally completed with around 70% annual completion. Coupled with missing data in some census returns, it means that some estimates have to be made around the prevalence of different types of tenure in Scotland. Consequently, the dataset does not yet offer a fully robust method of identifying crofts meaning that the data on tenure is likely to be clouded by crofting rentals. The data does, however, provide some clear indications of change in the amount of land let under Agricultural Holdings Legislation. It also gives insight into the way in which land has been let under the different letting vehicles introduced over the period not only within the legislation but also outside it, with particular reference to seasonal lets.
- 1.2 Including crofting tenure, there was a reduction in the total area of land let in Scotland from about 40% of land in 1982 to 24% of land in 2013, representing a decline of 42%. The rate of decline was low during the 1980s but since the introduction of the Agricultural Holdings (Scotland) Act 1991 and the Agricultural Holdings (Scotland) Act 2003 there was an average annual rate of decline of 2%. These changes are not entirely due to changes in land tenure, with reforms of Common Agricultural Policy (CAP) also having a bearing, particularly as support was decoupled from production.
- 1.3 At a holding level it is estimated that, excluding identifiable crofts, between 2000 and 2013 the amount of land let through agricultural tenure decreased from 1.59 million hectares to 1.19 million hectares with the proportion of holdings leasing land falling from 24.4% to 17.4%. At a business level (farm businesses may run multiple holdings) the proportion of businesses letting land fell from 26.8% in 2009 to 24% in 2013 with a reduction in the let area from 26.4% to 22.8% over the period.
- 1.4 There are strong regional variations in the relative importance of land tenure with areas in, for example, the Borders or Dumfries and Galloway traditionally having greater reliance on farming tenancies. There was also wide regional variations in the changes in the number of holdings, businesses and area of rented land over the period of analysis, with for example more rapid decline in areas such as Tayside, Ayrshire and Lothian.
- 1.5 The proportion of wholly tenanted holdings fell from 18.1% in 2000 to 12% in 2013 with the proportion of land on these holdings falling from 26.2% to 16.9%. Despite the proportion of holdings with mixed tenure falling from 6.3% to 5.4% the area of land under their control increased from 9.9% to 11.5%. Mixed tenure holdings and businesses were found to be more than double the size of wholly owner occupied holdings on average and about 60-75% larger than wholly tenanted counterparts over the period. At business level, mixed tenure businesses controlled a considerably larger proportion of the farmed area (20.4% in 2013) than at holding level (11.5% in 2013). The Borders and Dumfries and Galloway have traditionally had high levels of wholly tenanted farm holdings and businesses.

- 1.6 The estimated area and number of holdings and businesses under 1991 Act tenancies continues to decline, following long term patterns. It was estimated that the number of holdings with 1991 Act leases fell from 7,129 in 2007 to 5,793 in 2013 with the area leased falling from 1.15 million hectares to 0.887 million hectares during that time period. The North East of Scotland had nearly 1 in 5 holdings with 1991 Act leases in 2013 (14% of the rented area) and Highland had 22.7% of the rented area (13.7% of the holdings).
- 1.7 Business level analysis suggests that there were 4,497 unique businesses leasing 871,518 hectares in 2013 under 1991 Act tenancies, respective declines of 13% and 17.3% since 2009. There was also a decline in the estimated number of businesses leasing through Ltd Partnership agreements following legislative changes brought about from the Agricultural Holdings (Scotland) Act 2003. Whilst there has been growth in the uptake of Limited Duration Tenancies (LTDs) and Short Limited Duration Tenancies (SLTDs) this has been relatively slow and by no means compensates for the loss in 1991 Act and Ltd Partnership tenancies.
- 1.8 Using details submitted on IACS forms by CAP recipients since 2005 the amount of land let on a seasonal/temporary basis has increased from 510,805 to 721,907. This represents a net gain of 211,102ha (around 49,000ha less than was lost from holdings held under agricultural holdings legislation). The vast majority of new, seasonally let land is rough grazing and is likely used as “naked acres” as a result of “slipper farmers” seeking land to activate purchased CAP support entitlements or active farmers seeking a safety net for CAP inspections. There has been considerable uptake of seasonal let land in the south west of Scotland, letting in up to a quarter of the total area on seasonal basis. There were notable increases in the central Highlands and Wester Ross of locations where there have been significant increases in seasonally let-out land – potentially confirming assertions over naked acres.
- 1.9 In November 2013 there were 1,135 interests registered for a pre-emptive right to buy covering more than 190,000ha. This represented 21.4% of the estimated total area under secure 1991 Act leases in 2013, spread across Scotland but with some higher concentrations in counties traditionally associated with estate ownership and tenant farming. The Church of Scotland and Crown Estate were the landowners with the largest proportion of tenants’ interests registered for their land.
- 1.10 The drivers of change surrounding tenancy issues are numerous but there was surprising commonality across the regions. It certainly appears that the limited uptake of SLDTs and LDTs relates to control of the land, inheritance taxation considerations and importantly the ability of landlords to access (or potential access) decoupled CAP support payments when leasing through contract farming arrangements or seasonal lets. It was predicted by many working with farmers and landowners that contract farming will continue to blossom in the near future as landlords seek to maximise returns from their land through CAP support payments, whilst minimising longer term risks relating to land reform. It also appears that those land owners that continue to lease land through secure 1991 Act tenancies have nervousness over land reform, particularly the uncertainty it brings to the sector. There appears to be

a lot of informal arrangements (e.g. handshakes, unwritten agreements) being used as a more flexible method of renting land than more formalised legal options despite the landlord potentially being at greater risk through the informal route.

- 1.11 Surprisingly little empirical evidence is available on the relative performance of farms held under different tenure arrangements. This partly reflects a lack of suitable data for analysis, but also the confounding effects of other influences on farm performance. Literature suggests that mixed tenure farms may deliver superior results, but that farmer characteristics (e.g. attitude, education) are a more important determinant of performance. Moreover, results are sensitive to how finely tenure categories are defined and to how (imputed) family labour and (especially) land costs for owner-occupiers are treated.
- 1.12 Agricultural land tenure across different countries has been subject to a number of formal and/or academic reviews in recent decades. Although most are slightly dated, all of these studies provide useful overviews of different tenure patterns and of the different ways in which governments have sought to use legislative controls.
- 1.13 The variation in rented land's share of tenure is dramatic, ranging from less than 20% in Ireland and Romania to over 80% in Slovakia and the Czech Republic. In addition, the share of rented land has also varied over time – rising in some countries whilst falling in some others. There is also considerable variation on land prices and rents, plus in the structure of agriculture in terms of forms of business, average farm size, reliance on family labour and the proportion of younger and older farmers. Despite similarities in stated policy goals, countries have adopted a range of different tenure control measures.
- 1.14 In many countries, the holding of land by non-local interests is subject to regulatory restrictions. These restrictions reflect concerns over the impact of non-local and/or corporate interests on land prices and rental values plus community cohesion. Such concerns are prominent amongst New Member States of the EU, most of which have bans on foreign/corporate ownership and/or limits on areas that can be leased. Non-EU countries such as Canada, Norway and New Zealand have also had outright bans in the past, but have since generally adopted less-restrictive case-by-case consent procedures. Consent is often conditional on, for example, applicants having prior agricultural experience and relevant qualifications, being already resident in the country, and committing to personally residing on and working the land involved.
- 1.15 Acknowledgement of the negative influence of land fragmentation on agricultural efficiency has led many countries to constrain the sub-division of land and indeed to promote consolidation. Denmark, France and the Netherlands all have administrative bodies with the power to forcibly reallocate land between different farms if this will improve viability.

- 1.16 A desire to ease cost pressures on farmers has led many countries to impose maximum rental levels, typically revised every few years. In some cases, rents for a given piece of land are set with reference to rents on neighbouring land – a system that dampens changes, but inevitably imposes time lags - and in the event of falling incomes may actually worsen the situation. More commonly, rents are linked in some manner to the productive capacity of the land. For example, rents could be set in relation to crop yields, stocking densities and/or profit margins.
- 1.17 The degree of security of tenure provided varies considerably across countries. Belgian leases can be for up to 27 years and are renewed for the same period as the original term. Similar treatment is experienced in, for example, France, Italy and the Netherlands. Ireland offers no security of tenure and countries including Denmark, Hungary and Poland specify maximum lease durations with no automatic right of renewal.
- 1.18 Acknowledgement of the potential for tension between tenant and landlord interests is widespread, with most countries having some degree of explicit legislation detailing the obligations and powers of each party to a lease, plus how disputes can be resolved.
- 1.19 Examples of tenants having an absolute right to buy rented land are scarce, particularly from private landlords. Currently, most (but not all) tenants on Crown land in both Canada and New Zealand have an absolute right to buy and indeed are actively encouraged to exercise it. Most countries do, however, grant first refusal to private and public tenants through a pre-emptive right to buy land if offered for sale. For example, Belgium, France and Sweden. Some countries extend pre-emptive rights to relatives and/or neighbouring farms, as in France, Hungary and Italy.
- 1.20 In some countries such as Denmark, the Netherlands and New Zealand, the tax treatment of agriculture is more-or-less the same as for any other business sector. That is, although generic support for business succession and income-smoothing may be available, no farm-specific exemptions or allowances are offered. However, most countries do treat farm taxation differently, particularly with respect to the transfer of land between family members.
- 1.21 The availability of land, either to buy or to rent, is widely acknowledged to be a factor influencing the ease with which new farmers can enter the industry. Farm inheritance is the dominant entry route in most countries, and is typically facilitated by tax breaks on business succession and/or the extension of leasehold security to family heirs. Separately, for non-family succession, some countries make explicit provision for allocating land to new entrants. Bids for Crown land in Canada and New Zealand can be weighted in favour of younger farmers and around 1/3 of interventions under the French Sociétés d'Aménagement Foncier et d'Établissement Rural (SAFER) system are to assist new entrants, of which around 2/3 are not from farming families.
- 1.22 Five main points emerge from the tenure review literature and case studies. First, patterns of tenure vary considerably across different countries as do the

nature and degree of government control (either through legislation and/or as a State landlord) over tenure arrangements. Second, this diversity reflects not only variation in the quality and abundance of land in different countries but also variation in (often inconsistent if not incoherent) political preferences, driven largely by historical factors including the local co-evolution of democratic principles and private property rights. Third, whilst the nature and extent of intervention in land markets varies, in almost all cases the implicit or indeed explicit policy preference is for family-operated farms, either as owner-occupiers and/or tenants. Fourth, periodic reform of tenure controls is often highly politicised. This reflects inherent tensions between different interests in land and the ebb and flow of divergent views on the appropriateness of different forms of land tenure and indeed on the distribution of wealth within society. Fifth, formal evaluations of tenure controls are extremely rare and case study informants caution against drawing causal inferences. In particular, the context-specific and dynamic complexity of tenure means that similar observed outcomes may have different causes in different countries.

## 2 BACKGROUND

- 2.1 Agricultural tenancy is an emotive subject due to the interests of two distinct groups in Scotland, namely landlords and tenants, with a group in-between who both own and lease land. Since the enactment of the Agricultural Holdings (Scotland) Act 1948, later consolidated in the Agricultural Holdings (Scotland) Act 1991, agricultural tenants have enjoyed security of tenure under statute in Scotland. There was a poor uptake of 1991 Act leases and Limited Partnership arrangements became more popular throughout the 1980's and 1990's as landowners preferred to let out land under these arrangements in order to avoid security of tenure and fixed equipment provisions. As a consequence land was often let out to existing tenants to help them expand and it became very difficult for new entrants to the industry to find land to rent in from landlords.
- 2.2 The Agricultural Holdings (Scotland) Act 2003 was the culmination of many years of discussion, debate and deliberation throughout Scotland on the issue of land tenure. The 2003 Act was initially seen as far-reaching and new forms of tenancy were introduced, namely the Limited Duration Tenancy (LDT) and Short Limited Duration Tenancy (SLDT). These tenancy reforms aimed to provide a degree of security for tenants, introduce fair maintenance obligations for landlords, provide tenants an opportunity to diversify and plant trees and introduce procedures to reduce the costs of dispute resolution. Part two of the 2003 Act also introduced the "tenant farmers right to buy" which enabled tenants to register their interest in their holding meaning that they have a pre-emptive right to buy should the landlord choose to sell the holding.
- 2.3 To date there has been very limited uptake of these new forms of tenure and the tenancy sector continues to contract in Scotland.

### Purpose and Objectives

- 2.4 The main purpose of this report is to provide an evidence review on agricultural tenure in Scotland to inform the Agricultural Holdings Legislation Review Group and support policy development. This includes an examination of Scottish Government datasets pertaining to agricultural tenancies to identify trends in different forms of leasing agricultural land in Scotland, including any regional dimension or differences between farm types. In addition the report examines causal factors that have led to these changes. The report also includes a number of case studies from Europe and beyond, to ascertain, for example: extent and commonality of rented land; how their tenure systems operate; patterns and intensity of landownership; fiscal measures; regulation of land markets, etc.
- 2.5 The specific objectives for the study were to:
- Quantify the current level (frequency and area) and type of agricultural land tenure arrangements in Scotland
  - Quantify the level of change in owner occupied agricultural land, agricultural land let out under tenancy and grass lets between 2000 and 2012

- Account for, and where possible quantify, the underlying reasons for change in tenure arrangements between 1991 and 2012, identifying as necessary any geographical differences.
  - Explore the reasons for any differing change in ownership and tenure dependent on type of farming and location.
  - Undertake case study reviews of land tenure arrangements in 8 countries. The case study reviews were to consider the nature and length of tenancies, whether countries are doing anything to promote new entrants, how rents are set and the impact of those rents on that land tenure, how succession and assignation is handled, any absolute right to buy/pre-emptive right to buy provisions, information on the types of companies and individuals owning land and if those companies are owned by a small range of individuals and the nature of any key tax legislation which significantly benefits either tenant or landowners.
- 2.6 Given the specific legislative framework for crofting, the focus of this study was restricted to non-crofting tenure.

### 3 DATA SOURCES AND METHODS

- 3.1 The analysis conducted for this report draws heavily on holding level June Agricultural Census (JAC) data, provided by the Scottish Government's Rural and Environment Science and Analytical Services (RESAS) for the years 2000 to 2013. The census variables relating to land tenure, whilst not comprehensively covering the whole period, were extracted at holding level and then time series for each variable were created (using MS Access queries) for each holding to allow analysis of movements over time.
- 3.2 In addition using Business Reference Numbers (BRNs) to County Parish Holding number (CPH) look up tables supplied by RESAS for 2009 to 2013 the JAC data was aggregated to business level to provide a secondary analysis at farm business level rather than simply at holding level. This business level analysis therefore only includes holdings that are part of businesses that have registered for a BRN (normally recipients of CAP support payments), although it is acknowledged that this does include some non-farm businesses. This analysis does, however remove a large number of minor holdings that are not really engaged in agricultural activity from the dataset.
- 3.3 For parts of the analysis it was essential to make assumptions about (a) the location of, and (b) the robust farm type of farm businesses that were made up of multiple holdings. As such, for each business (BRN) with multiple holdings the location and robust farm type of the "main" holding was used, failing which the location of the economically dominant holding (as measured by standard labour requirements) was taken as representation of the whole business. It is acknowledged that this will undoubtedly lead to some errors in farm types and location (i.e. when a BRN has multiple holdings of different type in different locations), but it was nonetheless considered the best option. The location is of less concern when the data is aggregated to regional levels, as often when businesses have multiple holdings they are located in the same region.
- 3.4 Data on seasonally let land (less than a year) is also collected from the Single Application Form (SAF) as part of the Integrated Administration and Control System (IACS) and this was supplied by RESAS for the years 2005 and 2009-2013. This data provided field data on field by field use of seasonally let land and also on total amounts of seasonally let land (both in and out) for each CPH, and hence BRN.

#### Data Integrity

- 3.5 Whilst there is a statutory obligation for holding operators to complete and return the JAC it only has about a 70% annual response rate from the industry. In addition minor holdings are surveyed on a 3 or 4 yearly cycle rather than annually. Whilst RESAS have used SAF data (if available) to complete cropping data for holdings since 2009, there is no equivalent secondary data source relating to land tenure. This means that where JAC forms are not returned, or for minor holdings that were not surveyed, RESAS are required to

make an assumption about the holding's tenure (and other) data and simply use the previous year's data (which incidentally may also have been based on assumption). This means that the JAC cannot provide an exact portrayal of land tenure situation in Scotland, although it does provide a good indication of the position and trends.

**Figure 1 Section of JAC form relating to owned and rented land**

Section 2 Owned area				
Enter details of the area you own at this location (exclude land you rent out for 365 days or more).				
(hectares to nearest 0.01)				
Total area you own	1	11		
If any of the land entered at box 1 above is in a crofting county (see notes) and registered with the Crofting Commission enter area in hectares here.	2	2249		
Section 2 Rented area				
Enter area of land you rent in at this location (365 days or more)				
Hectares (to nearest 0.01)				
Rented croft registered with the Crofting Commission.	3	2251	Enter Years specified in longest lease	
Small Landholders Act tenancy (only found outside crofting counties)	4	2252		
91 Act tenancy: Any tenancy for more than 1 year with full security of tenure and succession rights	5	2160		
91 Act, Ltd Partnership: Any tenancy for more than 1 year where the tenant is a limited partnership	6	2161		
SLDT: entered into on or after Martinmas 2003 for between 1 and 5 years duration	7	2158		
LDT: entered into on or after Martinmas 2003 for 15 years or more and with a specific end date	8	2159		
Total area rented in (boxes 3 to 8 above)	9	7		
TOTAL AREA of this location (Box 1 plus Box 9)	10	12		
Section 3 Seasonal rents				
Area of land recorded in section 2 that you rent out seasonally (284 days or less) to another person				
Area of land you rent out seasonally (details of use of this land should be given in sections 4 and 5 on page 2).	1	1	Hectares	
If any of the land entered at box 1, above, is rented out under SLDT, please state the number of SLDT leases	2	2229	Number	
Please state the combined area of any SLDT leases entered at box 2, above.	3	2230	Hectares	
Area of land that you rent in seasonally from another person. Do not enter details of this land except in this section of the form.				
Area of land rented in seasonally from another person.	4	2	Hectares	

3.6 As the SAF relates to CAP payments, to which financial penalties may be imposed for inaccuracies, it was considered that this is a more robust dataset of seasonally let land in Scotland, compared to the JAC. That said, the extracted SAF data also contained problems in that the total seasonal let land variable was deemed inaccurate by RESAS, meaning only seasonally let land used to claim Single Farm Payments could be used in the analysis.

3.7 Another issue regarding the integrity of the tenure data is that there is an underlying assumption that if there is no breakdown of the area under tenure arrangements (see “section 2” of Figure 1) then the land is assumed to be let under a 1991 Act tenancy. This therefore adds another level of potential inaccuracies into the data due to incomplete form filling.

## Crofts

3.8 In an attempt to identify croft holdings within the JAC two new variables have been included in the JAC form since 2007: (a) the area of land owned that is registered with the Crofting Commission, and; (b) the area of land rented that is registered with the Crofting Commission. These variables were used for 2007 to 2013 to identify 100% croft holdings (where the Crofting Commission registered area equalled total area of the holding) and part-croft holdings (where only part of the total area of the holding was registered with the Crofting Commission). Table 1 shows how the number of total croft holdings across Scotland (a) increased from 7,490 in 2007 when these two variables were first introduced to 9,679 in 2013, highlighting the data lags inherent in the system.

3.9 There were some errors in the census returns for these “croft” variables with 626 holdings in non-crofting county locations reporting as croft holdings in 2007. This figure remained stable to 2013. When all “croft” holdings in non-crofting counties local authorities were excluded (columns (b)) the number of identifiable crofts was 7,959 in 2007 and 9,790 in 2013.

3.10 The amount of land reported as being owned and registered with the Crofting Commission (column (c)) in 2007 increased from 61,668ha in 2007 to 67,874ha in 2013 on 100% crofts and fell on part crofts from 92,563ha to 67,019ha. A similar trend was observed in the areas rented with 96,522ha rented by 100% crofts in 2007 rising to 122,430 in 2013 whilst on part-crofts the area rented fell from 64,731ha to 41,567ha.

**Table 1 Croft holdings identified in June Census and area of owned and rented land registered with the Crofting Commission**

Year	Number of Holdings				Crofting Commission Registered Area (Ha)			
	Scotland (a)		Crofting Counties (b)		100% Crofts (c)		Part Crofts (d)	
	100% Crofts	Part Crofts	100% Crofts	Part Crofts	Owned	Rented	Owned	Rented
2007	7,490	1,095	6,885	1,074	61,668	96,522	92,563	64,731
2008	7,882	1,109	7,294	1,084	58,881	100,489	87,372	59,795
2009	8,855	1,145	8,263	1,123	62,968	105,961	85,072	49,505
2010	8,784	884	8,208	864	70,348	112,663	46,918	47,972
2011	9,097	781	8,520	761	67,602	116,781	45,938	36,066
2012	9,182	786	8,609	764	63,547	121,601	73,662	35,031
2013	9,679	734	9,077	713	67,874	122,430	67,019	41,567

3.11 This however, was considered likely to be an underestimation, particularly in the Western Isles, due to lack of data in the JAC datasets to identify crofts satisfactorily. Therefore, RESAS released holding identifiers for 2,264 crofts they had identified through the Crofting Commission register that could not be identified through the JAC. Combining the JAC and RESAS lists provided a list that was considered the best estimate of croft holdings. The final adjustment was to remove about 115 part croft holdings from the list of crofts as they also rented land through other non-crofting agricultural tenure arrangements.

3.12 Due to the reporting and sampling issues discussed it was considered that the 2013 figures represent the best estimate of a holding's croft status, unless there has been de-crofting. Logic suggests that a holding that was a croft in 2013 was also historically a croft unless it was a new holding that emerged from a croft holding being split. In an attempt to overcome any potential inaccuracies in removal of "crofts" from the time-series dataset the croft status was taken from the RESAS list or the last completed June Census return made. Where it appeared that recent de-crofting had occurred on holdings then they too were excluded from this analysis.

3.13 Table 2 shows the estimated number of croft holdings remained relatively stable around 12,000 over the period 2007 to 2013 as did the area rented by these crofts (about 175,000ha) and area owned (about 138,000ha). It should be noted that the natural churn of holding numbers (i.e. some cease to exist and new ones are created annually for a variety of reasons) means that the further back in time this "croft list" is used the more inaccurate it becomes, as some croft holding numbers that may have been in use, for example between 2000 to 2005, were not in use between 2007 and 2013 meaning they could not be identified as a croft holding in the dataset. This will undoubtedly lead

to some anomalies in the data for the crofting counties looking at time-series data.

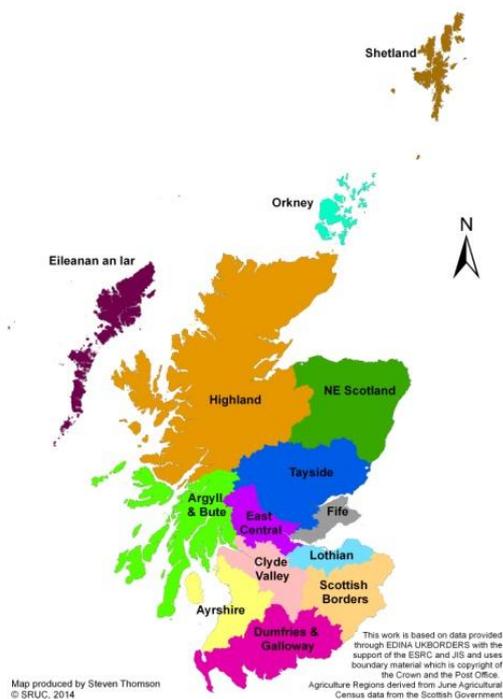
**Table 2 Total croft holdings\* and areas of rented and owned land, including crofts unidentifiable in the June Census**

Year	Number of Crofts	Area Rented (Ha)	Area Owned (Ha)	Total Croft Area (Ha)
2007	12,489	172,089	137,416	309,505
2008	12,522	176,854	138,400	315,254
2009	12,579	179,787	139,511	319,298
2010	11,793	176,065	139,774	315,838
2011	11,937	174,648	136,024	310,672
2012	11,970	175,922	142,479	318,401
2013	12,101	175,917	139,845	315,762

\* this excludes around 115 “part croft” holdings that cover about 14,000ha as they also rent in land under agricultural tenure arrangements

## Analysis

**Figure 2 JAC Agricultural Regions**



3.8 3.14 The analysis endeavours where possible to show the tenure data throughout by (a) census agricultural region (see Figure 2), robust farm type and by size based on standard labour requirements (as detailed in

Table 3) which is calculated using Scottish Government<sup>1</sup> criteria from the standard labour requirements for cropping and stocking activities for each holding or business. In addition geospatial representation of the data is also provided where possible at parish, or NUTS 4 level.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2012/06/6894/130>

**Table 3 Size grouping of farm businesses (BRNs) and holdings for analysis**

<b>Analysis Size Grouping</b>	<b>Scottish Government Size Category</b>	<b>Standard Labour Requirement Hours</b>	<b>Standard Labour Requirements</b>
<b>Small</b>	Very small	<1,900 hours	<1 FTE
	Small	1,900-3,800 hours	1-2 FTEs
<b>Medium</b>	Medium	3,800 – 5,700 hours	2-3 FTEs
<b>Large</b>	Large	5,700 – 9,500 hours	3-5 FTEs
	Very large	> 9,500 hours	>5 FTEs

*Adapted from Scottish Government 2012<sup>2</sup>*

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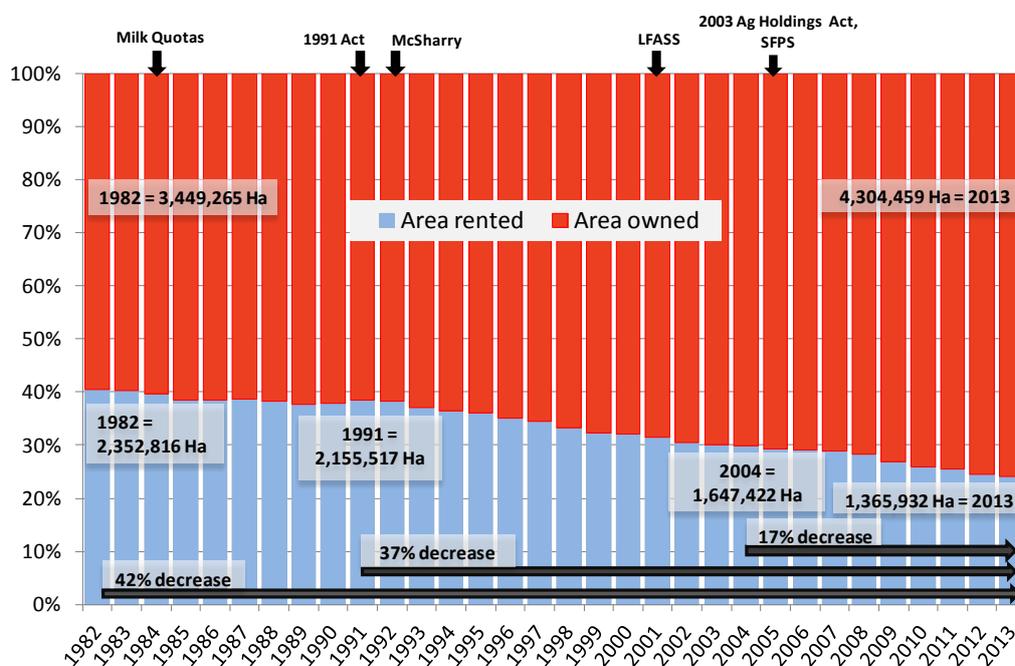
<sup>2</sup> <http://www.scotland.gov.uk/Publications/2012/06/6894/130>

## 4 ANALYSIS OF LAND TENURE DATA

### Trends in Scotland's Tenanted Land

- 4.1 Figure 3 shows the long term trends in the proportion of owned land and land under all tenure arrangements (including crofts) in Scotland, along with some key policy and legislative timelines. In 1982 let land accounted for 40.5% of Scottish land and in the decade to 1991 it fell gradually to 38.5% of land area. In the period following the Agricultural Holdings (Scotland) Act 1991 and the McSharry reforms of the Common Agricultural Policy (CAP) the rate of decline in let land increased, falling to 29.9% of total land in 2004. The enactment of the Agricultural Holdings (Scotland) Act 2003 and the decoupling of CAP support and the introduction of the Single Farm Payment closely coincided at the end of 2004 and by 2013 the area of let land fell to just over 24% of agricultural area.
- 4.2 These changes represent a 42% decrease in the area of let land from 1982, a 37% decrease since 1991 and a 17% decrease since 2004. This trend is not just about agricultural holdings legislation since the increased decoupling of CAP support since 1992 (arable aid payments were made on a per hectare basis as was set-aside) has clearly a part to play in incentivising greater control over farmland in order to benefit from CAP support payments. This incentive is likely to have increased since 2005 given the introduction of the Single Farm Payment which required the farmer to comply with statutory management requirements rather than actively farm the land.

**Figure 3 Proportion of owned and rented agricultural land, 1982-2013**



Data Source: Abstract of Scottish Agricultural Statistics 1982-2013<sup>3</sup>

<sup>33</sup> <http://www.scotland.gov.uk/Publications/2013/10/5891/0>

## Let Land - Excluding Croft Holdings

### *Total Rented Land (excluding seasonal lets)*

4.3 Table 4 shows the trend in the proportion of holdings renting land under agricultural tenure arrangements and the proportion of total agricultural land being let under these arrangements (no seasonal lets are included), once croft holdings have been excluded. This shows that once identifiable crofts have been removed that the number of holdings renting land under agricultural tenure arrangements (excluding seasonal lets) fell from 24.4% in 2000 to 17.4% in 2013 whilst the total area of land under these leases fell from 30.6% to only 22.2% of land over the same period. There were large regional variations in both the proportion of holdings and the proportion of land that was rented under tenure arrangements (see Table 15 in Annex A), with very low levels in Orkney and much higher levels in Tayside, the Borders, Dumfries and Galloway and in the crofting counties.

**Table 4 Proportion of agricultural land (excluding crofts) and holdings renting land 2000-2013**

Year	Renting Land				All land non-croft holdings and land	
	Area		Holdings		Hectares	Holdings
	Hectares	% Total	Number	% Total		
2000	1,592,765	30.6%	9,046	24.4%	5,211,227	37,111
2001	1,571,286	30.1%	8,845	23.7%	5,223,491	37,245
2002	1,525,432	29.1%	8,702	23.1%	5,243,443	37,631
2003	1,493,334	28.6%	8,476	22.4%	5,224,252	37,817
2004	1,483,075	28.4%	8,380	21.9%	5,219,354	38,264
2005	1,449,847	27.8%	8,257	21.4%	5,223,751	38,567
2006	1,465,738	27.6%	8,138	21.0%	5,309,126	38,790
2007	1,444,306	27.3%	7,919	20.4%	5,287,881	38,830
2008	1,417,760	26.6%	7,756	19.9%	5,331,652	38,924
2009	1,355,957	25.2%	7,613	19.5%	5,376,499	39,138
2010	1,307,847	24.1%	7,236	18.5%	5,417,248	39,202
2011	1,279,002	23.7%	7,128	18.1%	5,398,885	39,391
2012	1,211,181	22.6%	6,988	17.7%	5,349,485	39,432
2013	1,190,015	22.2%	6,875	17.4%	5,354,629	39,506

4.4 It was evident that a high number of unidentified croft holdings remained within the dataset despite best efforts to remove them. Around 60% of (about 735) holdings in Eileanan an Iar were renting land<sup>4</sup> in 2013 and it is suspected that the issue of unidentified crofts within the dataset also existed to a lesser extent in Shetland, Highland and Argyll and Bute regions. Table 16 in Annex A reveals the regional variation at businesses (BRN) level, and again the high proportion of BRNs renting in the traditional crofting areas confirms that at a business level the likelihood is that the dataset contains a number of croft businesses.

4.5 Using business (BRN) level data that excludes identified crofts and holdings not registered with the Scottish Government for CAP support, Table 5 reveals that there were 22,354 registered non-croft BRNs in 2013 that accounted for 96% of total non croft land in Scotland (calculated from Table 4). The data

<sup>4</sup> A feature of crofting

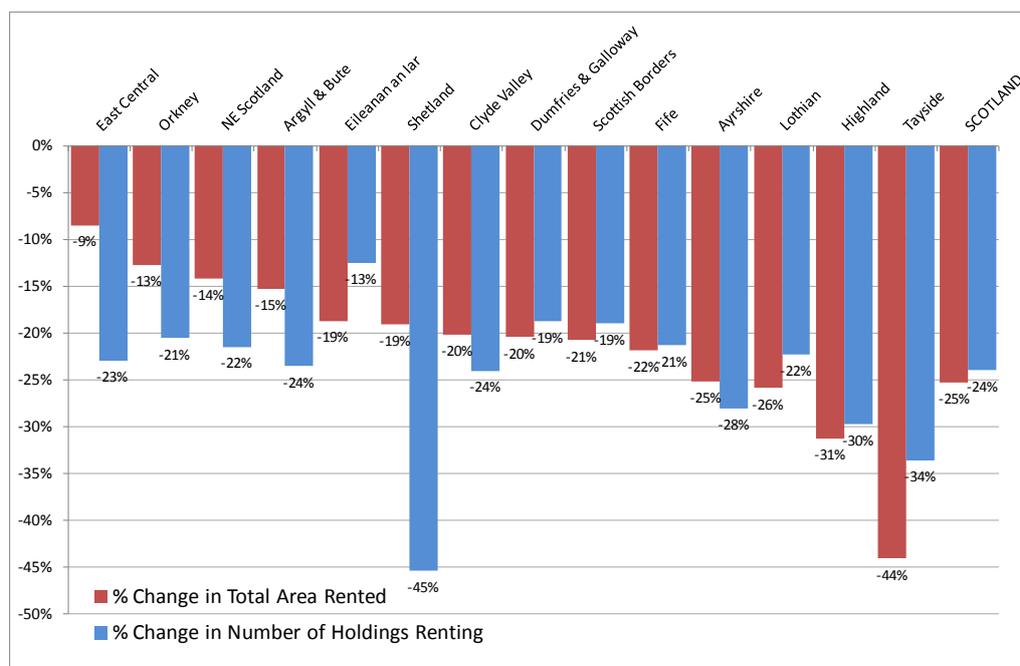
shows that in 2009 26.8% of BRNs rented land, falling to 24% in 2013<sup>5</sup> with the total amount of land they rented falling from 26.4% in 2009 to 22.8% in 2013.

**Table 5 Proportion of agricultural land (excluding crofts) and BRNs renting land 2009-2013**

Year	Renting Land				Total non-croft BRNs and land area	
	BRNs		Area		BRNs	Hectares
	Number	% Total	Hectares	% Total		
2009	5,882	26.8%	1,330,110	26.4%	21,961	5,037,825
2010	5,578	25.3%	1,281,134	25.1%	22,046	5,105,671
2011	5,522	24.9%	1,245,040	24.4%	22,146	5,105,530
2012	5,470	24.6%	1,191,724	23.3%	22,255	5,108,534
2013	5,371	24.0%	1,172,935	22.8%	22,354	5,139,644

4.6 Figure 4 shows how the number of holdings that rent land fell by 24% across Scotland between 2000 and 2013, including 33.6% in Tayside, 29.8% in Highland and 28.1% in Ayrshire. Even in the areas traditionally associated with agricultural tenancy in the South of Scotland and the North East the number of holdings renting land fell by around a fifth (the Borders fell by 19%, with 18.8% decline in Dumfries and Galloway and 21.1% decline in the North East). Across Scotland the amount of land rented fell by 25% between 2000 and 2013, falling by 44.1% in Tayside (from 243,146ha to 135,857ha), 31.3% in the Highlands, 25.9% in Lothian and 25.32% in Ayrshire. There were low declines in the amount of land rented in East Central (8.5%), Orkney (12.7%) and the North East (14.2%) regions.

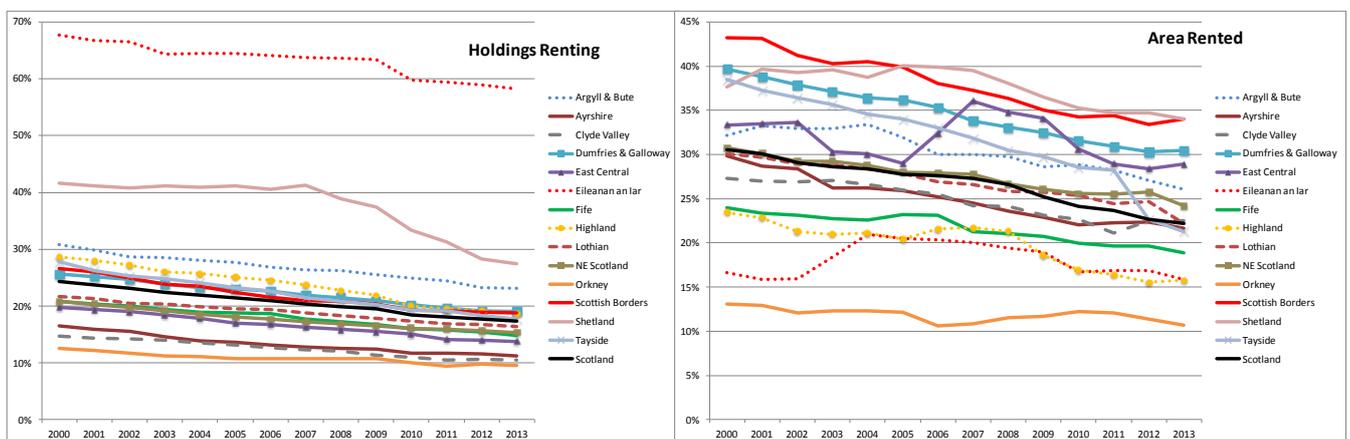
**Figure 4 Change in number of holdings renting and area rented by agricultural region, 2000-2013**



<sup>5</sup> A possible contributing factor to this reduction could be the increase in total number of BRNs, partially through the registration of non-farming units (e.g. forests, communities) to access Scotland Rural Development Programme 2007-2013 funds.

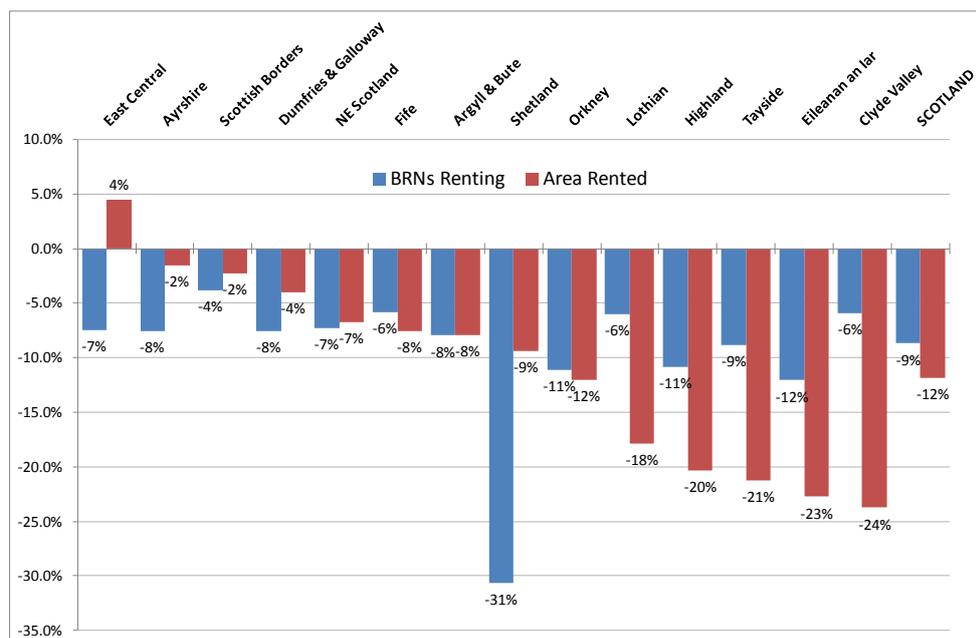
4.7 Figure 5 shows how the rate of change in the number of holdings and area rented across the regions differed through time. Generally there was a steady rate of decline in the number of holdings renting land over time with the exception of Shetland which saw a rapid decline after 2007 (perhaps as a consequence of improved identification of crofts). The fact that Eileanan an lar, Shetland, Highland and Argyll and Bute all had the highest proportions of holdings renting land again suggests that perhaps a number of crofts remained within the dataset despite best efforts to remove them. There was greater variability in the rate of change in the area rented with, for example a steady decline in Tayside until 2011 with a sudden decrease in rented land in 2012. Orkney had relative stability in the amount of rented land, the Borders had steady decline until 2010 before stabilising, Dumfries and Galloway having straight line decrease, whilst in Highlands there was relative stability between 2002 and 2008, followed by four years of decline.

**Figure 5 Proportion of holdings renting and area rented by agricultural region, 2000-2013**



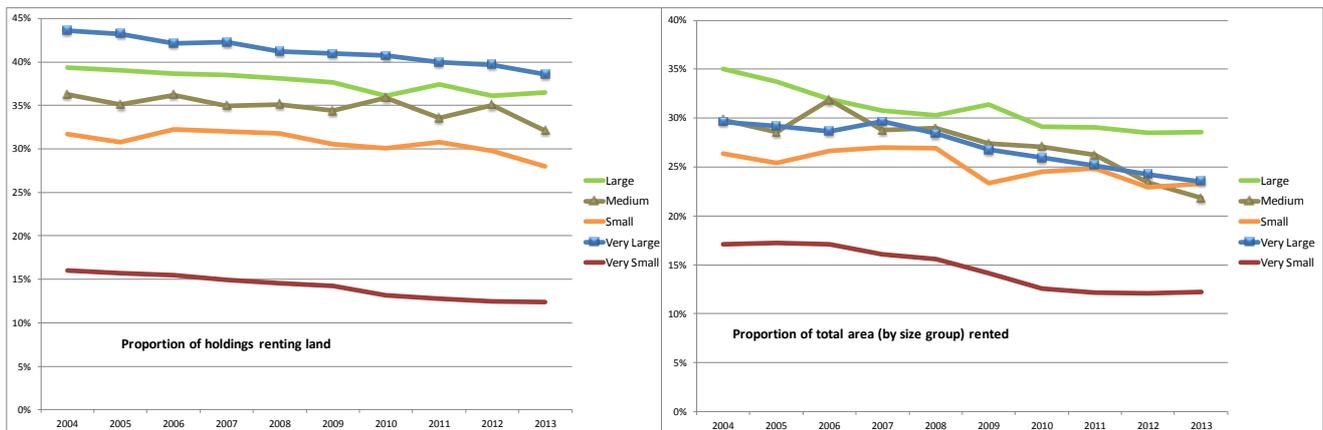
4.8 Figure 6 shows that at business level despite the number of BRNs falling by 7.5% in East Central region between 2009 and 2013 the amount of land rented by BRNs increased by 4.5%. This contrasted with Clyde Valley where despite only 5.9% fewer businesses renting land over the period the total area rented by BRNs fell by 23.8%. There were also large decreases in the area of land rented by businesses over this period in Tayside, Eileanan an lar, Highland and Lothian with relative stability in Ayrshire, the Borders and Dumfries and Galloway. Table 16 in Annex A provides details of the regional number and proportion of BRNs renting land and the area that is rented. The business level data followed a similar pattern to holdings with only 13.4% of BRNs in Orkney renting land in 2013 (10.4% of the area) compared to 26.5% of BRNs in the Borders who rented 34.6% of the area and 25% of Dumfries and Galloway BRNs who rented 31.4% of the area.

**Figure 6 Change in number of BRNs renting and area rented by agricultural region, 2009-2013**



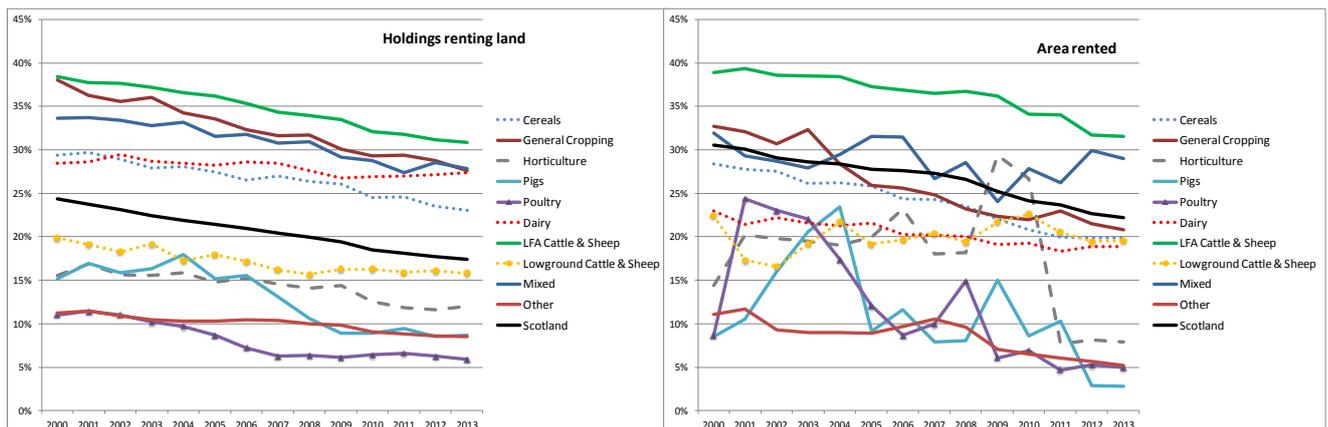
4.9 Variation in land tenure patterns by different size categories was also found (see Table 17 in Annex A for a summary of the data). Figure 7 shows that generally the likelihood of renting land under agricultural tenure arrangements (excluding seasonal lets) between 2004 and 2013 was positively correlated to holdings size (based on activity). Very small holdings were considerably less likely to rent land over the period. However, the proportion of land rented did not follow this pattern with a higher proportion of total land within the size category found to be rented by large holdings in comparison to the very large holdings (which were closely aligned to the medium sized holdings). The proportion of very large holdings that rented land fell from 43.6% in 2004 to 38.8% in 2013 (although this was only 44 holdings) with the area let falling from 678,532ha to 536,048ha (21% reduction). The proportion of large holdings renting land under agricultural tenure fell from 39.3% to 35% over the period and the amount of land rented fell by (17.7%). The medium sized holdings had the largest reduction in the area let (31.3%) with the proportion of holdings renting land having fallen from 36.2% to 32.1%. 369 fewer small holdings rented land over the period amounting to 13,711 fewer hectares being rented (from 18.8% to 13.6% of the total land area of very small holdings).

**Figure 7 Proportion of holdings that rent land and proportion of land rented, by size category: 2004-2013**



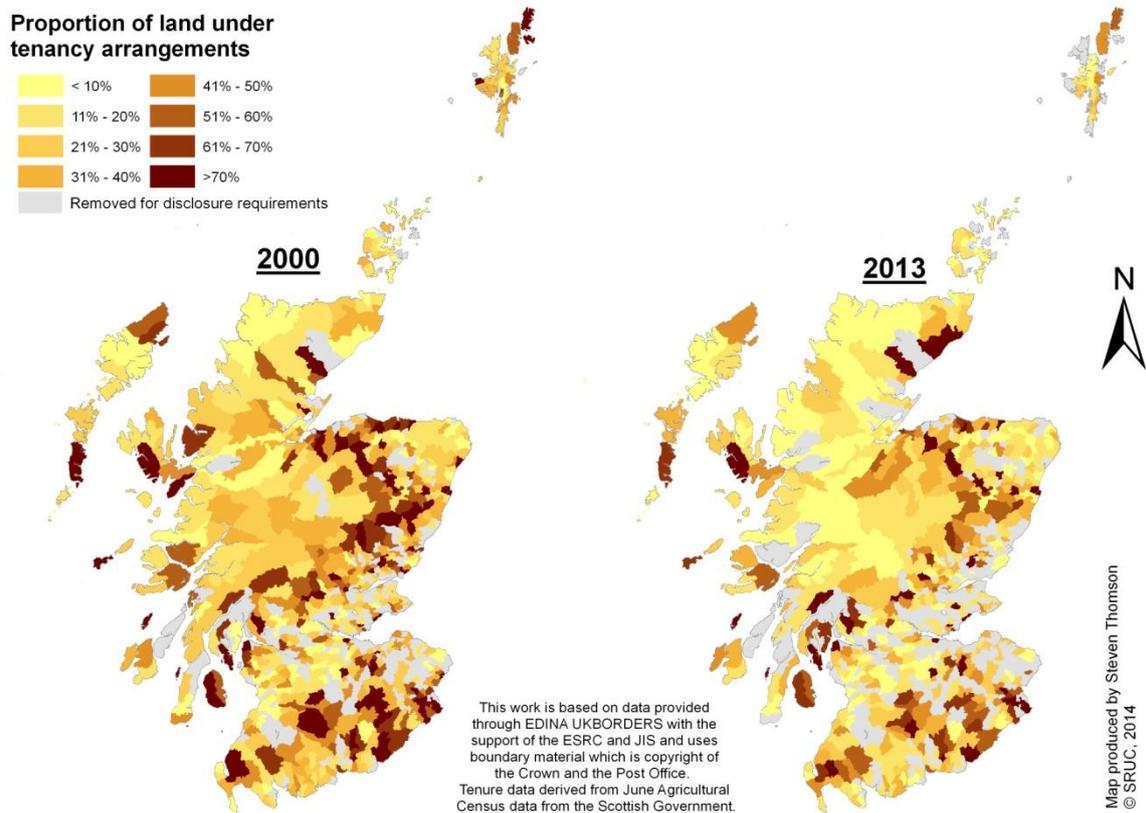
4.10 In addition to regional and holding size variations in agricultural tenure trends a difference between robust farm types (see Table 18 in Annex A for a summary) was also found although it should be acknowledged that holding movement between robust farm types may cloud the detail. Figure 8 does however show strong downward trends in the proportions of all robust farm types, with the exception of “other”. There was very wide variance in the proportion of holdings that rented land in each robust farm type grouping with LFA cattle and sheep, dairy, general cropping, cereals and mixed holdings having a greater propensity to rent land than the other groupings which are perhaps more specialist (with the exception of “other”). There was a 30% decline in the number of LFA cattle and sheep holdings renting land between 2000 and 2013 with a 25.5% decrease in area rented over the period. The proportion of general cropping holdings renting land fell from 38% to 27.6% with a decrease in the proportion of land rented from 32.7% of total area to only 20.8% (a 33% reduction). Similar trends were observed across the main farming types where fewer holdings leased land with fewer hectares being rented. The large fluctuations in proportion of land rented in the pig, poultry and horticulture sectors (which were historically unsupported sectors and faced with fluctuating market returns) may relate to (a) reactions to performance cycles and (b) they were very few in number meaning percentage changes can appear very large due to the small starting base..

**Figure 8 Proportion of holdings that rent land and proportion of land rented, by robust farm type: 2000-2013**



4.11 Figure 9 shows the geography of land tenure showing the proportion of non-croft land in each agricultural parish that was rented in 2000 and 2013. This reveals local concentrations of high levels of land rental similar to that published by the Scottish Government<sup>6</sup>, and Andy Wightman has shown<sup>7</sup> that many of these high rental concentrations are found in areas where there are large traditional estate owners letting land. What Figure 9 reveals that previous published analysis does not is how the position has changed since 2000, when there was generally more land being rented across Scotland. At this level of detail it is evident that there has been significant reductions in the proportions of let land in some parishes, suggesting either (a) withdrawal from the tenancy market by landowners, (b) purchase of rented land by tenants, or (c) a combination of (a) and (b).

**Figure 9 Proportion of non-croft holding land let under tenure arrangements by parish, 2000 and 2013**



## Tenure Mix

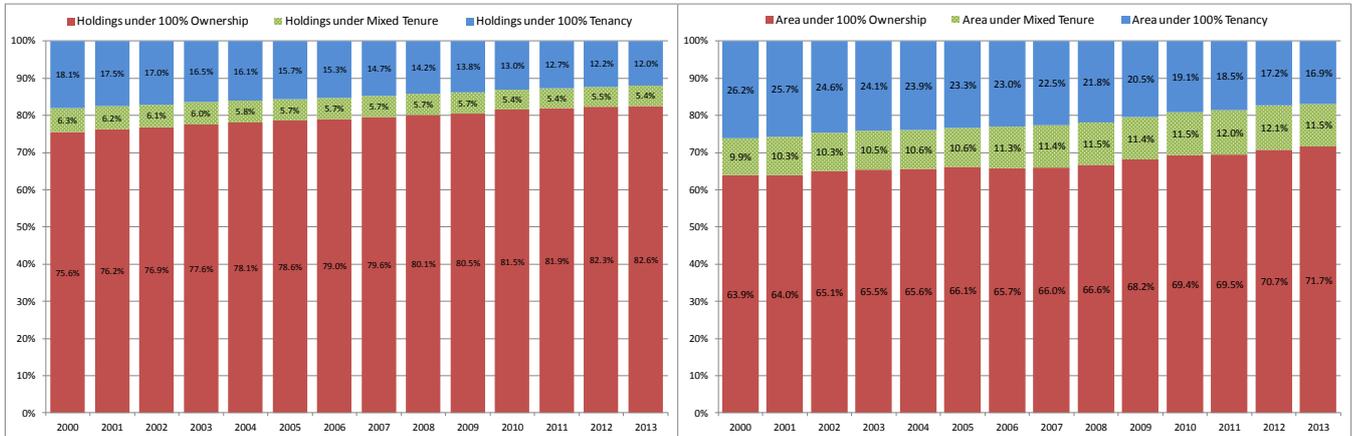
4.12 Using the time series of JAC data each holding was categorised as being fully tenanted, fully owned or with mixed tenure (partially owned and partially rented) for each year. Figure 10 highlights how the proportion of fully owned holdings increased from 75.6% in 2000 to 82.6% in 2013 with the proportion of total area being fully owned also increasing from 63.9% to 71.7% over the same period. The proportion of holdings under mixed tenure declined marginally from 6.3% to 5.4% with a small increase in the proportion of land

<sup>6</sup> <http://www.scotland.gov.uk/Resource/0044/00442215.pdf>

<sup>7</sup> [http://www.andywightman.com/docs/farm\\_tenancies\\_parish.pdf](http://www.andywightman.com/docs/farm_tenancies_parish.pdf)

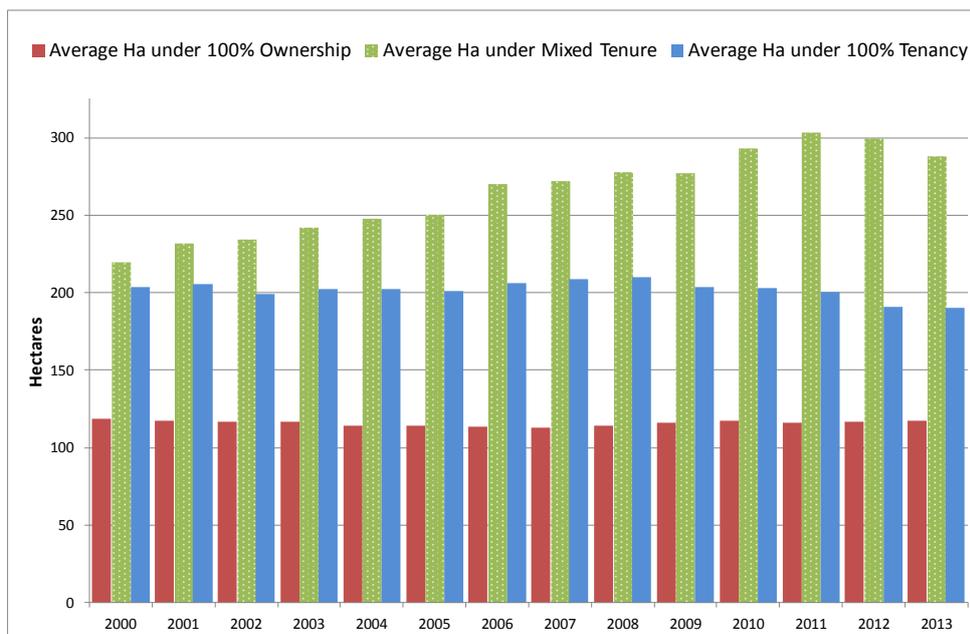
rented (from 9.9% to 11.5%). The proportion of holdings that were fully tenanted fell from 18.1% in 2000 to 12% in 2013 with the proportion of land on these holdings falling from 26.2% to 16.9% of total non croft land.

**Figure 10 Proportion of holdings and land under different tenure mixes, 2000-2013**



4.13 Figure 11 shows that on average fully owned holdings were considerably smaller than fully tenanted holdings, which in turn were smaller than mixed tenure holdings (a gap that has widened since 2000). The size of fully owned holdings remained very stable over the period at about 115 hectares, with fully tenanted holdings falling from an average of 203ha in 2000 to 190ha in 2013. There was considerable growth in the average area of mixed tenure holdings, increasing from 219ha in 2000 to a high of 303ha in 2011 before falling back to 288ha in 2013.

**Figure 11 Average size of holdings under different tenure mixes, 2000-2013**



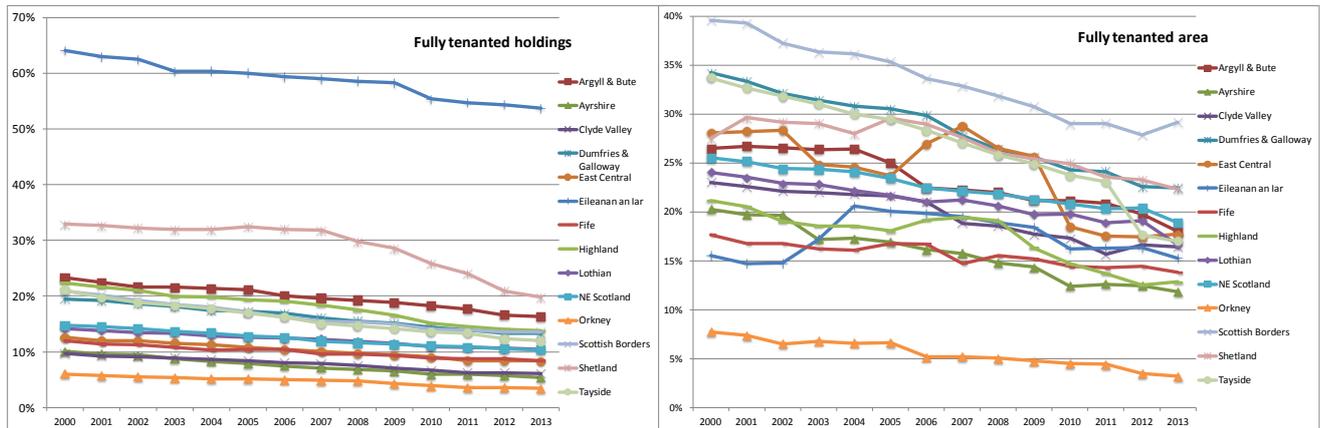
4.14 Table 6 shows that when the same analysis was conducted at BRN level that the average number of hectares controlled by each business increases dramatically from the holding level analysis. Mixed tenure businesses had on average twice as many hectares as wholly owned businesses and about 70% more than wholly tenanted businesses. This also revealed that mixed tenure businesses control a considerably larger proportion of the total farmed area (over 20%) than the holding level analysis suggested. The data also shows that it was estimated that in 2009 there were 3,331 wholly tenanted businesses (BRNs) controlling 879,588ha. It was estimated that this fell to 2,924 businesses in 2013, farming 731,366ha (declines of 13.9% and 20.3% respectively).

**Table 6 Average structure of BRNs by different tenure mixes, 2009-2013**

Year	Measure	Wholly Tenanted		Mixed		Wholly Owned	
2009	Total Area	879,588	17.5%	1,060,379	21.0%	3,097,858	61.5%
	BRNs	3,331	15.2%	2,550	11.6%	16,080	73.2%
	Average Ha	264		416		193	
2010	Total Area	838,758	16.4%	1,043,212	20.4%	3,223,700	63.1%
	BRNs	3,125	14.2%	2,453	11.1%	16,468	74.7%
	Average Ha	268		425		196	
2011	Total Area	812,461	15.9%	1,053,651	20.6%	3,239,418	63.4%
	BRNs	3,059	13.8%	2,463	11.1%	16,624	75.1%
	Average Ha	266		428		195	
2012	Total Area	753,056	14.7%	1,043,797	20.4%	3,311,681	64.8%
	BRNs	2,996	13.5%	2,474	11.1%	16,785	75.4%
	Average Ha	251		422		197	
2013	Total Area	731,366	14.2%	1,050,538	20.4%	3,357,740	65.3%
	BRNs	2,924	13.1%	2,447	10.9%	16,983	76.0%
	Average Ha	250		429		198	

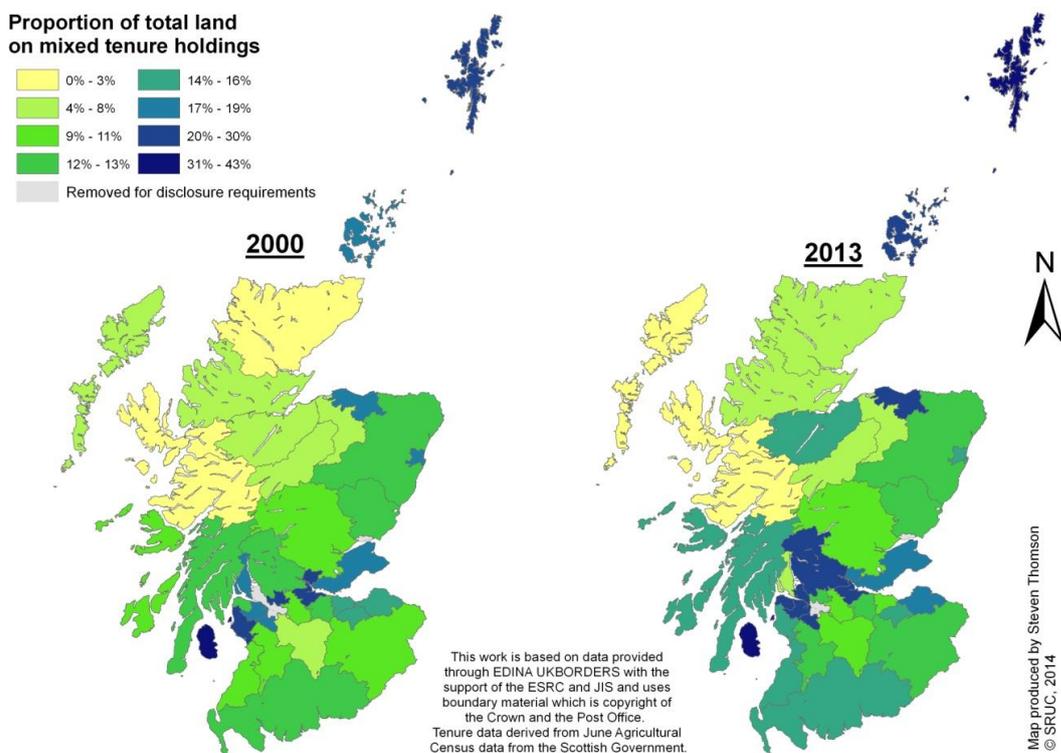
4.15 Analysing the fully tenanted holdings by region reveals that rate of decline (the angle of slope) in the proportion of holdings that were fully tenanted was similar across all regions, with the exception of the crofting counties (as shown in Figure 12). 39.4% of the Borders area was on holdings that were fully rented in 2000, with corresponding figures of 34.2% in Dumfries and Galloway and 33.7% in Tayside. By 2013 these figures had fallen to 29.2%, 22.5% and 17.0% respectively highlighting large changes in regional tenure patterns that have occurred (average areas of fully tenanted holding were pretty stable across most regions – as shown in Figure 33 in Annex A).

**Figure 12 Proportion of holdings and area that are fully under tenure arrangements, by region: 2000-2013**



4.16 The spatial distribution of the proportion of land on fully tenanted holdings closely mirrors Figure 9 (see Figure 32 in Annex A) but there is an interesting spread of mixed tenure holdings locally, and the change since 2000 is worth considering. At parish level there were increases in areas such as the Kyles of Bute, Mull, the Trossachs, Loch Ness, and around Inch in Aberdeenshire. Regionally (see Figure 13) it is noticeable that there was a large shift in the proportion of mixed tenure businesses in the Trossachs and Orkney with smaller increases also witnessed in the South West, Argyllshire and Inverness and Nairn.

**Figure 13 Proportion of land on mixed tenure holdings by NUTS IV region, 2000 / 2013**



## Types of Tenure Arrangements

4.17 Since 2005 the Scottish Government has been gathering data on the type of tenure arrangements holdings have, collecting details about:

- **Small Landholders Act tenancy.** The Small Landholders (Scotland) Act 1911 to encourage the creation of small agricultural holdings outwith Scotland's crofting counties. These are similar to crofting leases and landlords are required to inform the Scottish Government where a successor cannot be found and the landlord may be restricted from re-letting the holding without the Scottish Government's approval to any person other than a neighbouring holder to enlarge his holding or to a new holder. If a new landholder cannot be found the Scottish Government may allow landlords to let the land under another form of land tenure.
- **91 Act tenancy.** The 1991 Agricultural Holdings (Scotland) Act 1991 consolidated legislation from over a century regarding leasing of land for agricultural purposes. It regulates lease terms (including fixed equipment obligations by landlords and rent reviews, notices to quit, etc), provides general security of tenure to tenants, provides statutory rights to compensation for tenant improvements at waygo and deals with assignation rights and succession rights of near relatives of the tenant. Under the Agricultural Holdings (Scotland) Act 2003 tenants of 1991 Act leases have a right of pre-emption should the landlord sell, provided the tenant has registered their interest with the Scottish Government. Landlords and tenants can still enter 1991 Act tenure agreements providing the lease expressly states the 1991 Act applies to it.
- **Limited Partnership tenancies.** These tenancies were established to avoid security of tenure that 1991 Act leases provided. A limited partnership was established where the limited partner (the landlord) made an initial capital contribution but took no part in the management of the partnership affairs. The general partner (the tenant) had sole management responsibilities of the partnerships affairs and had rights to the bulk of the profits of the partnership. Security of tenure was avoided by the landlord granting a tenancy to the partnership (of which he was part) meaning that when the partnership dissolved (generally after a fixed period) the tenancy would no longer exist. The 2003 Act sought to protect general partners from notices to quit through termination of the partnership and now provide the general partner a further three years tenancy after the termination of the limited partnership provided they serve a counter notice to the limited partner (landlord).
- **Limited Duration Tenancy (LDT).** These were introduced by the Agricultural Holdings (Scotland) Act 2003 and were originally set for a minimum period of 15 years until the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 reduced the minimum term to 10 years.

Tenants with LDTs have rights of assignation and succession for the term of the lease and the tenant has rights to compensation for improvements at waygo.

- **Short Limited Duration Tenancy (SLDT).** These were introduced by the Agricultural Holdings (Scotland) Act 2003. They are for between one and five years duration. If the tenant of a lease of less than 5 years continues to occupy the land after the tenancy period has ended it automatically extends to 5 years. Should the tenant continue to occupy the land beyond 5 years then the lease reverts to a Limited Duration Tenancy of 10 years (the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 introduced an opportunity for landlords and tenants to agree a conversion of a SLDT to LDT with an effective start date of the period when the SLDT started). Tenants with SLDTs are entitled to compensation for improvements at waygo and succession rights for the duration of the lease.

4.18 The estimated number of holdings (excluding crofts) with different lease types and the area leased are summarised in Figure 14 and Figure 17 (with data provided in Table 19 in Annex A).

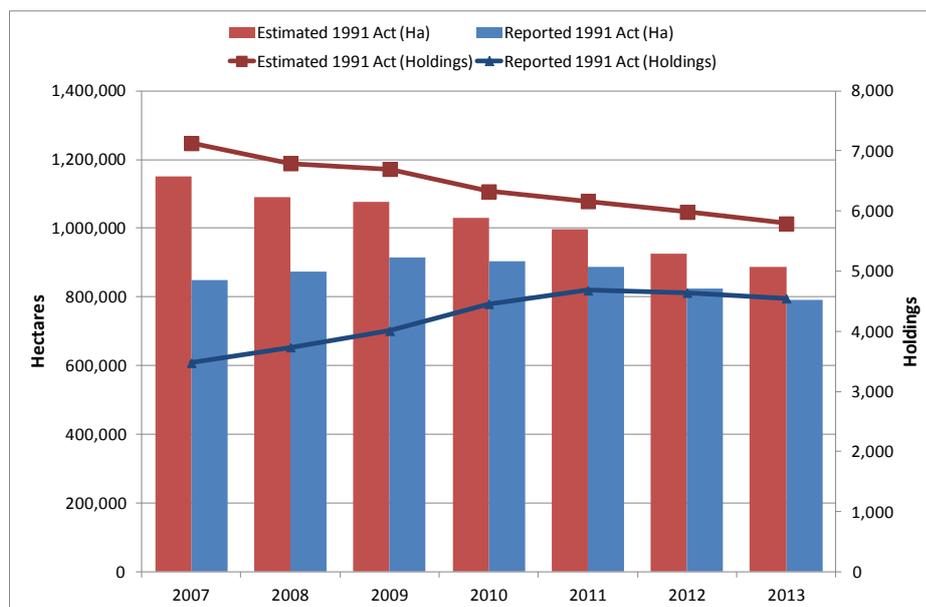
### **1991 Act Tenancies**

4.19 Figure 14 shows the rented area and number of holdings that reported, and are estimated<sup>8</sup> to have secure 1991 Act leases. It is evident from this graphic that whilst both the number of holdings and area that are estimated to be under secure 1991 Act leases were in decline the area and number of holdings reporting 1991 Act tenancies have been increasing. This is likely to be due to reporting lags from the JAC, where forms were returned incomplete or were not returned at all. Overall the estimated figures show that both the estimated area and number of holdings under secure 1991 Act leases has been in decline falling from 7,129 holdings with 1.15 million hectares in 2007 to 5,793 holdings and 0.887 million hectares. This represents estimated declines of 18.7% and 22.9% respectively.

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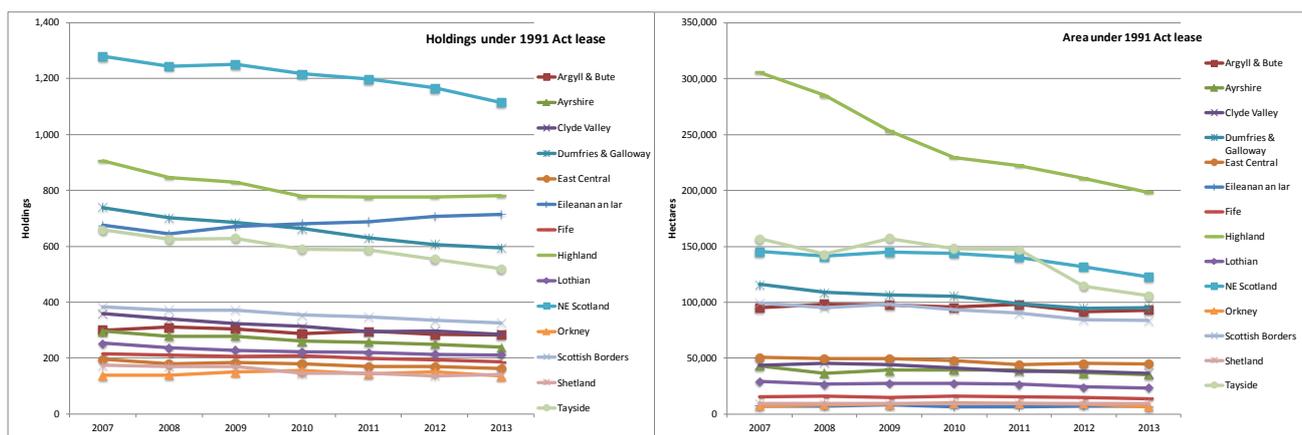
<sup>8</sup> RESAS explained that when there is no breakdown of tenancy type it is assumed that the land is let through a secure 1991 Act lease. Therefore to calculate these figures for each holding the summation of all other types of tenure (excluding seasonal rents) was subtracted from the total rented land variable and the difference is the estimate of total area and number of holdings with 1991 Act leases.

**Figure 14 Number of holdings and area under secure 1991 Act lease, 2007<sup>9</sup>-2013**



4.20 Figure 15 shows the change in the amount of holdings with 1991 Act leases has decreased generally at quite a steady rate across the regions, generally falling by about 15-20% over the 2007 to 2013 period with the largest percentage changes in Tayside (-21.1%), Clyde Valley (19.5%), Dumfries and Galloway (-19.5%) and Ayrshire (-19.3%). The amount of land leased under secure tenure fell by 250,066ha over the period and 43% of that change was from Highland, with Tayside accounting for further 20%, North East Scotland 9% and Dumfries and Galloway 8%.

**Figure 15 Regional change in holdings with and area under 1991 Act leases, 2007-2013**

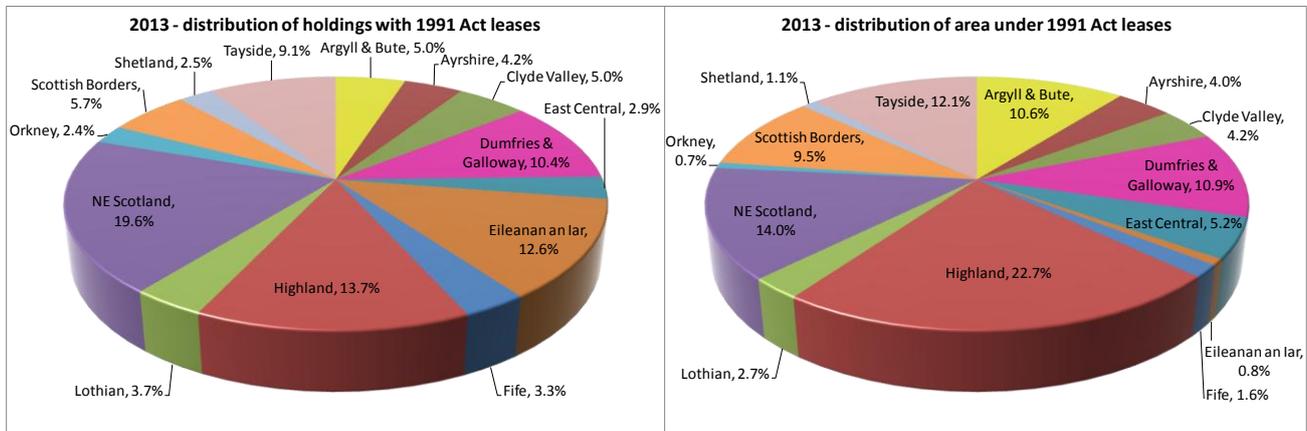


4.21 Figure 16 shows that North East Scotland accounted for 19.6% of the holdings with 1991 Act leases in 2013, with 14% of the area under secure tenancy. 13.7% of the holdings were located in Highland with 22.7% of the

<sup>9</sup> Whilst the data was largely collected from 2005 it was felt that to allow for any data lag from non-responders to JAC then 2007 would be an appropriate point from which to report.

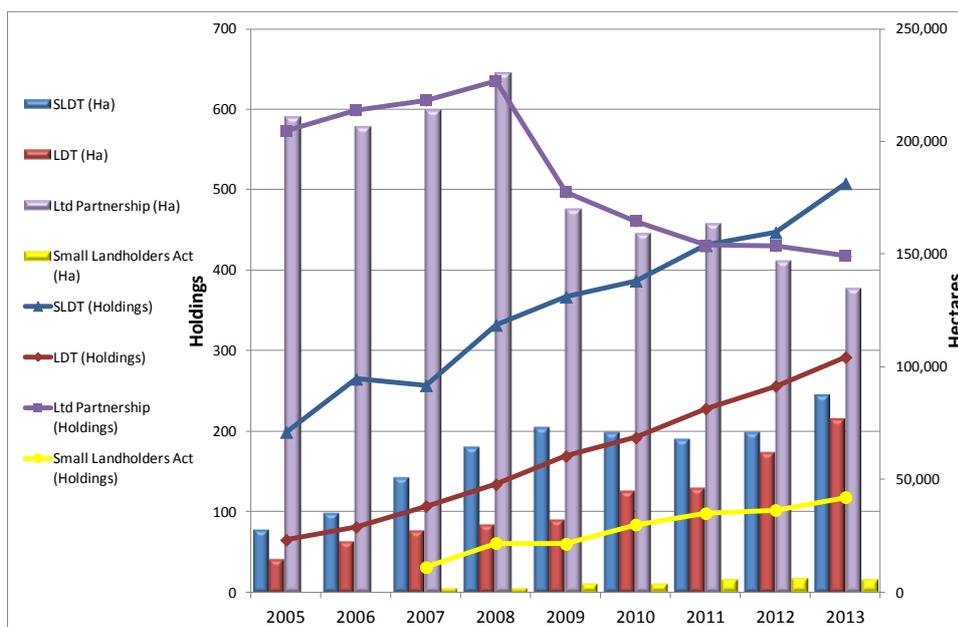
land with Tayside (9.1% holdings and 12.1% of land), Dumfries and Galloway (10.4% of holdings and 10.9% of land), Argyll and Bute (5% of holdings and 10.6% of land) and the Borders (5.7% of holdings and 9.5% of land) also being important locations for secure tenancies.

**Figure 16 Regional distribution of area under and holdings with 1991 Act leases, 2013**



4.22 It was estimated that the number holdings with 1991 Act Ltd Partnership leases fell from around 635 in 2007 to 418 in 2013, with the area under this form of tenure also falling by 37% from 213,630ha to 134,593ha. The number of LDTs grew from an estimated 106 in 2007 to 292 in 2013 with area increasing by 49,000ha over that period. The number of estimated SLDTs nearly doubled, rising from 257 in 2007 to 508 in 2013 (with the area rented increasing by 71% to 87,000ha). There were very few Small Landholders Act Tenancies.

**Figure 17 Number of holdings with and area of other tenancy arrangements: 2007-2013**



4.23 Examining the data at business (BRN) level shows that whilst 3,803 businesses recorded that they leased<sup>10</sup> 783,602ha under 1991 Act tenancies in 2013 it was estimated that there actually were 4,497 businesses renting 871,518ha. It was estimated that between 2009 and 2013 there was a 13% reduction in the number of businesses with secure leases with a 17.3% reduction in the area under 1991 Act leases. As with Figure 17, the reporting lag is apparent here as the number of BRNs that reported having secure leases increased over the period (despite a 13.5% decrease in reported area rented). There was a 34.7% increase in the number of SLDTs with a 19.3% increase in the area let under this method – although the increase in area solely took place in 2013. Whilst the number of LDTs showed a large percentage increase it must be acknowledged that it started at a very low base and was reported in the 2013 JAC that there were still only 272 businesses with LDT agreements. As discussed above the number of businesses with Ltd Partnership continued to fall with an estimated 378 with 134,000ha in 2013.

**Table 7 Number of BRNs with, and area of, differing tenancy arrangements: 2009-2013**

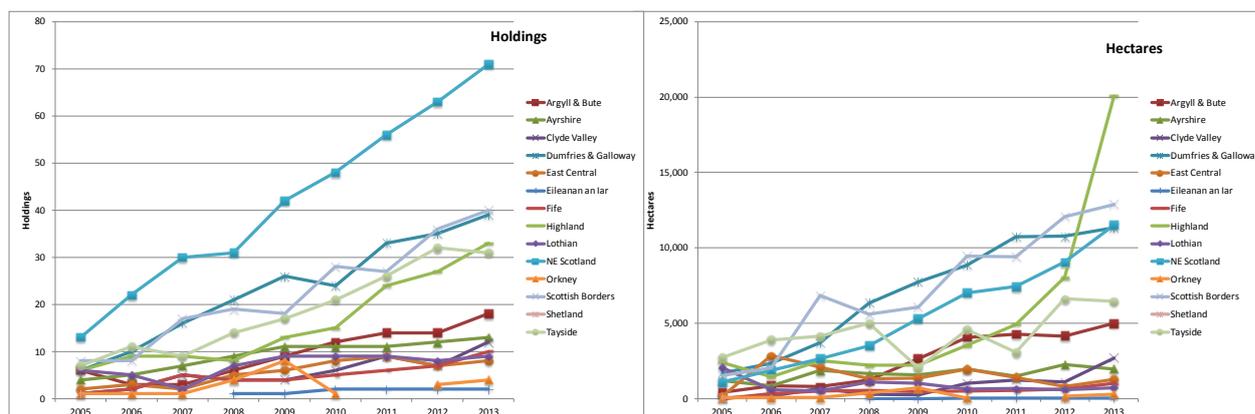
Form of Tenure	2009	2010	2011	2012	2013	2009-13
Estimated 1991 Act	5,171	4,865	4,761	4,661	4,497	-13.0%
	1,054,357	1,004,248	971,127	908,390	871,518	-17.3%
Reported 1991 Act	3,485	3,854	3,941	3,915	3,803	9.1%
	906,078	893,552	873,523	815,054	783,602	-13.5%
SLDT	337	351	384	403	454	34.7%
	72,484	70,346	67,035	70,111	86,442	19.3%
LDT	160	179	212	243	274	71.3%
	31,852	44,082	45,305	61,468	76,076	138.8%
Ltd Partnership	456	422	388	391	378	-17.1%
	167,854	158,913	156,487	146,464	134,015	-20.2%

### **Limited Duration Tenancies**

4.24 Figure 18 shows that there has been a strong regional dimension to the growth in the number of LDTs with a quarter of them (71) existing in the North East in 2013, growing from only 13 in 2005. Dumfries and Galloway (39), the Borders (40), Highland (33) and Tayside (31) also have had faster uptake of LDTs as a form of tenure than the remaining regions. With regards to the area leased, the Highlands accounted for more than a quarter (27% or 20,000ha) of all land leased under LDTs in 2013, although this area more than doubled between 2012 and 2013. At nearly 13,000ha the Borders accounted for 17% of the area leased in 2013, with the North East and Dumfries and Galloway each accounting for 15% (about 11,500ha). Whilst these regions appear to have relatively fast uptake of LDTs as a form of tenure the number of holdings using them and the area let is dwarfed by the decrease in the number of holdings and area let through 1991 Act tenancies and 1991 Act Ltd Partnership tenancies over the period.

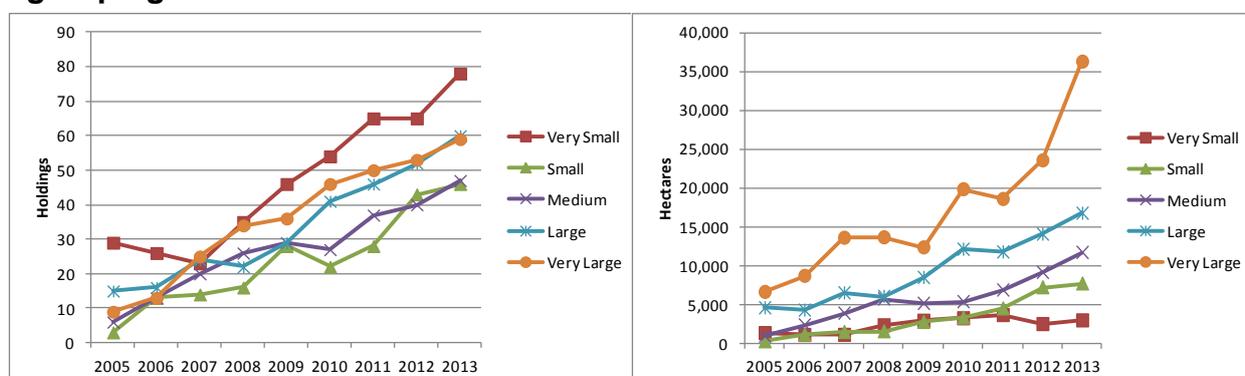
<sup>10</sup> This cannot be considered the number of tenancy agreements as some of these businesses have multiple holdings for which there may indeed be more than one formal secure tenancy agreement

**Figure 18 Number of holdings with and area rented through LDTs, by region: 2005-13**



4.25 The uptake of LDTs was dominated by LFA Cattle and Sheep holdings which in 2013 accounted for 45% of all holdings with LDTs and 75% of the area let. It is interesting that whilst very small holdings accounted for most LDTs in 2013 (see Figure 30) there was relatively similar uptake in their use across all other size groupings. Very Large holdings accounted for nearly half the area rented under LDTs in 2013 at over 36,000ha with large holdings accounting for nearly 17,000ha (22%) of LDT leased land. Maps showing the spatial distribution of the area of land let through LDTs in 2007 and 2013 can be found in Figure 35 in Annex A).

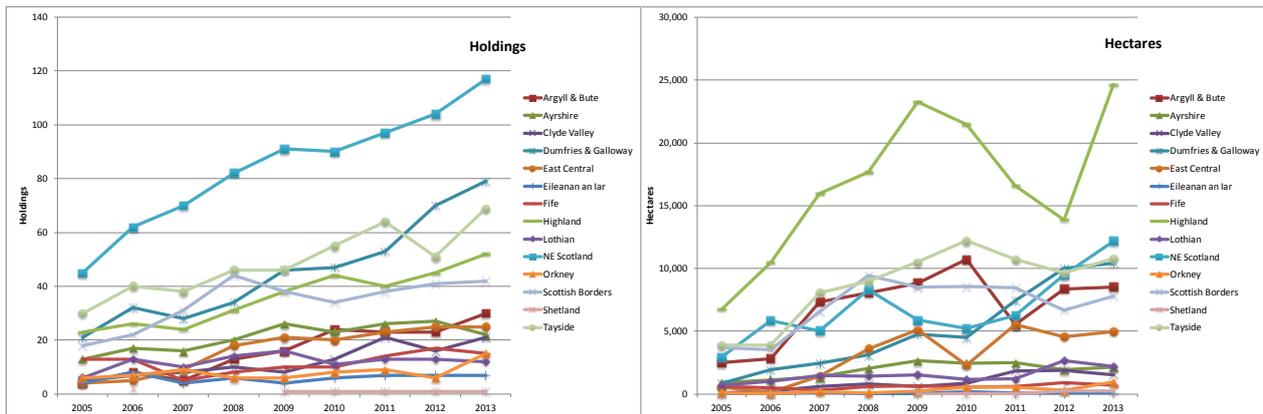
**Figure 19 Number of holdings with and area rented through LDTs, by size grouping: 2005-13**



### Short Limited Duration Tenancies

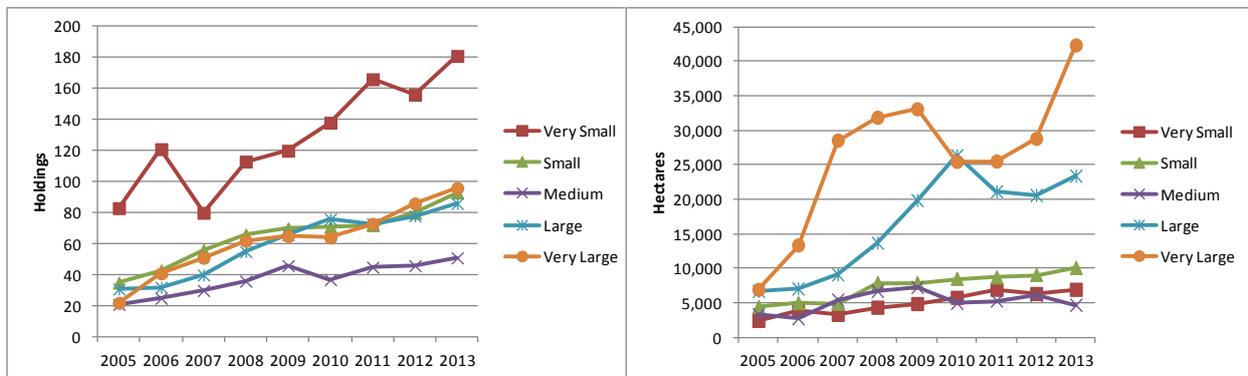
4.26 Figure 18 shows that once more the North East had the fastest uptake of SLDTs increasing from 45 in 2005 to 117 (23% of the total) in 2013. Dumfries and Galloway and Tayside (79 and 69 respectively in 2013) and Highland and the Borders (52 and 42 respectively in 2013) also had greater uptake of SLDTs than the other regions. The Highlands accounted for 28% of the total area let under SLDTs, although this took a sharp decline from 2009 before recovering in 2013. The North East (14%), Clyde Valley (12%), Argyll and Bute (10%) and Tayside (12%) accounted for the majority of the rest of land let through SLDTs in 2013.

**Figure 20 Number of holdings with and area rented through SLDTs, by region: 2005-13**



4.27 As with LDTs, the letting of land through SLDTs is dominated by the LFA cattle and sheep sectors, accounting for 44% of holdings and 77% of the total area let under SLDTs in 2013. Figure 21 shows that the SLDTs were more frequently used by very small holdings (36% of all holdings using SLDTs) in 2013, although the total area leased was limited (6,800ha). In 2013 over 65,000ha was leased using SLDTs by very large and large holdings (over 75% of total area). Maps showing the spatial distribution of the area of land let through SLDTs in 2007 and 2013 can be found in Figure 34 in Annex A).

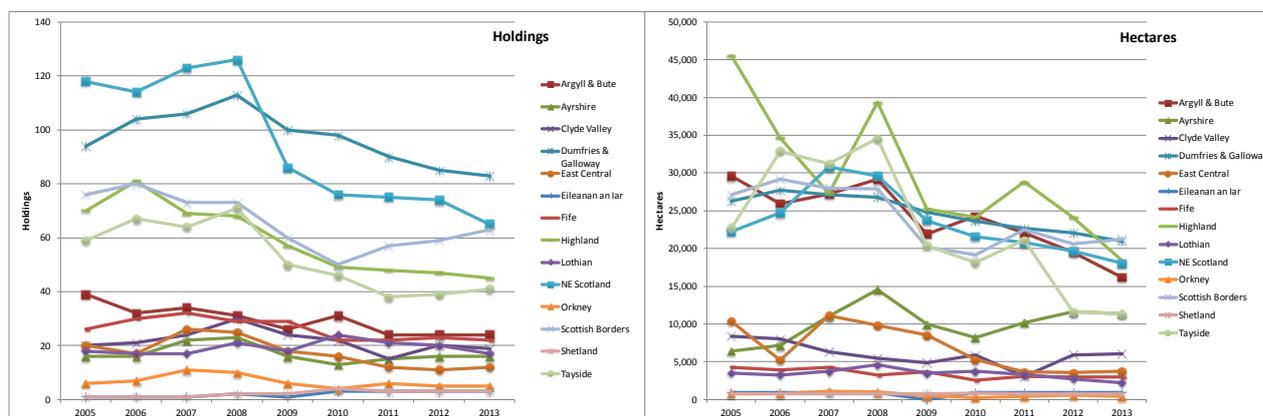
**Figure 21 Number of holdings with and area rented through SLDTs, by size grouping: 2005-13**



### Limited Partnership Tenancies

4.28 Figure 22 reveals the changes in the number of holdings, and area of land that was reported as leased through Limited (Ltd) Partnership tenancies. After 2008 there was a sudden drop in their frequency of use across many regions, particularly in the North East and Dumfries and Galloway. Whilst the Borders, Highland and Tayside also had a sharp decline in the number of holdings with Ltd Partnership tenancies they stabilised from 2010. It is clear that in the majority of regions the area let under Ltd Partnership agreements has continued to fall since 2005, with Highland decreasing by 60%, Tayside by 50% and Argyll and Bute by 45% etc.

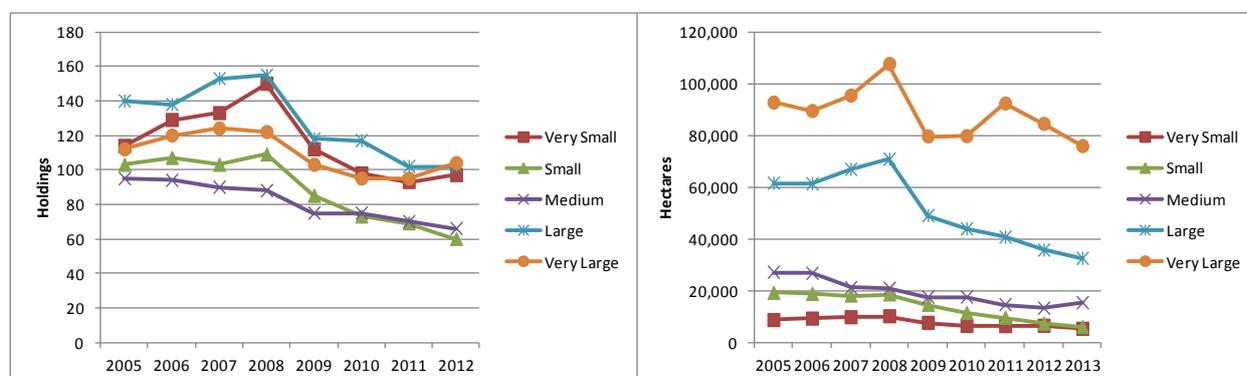
**Figure 22 Number of holdings with and area rented through Limited Partnership tenancies, by region: 2005-13**



4.29 The vast majority of the reduction (74,000ha) in the area under Ltd Partnership agreements took place on LFA cattle and sheep holdings (they accounted for 80% of all area rented in both 2005 and 2013). Figure 23 shows how the change in holdings with Ltd Partnership tenancies decreased by similar proportions across all size groupings, although the biggest decrease (47%) in the area rented occurred on large holdings (29,000ha), with very large holdings having a smaller decrease (17,000ha) of only 18%.

Maps showing the spatial distribution of the area of land let through LDTs in 2005 and 2013 can be found in Figure 36 in Annex A).

**Figure 23 Number of holdings with and area rented through Limited Partnership tenancies, by region: 2005-13**



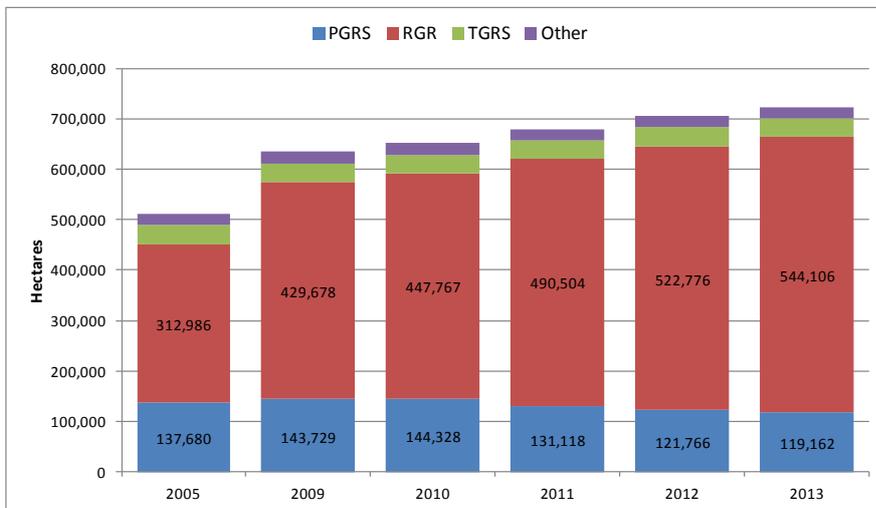
**Seasonally Let Land**

4.30 Whilst there was a significant decline in the area of land let through traditional tenure arrangements between 2000 and 2013, there was, between 2005 and 2013 a significant uplift in the area of land let on a seasonal / temporary basis. According to IACS data there was 510,805ha of seasonally let land in 2005 (just after the introduction of the Single Farm Payment) and by 2013 this had reached 721,907ha. This equated to 13.5% of the total land on non-croft holdings.

4.31 Figure 24 shows the importance of rough grazing (RGR) in these seasonal lets accounting for 62% of the total in 2005 rising to 75% in 2013. Whilst

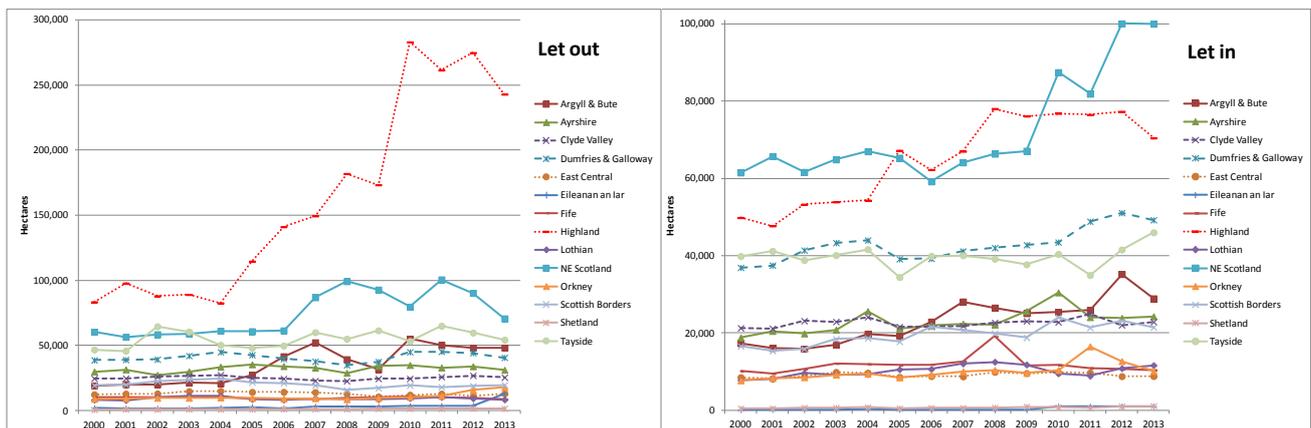
there was only a slight decrease in the absolute area of seasonally let permanent grass (PGRS), it accounted for only 16.5% of total seasonally let in land in 2013 (from 27% in 2005). The area of temporary grassland (TGRS) and other land (mostly cropping) remained relatively stable over the period. The changes in seasonally let land related to (a) land let to “slipper farmers” and (b) land let to active farmers who were looking for additional eligible hectares to ensure they did not receive CAP penalties for having ineligible features on their land that could lead to an over-declaration of their eligible area compared to the number of SFP entitlements claimed (this is particularly the case following 2009 when SGRPID tightened up on ineligible features as a result of EU audit criticism).

**Figure 24 Area of seasonally let-in land by land-use: 2000 - 2013**



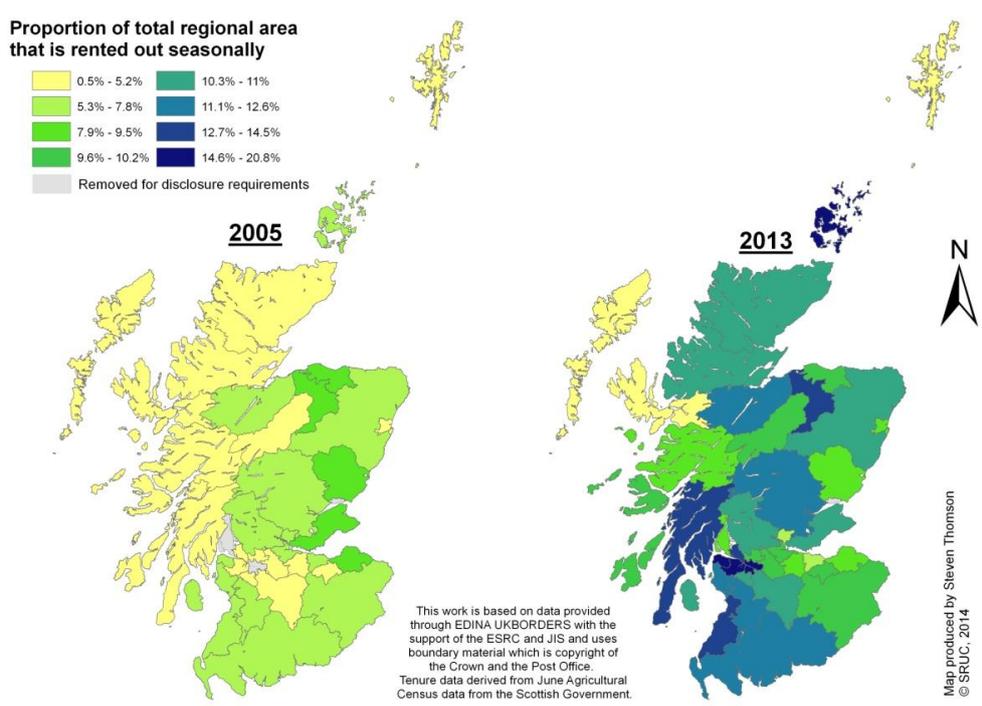
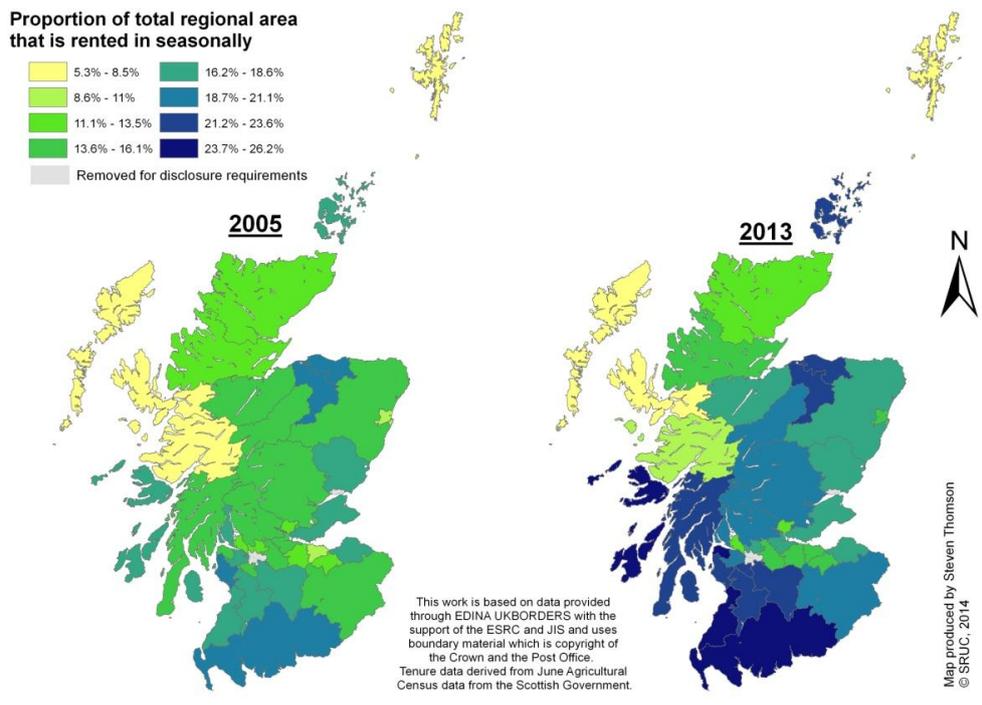
4.32 From the JAC the full timeline can be observed, and the regional dimension is particularly interesting. Figure 25 shows that the majority of the change in leased-out land was located in the Highlands, where there are large amounts of “naked acres” which “slipper farmers” and active farmers looking for some CAP safety-net can readily rent land on a seasonal basis. Whilst the seasonal rental land has largely been sourced from the Highlands since 2005 (40% of all seasonal let land in 2013), in 2013 holdings in the Highlands only let in the equivalent of 29% of the region’s total seasonally let out hectares, meaning over 70% was rented-in by holdings in other regions.

**Figure 25 Area of seasonally let-in and let-out land by region, 2000-2013 (JAC)**



4.33 Examination of the parish level<sup>11</sup> data reveals that whilst there was a high level of rented in sasonal land around Lochaber in both 2005 and 2013 there was a general increase across most parishes in Scotland by 2013. Seasonally let-out land at local level particularly increased in the central Highlands and Wester Ross

**Figure 26 Area of seasonally let-in and let-out land by NUTSIV region, 2005 and 2013 (from IACS)**



<sup>11</sup> Unfortunately due to disclosure requirements this cannot be shown.

4.34 Figure 26 examines the geospatial nature of the seasonally let-in and let-out markets by showing the portion of land seasonally rented in (from within and from other regions) and of seasonally rented out (to those within the region and beyond) in both 2005 and 2013. Here the darker blue areas have the largest proportion of the region's area seasonally let. The top two maps reveal how the proportion of seasonally let-in land has increased across most areas with the exception of Shetland, the Western Isles, Lochaber, Skye and Lochalsh. The south west of Scotland is notably letting in over a quarter of the total land on holdings seasonally, with increases also in Argyll and Bute and Orkney. The lower two maps also reveal a step change in the proportion of land leased out seasonally between 2005 and 2013 with increases in most regions with the exceptions of Skye and Lochalsh, Tayside and East Lothian.

### **Register of Tenant Farmers' Interest in Land**

4.35 Part 2 of the Agricultural Holdings (Scotland) Act 2003 provided tenant farmers pre-emptive rights to purchase their holding, should the land owner choose to sell the land. This right is only available to those secure (1991 Act) tenants who publically register their interest with the Government, through Registers of Scotland<sup>12</sup>. Using data extracted from the Register of Agricultural Tenants Interests (November 2013) and some analysis conducted by RESAS, Table 8 reveals the number of registered interests in agricultural units by county and the total area (where known) of those interests. 1,135 interests were registered<sup>13</sup> covering more than 190,000ha (with size of the land unknown in 14% of the cases) representing 21.5% of the estimated total area under secure 1991 Act leases in 2013. There is widespread uptake of the right geographically with some higher concentrations in counties traditionally associated with estate ownership and tenant farming.

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<sup>12</sup> The Register of Agricultural Tenants Interests can be accessed at <http://rcil.ros.gov.uk/RCIL/default.asp?Category=RCILAT>

<sup>13</sup> On April 30<sup>th</sup> 2014 there were 1,192 registers of interest meaning that there was increased registration activity during the period of the establishment of the launch of the Agricultural Holdings Legislation Review.

**Table 8 Location of Register of Agricultural Tenants Interests and area of land**

County	Units	Ha	Size unknown	County	Units	Ha	Size unknown
Aberdeen	136	11,108	20	Kircudbright	32	5,123	5
Angus	80	10,149	12	Lanark	34	6,061	5
Argyll	61	23,047	11	Midlothian	40	6,279	4
Ayr	46	5,170	6	Moray	36	7,378	1
Banff	60	7,536	16	Nairn	20	2,686	1
Berwick	24	4,701	4	Orkney	8	831	1
Bute	15	3,989	2	Peebles	2	64	
Caithness	9	3,580	4	Perth	91	17,349	11
Clackmannan	4	41	2	Renfrew	23	2,810	1
Dumbarton	8	187	3	Ross and Cromarty	30	2,620	5
Dumfries	70	9,225	7	Roxburgh	54	13,749	4
East Lothian	18	3,095	4	Selkirk	13	5,753	3
Fife	70	6,526	6	Stirling	24	6,307	3
Glasgow	3	167		Sutherland	10	2,363	4
Inverness	40	9,741	6	West Lothian	8	665	
Kincardine	26	1,570	5	Wigtown	38	9,190	1
Kinross	2	3	1	<b>Scotland</b>	<b>1,135</b>	<b>189,061</b>	<b>158</b>

4.36 It is of particular note that when scrutinising the register that the word “glebe” appears often and analysis shown in Table 9 reveals that the Church of Scotland (or variants of in the register) was the landowner in 54 cases, accounting for 1,775ha. The Crown Estate had 54 registers of interest in land they let out. Buccleuch Estates were the private land owner with the most registers of interest (30 and 9,511ha) followed by Seafiel Estates (19 and 1,782ha).

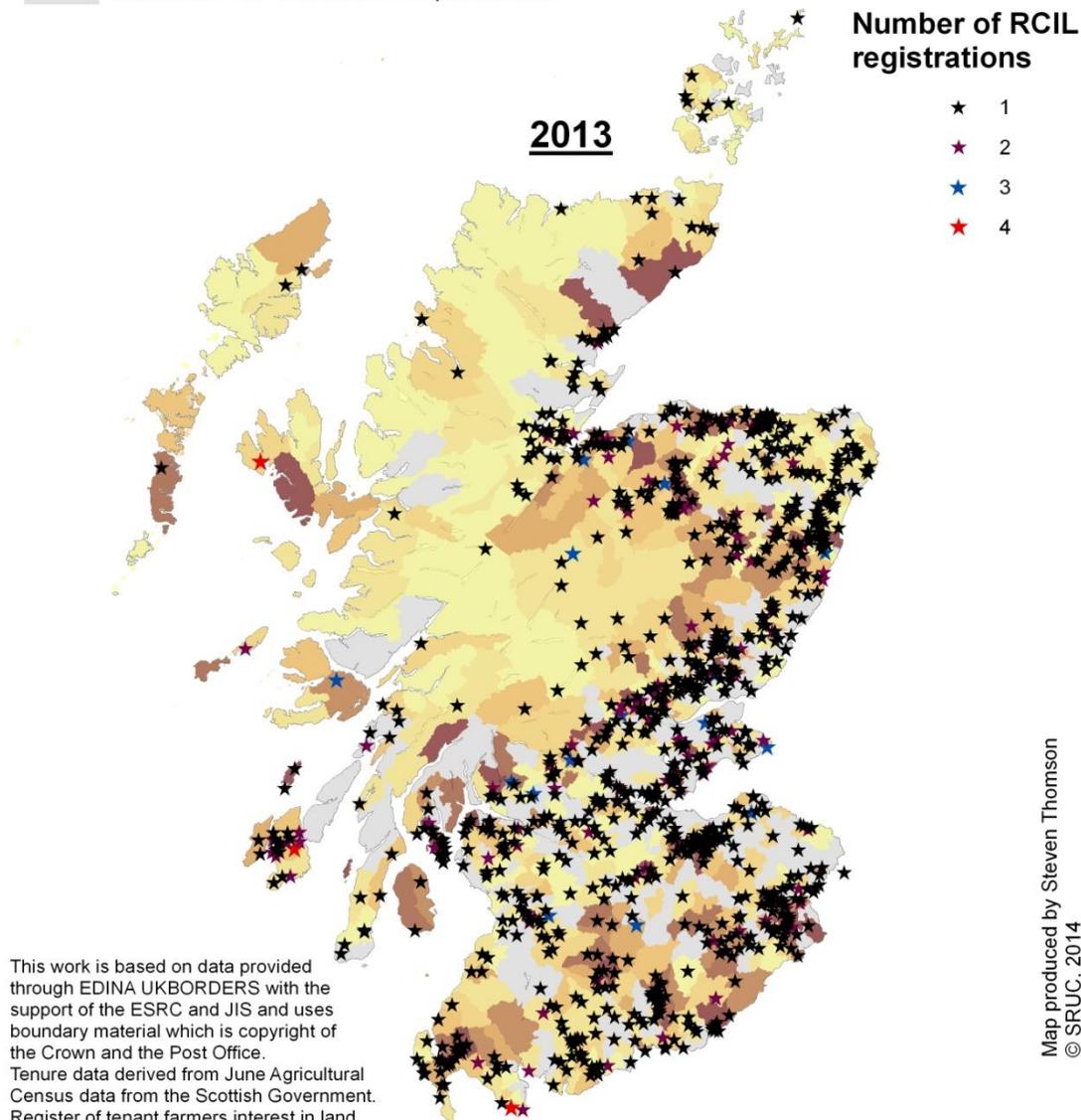
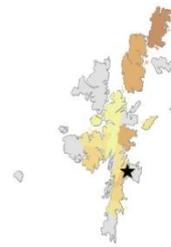
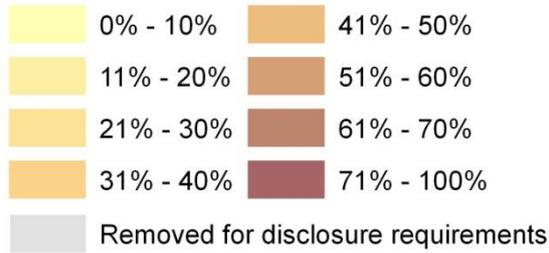
**Table 9 Significant landowners in the Register of Agricultural Tenants Interests, December 2013**

Landowner	Units	Ha
Church of Scotland	54	1,775
Crown Estate	54	8,482
Buccleuch Estates Limited	30	9,511
Earl of Seafiel	19	1,782
Islay Estates Company	18	4,377
Scottish Water	15	4,395
Earl of Stair	11	4,650
Mount Stuart Trust	11	2,050
Baron Lyell of Kinnordy	10	735
Wemyss Estate Trust	10	896

4.37 Figure 27 shows the location of all the land that is included on the register (as of December 2013). This was overlaid on a map showing proportion of land let under tenancy arrangements. It is perhaps notable that there were higher concentrations of registration in the more fertile regions (Moray, Black Isle, Berwickshire, Wigtownshire, Lothians, Tayside, etc) with very little from the majority of the west and central Highlands, and the Islands (with the exception of Islay) where Community ownership of land is more prevalent.

**Figure 27 Location of land on the Register of Agricultural Tenants Interests (Dec, 2013)**

**Proportion of land under tenure arrangements**



This work is based on data provided through EDINA UKBORDERS with the support of the ESRC and JIS and uses boundary material which is copyright of the Crown and the Post Office. Tenure data derived from June Agricultural Census data from the Scottish Government. Register of tenant farmers interest in land extracted from <http://www.ros.gov.uk/rcil/>

Map produced by Steven Thomson  
© SRUC, 2014

## 5 DRIVERS OF CHANGE

- 5.1 Staff within SAC Consulting regional offices and Scottish Government Rural Payments and Inspectorate Division area offices were asked to provide their opinion and thoughts on the drivers for tenancy change within their regions. Their feedback on observed changes to tenure and ownership was helpful in identifying and illustrating drivers of change. It is not meant to be exclusive or representative.
- 5.2 These drivers of change observed by regional staff were numerous but there was some commonality across the regions. For example, staff reported a tendency for informal arrangements to be used as a more flexible method of renting land than more formalised legal options, despite the landlord potentially being at greater risk through the informal route.

**Table 10 Observed drivers of change and issues relating to Scottish agricultural tenure**

Topic	Trends and issues
<b>1991 Act tenancies</b>	<ul style="list-style-type: none"> <li>• Long term decline in amount offered since the introduction of Ltd Partnerships in the 1980s – potentially related to landowners seeking less secure terms</li> <li>• Retiring tenants' farms are often taken back in hand, particularly if there is development potential – occasionally re-let through SLDT / LDT but increasingly seasonal lets.</li> <li>• Some landowners are actively farming and termination of secure tenancy provides landowner with farming opportunities</li> <li>• Some landowners are actively trying to buy out tenants for a variety of reasons (development, inheritance tax, CAP reform, land reform, SRDP grants, renewable projects, etc).</li> <li>• Decoupled CAP support has provided landowners with an incentive to hold land in hand and resume tenancies as they dissolve, with some benefiting from CAP support payment or letting of naked acres.</li> <li>• There are examples of corporate, foreign and traditional owners liquidating assets for variety of reasons – some selling to tenants meaning fewer tenancies available.</li> <li>• Anecdotal examples of positive outcomes from estates (eg. in Angus and Cumbrae) that were sold to tenants in the early 2000s.</li> <li>• Many examples of amalgamations with other existing tenancies. For example when a tenant retires or terminates a lease the landlord motivation is to lease to an existing tenant rather than an unknown entity.</li> </ul>
<b>Ltd Partnerships</b>	<ul style="list-style-type: none"> <li>• These had become the most popular way to let land in the 1990s with flexibility between the parties.</li> <li>• Mostly reported to have been terminated with very few left in place.</li> <li>• Estimate that 75% of Ltd Partnerships in the south west were not renewed, CAP support was thought to be a key consideration.</li> </ul>
<b>LDTs</b>	<ul style="list-style-type: none"> <li>• Very few reported as being offered. Initially there was a lack of trust / understanding of these new forms of lease plus there were issues with the fixed equipment requirements – many acted on legal advice not to offer LDTs.</li> <li>• Very few appear on open market – when they appear they tend to be offered to established farmers expanding capacity. When they do come on the market there is generally considerable interest.</li> </ul>

<b>SLDTs</b>	<ul style="list-style-type: none"> <li>• Some examples of landowners letting on 5 year SLDTs and then rotating tenants. Example given of SLDT being used for allotments.</li> <li>• Belief that there would be high demand if availability was known – particularly for farmers looking to expand.</li> <li>• Anecdotal evidence that SLDTs became popular in the North East after their introduction due to the flexibility they offered landlords. However, they are now less popular as many landlords want to ‘actively farm’ and access CAP payments which is possible through contract farming.</li> <li>• Some evidence that SLDTs have been provided to facilitate entry into SRDP Rural Development Contracts instead of the usual seasonal lets – alternatively sometimes a seasonal let is needed to break SLDT and allow farmer to remain in agri-environment scheme.</li> <li>• Evidence that some farmers are not having SLDTs and LDTs renewed although they are offered seasonal lets as landlords look to capitalise on CAP reform / inheritance tax.</li> </ul>
<b>Seasonal Lets</b>	<ul style="list-style-type: none"> <li>• CAP reform delays may have adverse impact on 2014 grazing lets as landlords keep land back to claim on own IACS.</li> <li>• Potato and vegetable lets appear to be informal and therefore will not get picked up by official statistics.</li> <li>• Reported that a significant proportion of grassland based businesses take seasonal lets – farmers hauling forage crops from further and further afield as machinery size and capability have improved – farmers taking on cereal land, and land from potatoes and peas.</li> <li>• Perception that inheritance tax benefits from moving from formal long term leases to seasonal lets.</li> <li>• Seen as low cost expansion for farmer through spreading of fixed costs.</li> <li>• Many farmers have taken naked acres to cover purchased entitlements or ineligible features.</li> <li>• Seasonal lets give retiring / retired farmers the option to maintain farm ownership without actively farming.</li> </ul>
<b>Ownership</b>	<ul style="list-style-type: none"> <li>• Some discussion that long term structural changes tend to occur due to financial crisis of landlords (e.g. poor business performance, inheritance tax, etc).</li> <li>• Sale of large land parcels can be a catalyst for change for a region.</li> <li>• Some landlords have sold to tenants due to concerns over absolute right to buy or to get rid of tenancy burden.</li> <li>• Regionally specific – many report no or very few tenants have recently had opportunities to purchase farms.</li> <li>• Reported that crofting tenants continue to purchase crofts to allow development, gain security and leverage finance.</li> <li>• Some reporting of Forestry Commission purchase of farmland for planting with some retained for starter units.</li> <li>• Examples of development land close to towns being bought and leased through a variety of means.</li> </ul>
<b>Contract farming</b>	<ul style="list-style-type: none"> <li>• Contract farming has become more favoured and popular (more use than SLDTs) and it is reported that right to buy, taxation, CAP reform, etc means it is a more secure option for landowner.</li> <li>• In arable areas it is reported that solicitors and accountants often advise landowners to use contract farming arrangements.</li> <li>• Undoubtedly this is a growth area and is likely to increase further with CAP reform.</li> <li>• Opportunity from developers (e.g. windfarms), offering in-bye to new business on contract farming basis.</li> </ul>

**Land reform**

- More tenants have become interested in registering interest in their land.
- Landowners are increasingly concerned about the right to buy – some tried to terminate leases after the introduction of the 2003 Act and this has now raised itself as an issue once more.
- Landlord nervousness of long term leasing deals has grown significantly since the early 2000s due to concerns over land reform - not just rights to buy but also issues relating to taxation of land, etc.

5.3 It certainly appears that the limited uptake of SLDTs and LDTs relates to control of the land, inheritance taxation considerations and importantly the ability of landlords to access (or potentially access) decoupled CAP support payments when leasing through contract farming arrangements or seasonal lets. It is notable that similar tendencies exist in other EU countries, as revealed by the case studies and the literature – notably Swinnen et al. (2013).

5.4 It was predicted by many working with farmers and landowners that contract farming will continue to blossom in the near future as landlords seek to maximise returns from their land through CAP support payments, whilst minimising longer term risks relating to land reform. It also appears that those land owners that continue to lease land through secure 1991 Act tenancies have a nervousness over land reform, particularly the uncertainty it brings to the sector.

## 6 TENURE AND FARM PERFORMANCE

- 6.1 Surprisingly little empirical evidence is available on the relative performance of farms held under different tenure arrangements. This partly reflects a lack of suitable data for analysis, but also the confounding effects of other influences on farm performance. Indeed the economic literature stresses the context-specific nature of optimal tenure arrangements, highlighting inter-linkages between land tenure decisions and other farming decisions (Schickele, 1941; Currie, 1986; Otsuka et al., 1992; Alan and Lueck, 2003) and policy inter-linkages between tenure legislation, agricultural subsidies and R&D support plus wider rural development topics such as off-farm employment opportunities, housing and pensions (EC, 1982; Swinnen et al., 2013).
- 6.2 Published analysis of farm tenure is dominated by attention to situations in developing (e.g. Africa, Asia) and transitional (e.g. Eastern Europe) economies where agriculture remains a significant sector and changes to tenure arrangements have been dramatic (e.g. widespread redistribution of land). In such cases, demonstrable efficiency gains are generally reported – but are often relative to a low base and at least partly attributable to basic improvements in legal recognition and protection of private property rights (Ladejinsky, 1964; USAID, 2013).
- 6.3 For industrialised economies in Western Europe and North America, changes to farm tenure arrangements are typically less dramatic, involving marginal changes to terms and conditions rather than radical reforms. Moreover, agriculture is often subject to other government interventions (e.g. production subsidies) that make it difficult to isolate the impact of modest tenure changes. Indeed Hill (1974 and 1985) suggests that tenure effects have largely been neglected by economists due to a pre-occupation with production and trade aspects of agricultural policies.
- 6.4 This neglect extends to data collection, with information on tenure often being incomplete and/or of poor quality. For example, few countries appear to routinely collect information on the nature and prevalence of different types of landlord and lease arrangements. Yet landlords take several possible forms - including central and local government, charities and Churches, NGOs, financial institutions, landed estates, other farmers and non-farming rural residents - and the motivations and behaviours of each are likely to be different. Equally, farms can vary considerably in their tenure mix, with the simple extremes of complete owner-occupation and complete tenancy masking the multitude of forms that mixed tenure may take through leases of different types and duration with different landlords (some of whom may be family members).
- 6.5 In addition, statistical quality assurance is often absent and information is typically lacking on productivity and on how management responsibility relates

to stated tenure arrangements.<sup>14</sup> Consequently, although changes to headline figures of (e.g.) freehold and leasehold land may be reported, these may contain inaccuracies and are typically too coarse to infer much about specific changes or any associated efficiency changes.

- 6.6 Where attempts have been made to compare farm performance under different tenure arrangements using farm surveys in industrialised countries, the results are somewhat variable and ambiguous. For example, notwithstanding hypotheses that tenanted farms will deploy more working capital and farm more intensively over larger areas, little difference was found in early American studies (e.g. Miller, 1959), although later ones found tenants more focused on short-term profitability (e.g. Garcia et al., 1982).
- 6.7 In the UK context, Britton and Hill (1978) suggest that tenanted farms may deliver better returns, but that any performance differential relates also to farm size and farm type. Hill (1974) and Gasson and Hill (1984) suggest that mixed tenure farms may deliver superior results, but that farmer characteristics (e.g. attitude, education) are a more important determinant of performance. Moreover, results are sensitive to how finely tenure categories are defined and to how (imputed) family labour and (especially) land costs for owner-occupiers are treated.
- 6.8 Similarly, comparisons of investment levels between owner-occupied and tenanted farms are equally open to interpretation. For example, although both Bonthron (1969, for Scotland) and Harrison (1975, for England) report higher average levels of investment in fixed assets by owner-occupiers relative to landlords, both note wide variation within a given class of tenure and (moreover) that it is not possible to judge the appropriateness of the investments made (i.e. whilst lower levels of investment could be too low, higher levels could be unnecessarily high). They also highlight the significance of grant-aid in overall investment levels.
- 6.9 Casual inspection of recent data from the Scottish Farm Accounts Survey (FAS) suggests that average levels of working capital are similar across owner-occupiers and tenants, but that owner-occupiers are carrying significantly more debt in absolute terms – reflecting their (rather than landlord) financing of land and building assets, although rising land values inevitably mean that such debt is proportionately smaller than for tenants when expressed relative to assets. However, there appears to be considerable variation within each type of tenure and across different farm types and sizes.
- 6.10 More rigorous analysis of viability (based on short and long-run income levels) suggests that tenanted farms may have some performance advantages, but that other factors – notably the degree of diversification into different farm and non-farm activities – have a stronger influence (pers. comm., Barnes, 2014). Further research may be merited, but is beyond the scope of this project.

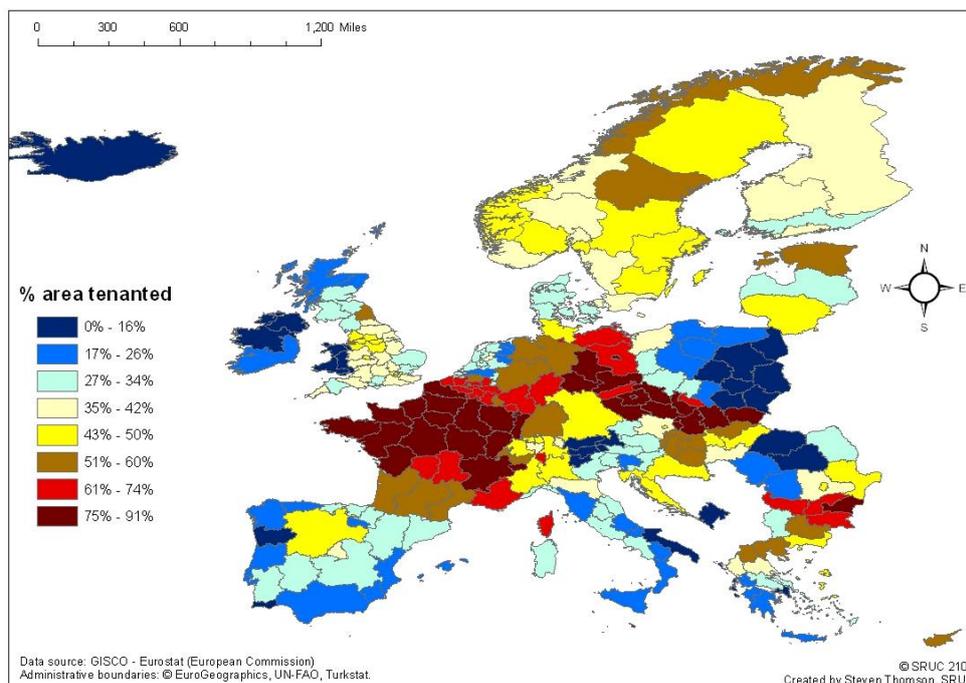
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<sup>14</sup> For example, management control within family farms may or may not align with how tenure is arranged formally and intra-family leases are often complex (Hill, 1974 and 1985).

## 7 OVERVIEW OF AGRICULTURAL LAND TENURE IN SELECTED COUNTRIES

7.1 The analysis of the data has shown that there are wide variations in the extent and importance of the tenanted sector across Scotland, for a variety of historic, fiscal, and wider policy reasons. This level of variation is not unique to Scotland and the 2010 Farm Structure Survey results show that there is considerable variation in the proportion of tenanted land within many countries. For example, Figure 28 shows how the tenanted sector is more important in the north and east of France, compared to the south west. Equally in the UK, Wales and Northern Ireland have the lowest level of long term tenancies followed by Scotland, with the highest levels of farm tenure occurring in England. The factors behind these regional and inter-country differences in the importance of the tenancy sector are investigated in more detail in this chapter which uses a number of case studies that can be found in Annex B.

**Figure 28 Proportion of Utilisable Agricultural Area that is tenanted across the EU**



### Recent tenure review exercises

7.2 Agricultural land tenure across different countries has been subject to a number of formal and/or academic reviews in recent decades. For example: the Northfield Committee (1979) reported on the UK situation, including some limited international comparisons, whilst the European Commission (EC, 1982; see also Harrison, 1985) provided an overview of tenure arrangements

in nine European countries, later extending explicit attention to new entrants (EC, 1992).

- 7.3 Grossman and Brussaard (1992) offered an academic perspective on 12 countries, including some outwith Europe. Ravenscroft et al. (1998a, b and c) also considered a mix of European and non-European countries, with their conclusions later incorporated into best practice guidelines by the Food and Agriculture Organisation (FAO, 2001). At a less detailed level, the OECD (1996) made some international comparisons and the United Nations Economic Commission for Europe presented results of a survey across Europe (UNECE, 2003). ADAS (2004) considered new entrants in the UK context. Most recently, in a continuing programme of work, various aspects of land markets in both old and new Member States of the EU have been explored in some detail by Swinnen and colleagues (Swinnen, 2002; Swinnen et al., 2009; Swinnen et al., 2013).
- 7.4 Although most are slightly dated, all of these studies provide useful overviews of different tenure patterns and of the different ways in which governments have sought to use legislative controls. Case studies conducted for this project (see Annex A) provide some additional, updated information to supplement insights from the general literature.
- 7.5 The following sections summarise briefly the main findings reported by the reviews cited above, supplemented with updated information from the 10 short case studies undertaken specifically for this project. The summaries offered should be viewed as indicative rather than definitive descriptions since requests for information from other countries are inevitably subject to interpretation and translation errors, plus on-going legislative changes can overtake reporting.

### **Relative shares of owned and rented farmland**

- 7.6 The diversity of agricultural tenure is most easily illustrated by a comparison of the relative shares of owned and rented farmland across different countries. Such comparisons are hindered slightly by discrepancies<sup>15</sup> in how data are recorded and/or reported, but available information is nevertheless sufficient to reveal broad patterns – as shown in Table 11, Table 12, Table 13 plus Figure 29 below.
- 7.7 The variation in rented land's share of tenure is dramatic, ranging from less than 20% in Ireland and Romania to over 80% in Slovakia and the Czech Republic. In addition, the share of rented land has also varied over time – rising in some countries whilst falling in some others. There is also considerable variation on land prices and rents, plus in the structure of agriculture in terms of forms of business, average farm size, reliance on family labour and the proportion of younger and older farmers.

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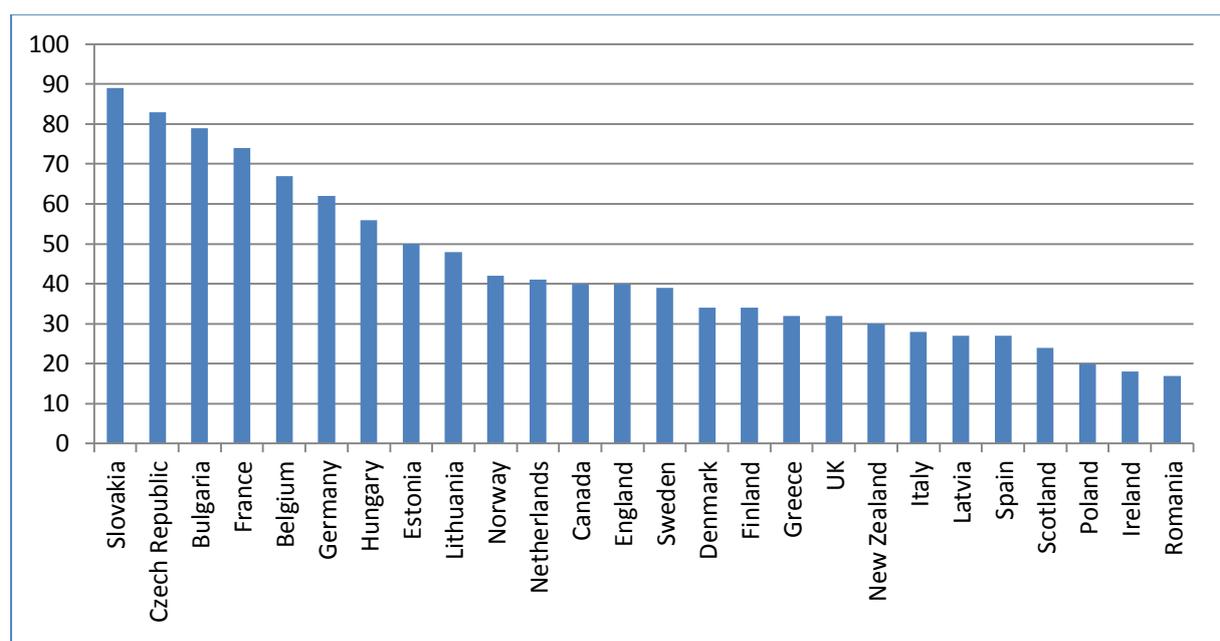
<sup>15</sup> For example, the sampling approach adopted and whether all let land is included. This also causes discrepancies between Tables 1 and 2, with the latter using a different source in order to estimate time-series values.

**Table 11 Rented land as a current share of utilised agricultural area in selected countries**

Country	% rented	Country	% rented
Belgium	67	Latvia	27
Bulgaria	79	Lithuania	48
Canada	40	Netherlands	41
Czech Republic	83	New Zealand	30
Denmark	34	Norway	42
Estonia	50	Poland	20
Finland	34	Romania	17
France	74	Slovakia	89
Germany	62	Spain	27
Greece	32	Sweden	39
Hungary	56	UK	32
Ireland	18	England	40
Italy	28	<b>Scotland</b>	<b>24</b>

Source: adapted from Ciaian et al. (2012), supplemented by cases studies. The year and basis for calculations varies across countries, but the estimated shares are indicative of broad differences.

**Figure 29 Rented land as a current share of utilised agricultural area in selected countries, ranked**



Source: as per Table 10

**Table 12 Rented land share over time in case-study countries, plus indicative current land costs**

Country	1970s % rented	1990s % rented	current % rented	£/ha value	£/ha rent
Belgium	71	68	67	6.5k – 12k	120
Canada	35	37	41	1k – 7k	20 - 130
Denmark	18	29	34	16k	400
France	51	57	74	2k - 10k	30 - 125
Hungary	-	-	60	1.6k	80
Ireland	6	10	11	21k	160
Netherlands	48	33	41	33k	300 - 675
New Zealand	-	-	20	8k - 11k	200 - 500
Norway	20	31	42	-	32 – 160
Poland	-	-	20	4k	80
England	46	37	40	22k	130 – 180
Scotland	<b>49</b>	<b>36</b>	<b>24</b>	<b>9k</b>	<b>75 – 230</b>

Source: case study research. The year and basis for calculations varies across countries, but the estimated rental shares and land costs are indicative of broad differences (but may mask within-country variation across different land types). Comparable rental data are not available for Hungary and Poland prior to liberalisation in the 1990s; NZ rental area is an industry estimate. Norwegian land values are not available. Scottish data from variety of sources including land agent publications.

**Table 13 Share of farms held by sole-proprietors, farmers age profile and importance of family labour**

Country	Sole-proprietors	% < 35 years	% > 55 years	% family labour	Avg. farm size
Belgium	92%	6%	53%	79%	30ha
Canada	55%	8%	48%	50%	312ha
Denmark	98%	6%	44%	61%	60ha
France	59%	8%	38%	70%	29ha
Hungary	96%	7%	48%	58%	20ha
Ireland	97%	4%	44%	60%	33ha
Netherlands	93%	4%	44%	60%	25ha
New Zealand	77%/25% <sup>a</sup>	4%	44%	80%	248ha
Norway	94%	8%	23%	93%	22ha
Poland	99%	17%	23%	93%	12ha
England	95%	3%	59%	70%	87ha
Scotland	<b>93%</b>	<b>3%</b>	<b>58%</b>	<b>81%</b>	<b>106ha</b>

Source: case study research. The year and basis for calculations varies across countries, but the estimated figures are indicative of broad differences. NZ figures are mainly industry rather than government estimates.

<sup>a</sup> higher figure is for beef and sheep farms, lower figure for dairy farms.

## Types of tenure control

7.8 Despite similarities in stated policy goals, countries have adopted a range of different tenure control measures. Although Annex B offers greater detail on a country-by-country basis for the selected cases studies, Table 14 and the accompanying descriptions below are structured by broad type of control measure as a means of highlighting the diversity of approaches taken.

7.9 Whilst focusing on measures relating directly to tenure, some other influences are also considered – notably taxation, treatment of new entrants to farming and environmental or planning restrictions.

**Table 14 Summary of common tenure control measures in example countries**

Tenure control measure	Example Countries
Restrictions on nationality of owners	Canada, Finland, Greece, Hungary, Latvia, Lithuania, New Zealand, Norway Poland, Romania, Slovakia
Restrictions on owners (e.g. residency, qualifications)	Austria, Denmark, Norway, Hungary, Poland
Max area owned	Denmark, France, Hungary, Lithuania
Land consolidation	Canada, Denmark, France, Netherlands, New Zealand, Norway
Maximum sale price	Austria, France, Poland
Maximum rent	Austria, Belgium, France, Netherlands
Minimum rent	Austria, France, Czech Republic
Minimum lease duration	Austria, Belgium, France, Italy, Netherlands, Portugal, Slovakia, Slovenia, <b>Scotland</b>
Maximum lease duration	Denmark, Finland, Sweden, Hungary, Poland, Slovakia, <b>Scotland</b>
Continuity of tenure	Belgium, Canada, France, Italy, Netherlands, New Zealand, Portugal, Sweden, Slovakia, Slovenia, <b>Scotland</b>
Land-specific court or other body for dispute resolution	Denmark, France, Netherlands, Norway, <b>Scotland</b>
Tenant pre-emptive right to buy	Belgium, France, Italy, Portugal, Sweden, Hungary, Latvia, Lithuania, Poland, Slovenia, <b>Scotland</b>
Tenant Absolute right to buy	Canada, New Zealand
Neighbour's pre-emptive right to buy	France, Italy, Portugal, Hungary,
Tax breaks on transfers	Canada, Ireland, Norway, Poland, <b>Scotland</b>
Tax breaks on ownership	Canada, France, Norway, <b>Scotland</b>
Tax breaks on rental income	Belgium, Hungary, Ireland.
New entrant tenure support	Canada, France,
New entrant finance	Canada, Denmark, France, Hungary, Ireland, Netherlands, N. Zealand, <b>Scotland</b>
New entrant partnerships	Belgium, France, Denmark, Netherlands, New Zealand
Other non-tenure legislation (e.g. planning, environment)	Across EU, New Zealand, <b>Scotland</b>

Source: derived from EC (1982), Grossman and Brussaard (1992), (UNECE, 2003) and Swinnen et al. (2013) plus case study research. \* for Canada and New Zealand, only on Crown not private land. Also, not all Canadian Provinces have the same controls.

## Restrictions on owning or leasing land

7.10 In many countries, the holding of land by non-local interests is subject to regulatory restrictions. For example, outright bans on non-local ownership, limits on the area that can be held by a non-local, and consent procedures prioritising local residents. In some cases, non-local is interpreted as from outwith the immediate area but more generally as from a foreign country. Restrictions may also apply to corporate land holding, favouring family-operated farms.

7.11 These restrictions reflect concerns over the impact of non-local and/or corporate interests on land prices and rental values plus community cohesion. Such concerns are prominent amongst New Member States of the EU, most of which have bans on foreign/corporate ownership and/or limits on areas that can be leased. However, such restrictions are due to be relaxed for EU-nationals as NMS' transitional entry arrangements come to an end (a similar process applied to Denmark earlier).

- 7.12 Non-EU countries such as Canada (although not all provinces), Norway and New Zealand have also had outright bans in the past, but have since generally adopted less-restrictive case-by-case consent procedures – as have a number of EU countries such as Austria, Denmark and France. Consent is often conditional on, for example, applicants having prior agricultural experience and relevant qualifications, being already resident in the country, and committing to personally residing on and working the land involved. Some countries, such as France, Hungary and Italy, grant pre-emptive rights to neighbouring farms to buy or lease land, prioritising them over other prospective bidders. Norway prioritises within-family transfers.
- 7.13 In Scotland, there are no restrictions on owning or leasing land in terms of nationalities, residency or skills/experience.<sup>16</sup>

### ***Restrictions on area of land held***

- 7.14 Restrictions on the area of land held are not necessarily confined to non-local interests but can extend to locals too as a generic constraint on land aggregation by individuals. Such restrictions are intended to favour a pattern of smaller, family-operated farms. Examples include Denmark, France and Hungary.
- 7.15 However, external pressure for structural change in agriculture typically leads to a need for periodic adjustment of such constraints. Hence, for example, the maximum area permitted and the number of individual farms permitted to be held by an individual has gradually increased in Denmark whilst New Zealand removed all such controls in 1995.
- 7.16 In Scotland, there are no restrictions on the area of land that can be owned or leased.

### ***Promotion of land consolidation***

- 7.17 Conversely, acknowledgement of the negative influence of land fragmentation on agricultural efficiency has led many countries to constrain the sub-division of land and indeed to promote consolidation. For example, through arrangements to avoid splitting land amongst multiple heirs and offering pre-emption rights to relatives, co-owners or indeed neighbours.
- 7.18 In addition, consolidation can also be promoted more actively through State facilitation of voluntary exchange of land between neighbouring farms and/or through active intervention in local land markets. For example, Denmark, France and the Netherlands all have administrative bodies with the power to forcibly reallocate land between different farms if this will improve viability (or is necessary to accommodate public infrastructure improvements). The French SAFER (Sociétés d'Aménagement Foncier et d'Etablissement Rural) system is the most active interventionist model, with all land transfers being subject to local scrutiny and pre-emptive rights of the State to take (temporary) possession of land for reallocation.

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<sup>16</sup> All descriptions here of the situation in Scotland are restricted to non-Crofting tenure.

- 7.19 In Scotland, although there is some legal provision for the amalgamation of tenanted land by landlords, there are no formal processes to promote land consolidation in a manner akin to that in some other countries.

### ***Sale price controls***

- 7.20 Explicit articulation of acceptable land values is rare. However, concern over the impact of rising land values on farmers' (especially new entrants) ability to acquire land has led some countries to subject sales to case-by-case scrutiny. For example, Austria, France and Poland all empower local land boards to intervene to cap excessive local price rises. Equally, restrictions on land ownership, especially by non-local interests, are also intended to dampen the rate of increase in land values. Minimum sale prices are not apparently addressed.

- 7.21 In Scotland, there are no controls on land prices.

### ***Rent controls***

- 7.22 A desire to ease cost pressures on farmers has led many countries to impose maximum rental levels, typically every few years. In some cases, rents for a given piece of land are set with reference to rents on neighbouring land – a system that dampens changes, but inevitably imposes time lags - and in the event of falling incomes may actually worsen the situation. Equally, expressing rents as a percentage of land values can result in excessive increases if land values are detached from agricultural productivity through external drivers (i.e. non-farming demand).

- 7.23 More commonly, rents are linked in some manner to the productive capacity of the land. For example, in relation to crop yields, stocking densities and/or profit margins. In some cases, such as the Netherlands, formal independent analysis is used as the benchmark whilst in others, such as Belgium and France (which also sets a minimum rent), a more consultative approach involving local stakeholders is used (with some independent input). In Belgium, maximum rents are also varied according to the lease duration, rising with length. Canada, Hungary, Poland and New Zealand have no rent controls for private leases, but do for public leases.

- 7.24 Where maximum price or rent levels are in place, an illegal “grey” market may emerge. That is, farmers keen to obtain more land, particularly if contiguous with an existing holding, may be willing to pay more than the maximum regulated amount by offering additional “key money” payments. This is suspected to occur in, for example, Belgium, France and the Netherlands. Similarly, constraints on (especially) foreign ownership are suspected to be circumvented through additional payments in, for example, Hungary and Poland – particularly in border regions.

- 7.25 In Scotland, there are no rent controls in terms of definitive maximum or minimum values. However, there is a recommended voluntary process for reviewing rents. Ultimately, disputes over rent can be judged by the Scottish Land Court.

### ***Minimum lease duration and continuity of tenure***

- 7.26 Leasehold occupation of land is less secure than freehold occupation, meaning that tenant incentives to plan and invest for the longer-term may be dampened. Consequently it is common for leasehold security to be strengthened through limiting the scope for leases to be terminated and by obliging landlords to offer leases of reasonable duration which are then renewed automatically (and often for the same period as the initial term). In addition, renewal typically extends to other family members, thereby making leases heritable and facilitating farm succession.
- 7.27 The degree of security provided varies considerably across countries. For example, Belgian leases can be for up to 27 years (or indeed up to the expected life of the tenant) and are renewed for the same period as the original term. Similar treatment is experienced in, for example, France, Italy and the Netherlands. By contrast, Ireland offers no security of tenure and countries including Denmark, Hungary and Poland specify maximum lease durations with no automatic right of renewal. Although offering no obligatory security for private tenants, rental of Crown land in New Zealand is typically on a 33-year perpetually renewing lease. Similar arrangements exist in some Canadian Provinces.
- 7.28 In some countries, such as England, the Netherlands and Norway, shorter-term leases are exempt from regulatory controls – notably rent levels plus rights of renewal, succession and pre-emption rights. Concerns that over-regulation was limiting the availability of rental land led England to introduce unregulated short-term leases in the 1990s (see Whitehead et al., 2002, for an evaluation) and the Netherlands to do the same in the mid-2000s.
- 7.29 In Scotland, minimum duration and continuity vary across different types of lease. For example, although often rolled-over for successive years, short-term lets have no binding commitment beyond their first year. Conversely, “secure” tenancies under the Agricultural Holdings (Scotland) Act 1991 are heritable with long-term security of tenure and a succession right. In-between these two extremes, a Short Limited Duration Tenancy (SLDT) is for up to five years whilst a Limited Duration Tenancy (LDT) is for a minimum period of ten years.

### ***Dispute resolution***

- 7.30 Acknowledgement of the potential for tension between tenant and landlord interests is widespread, with most countries having some degree of explicit legislation detailing the obligations and powers of each party to a lease, plus how disputes can be resolved. Aspects covered include lease duration and rental levels, but also in most cases how tenant improvements (or damage) to land are valued and any limits to the freedom to farm. A few countries, such as New Zealand and Hungary, rely upon basic contract law or generic landlord-tenant law and do not have specific courts or tribunals to resolve disputes arising from private leases. However, many countries do have land-specific bodies either at a local and/or national level, for example, Denmark, France and the Netherlands,

- 7.31 In Scotland, the Land Court can ultimately rule on disputes between landlords and tenants. Less costly voluntary resolution processes are also available, for example as promoted by the Scottish Agricultural Arbiters and Valuers Association (SAAVA).<sup>17</sup>

### ***Tenants' right-to-buy***

- 7.32 Examples of tenants having an absolute right to buy rented land are scarce, particularly from private landlords. Historically, the transformation of Irish agriculture from mainly tenanted to mainly owner-occupied during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries occurred through granting of such an absolute right to buy – but only once favourable financial support was also provided. Currently, most (but not all) tenants on Crown land in both Canada and New Zealand have an absolute right to buy and indeed are actively encouraged to exercise it.
- 7.33 By contrast, most countries grant first refusal to private and public tenants through a pre-emptive right to buy land if offered for sale. For example, Belgium, France and Sweden. Some countries extend (in a sequence of rank-order prioritisation) pre-emptive rights to relatives and/or neighbouring farms, as in France, Hungary and Italy. In some cases, pre-emptive rights are accompanied by price controls (e.g. France, Hungary) but in other cases there are no price controls and holders of pre-emptive rights may simply be outbid (e.g. Denmark).
- 7.34 In Scotland, holders of secure tenancies under the Agricultural Holdings (Scotland) Act 1991 are granted a pre-emptive right to buy if the land is sold, but only if they register (and re-register after five years) an interest to do so with the Registers of Scotland. There is not currently any absolute right to buy<sup>18</sup>, but the Cabinet Secretary has indicated that he is minded to grant it to holders of secure tenancies under the 1991 Act.

### ***Tax breaks on farmland***

- 7.35 In some countries such as Denmark, the Netherlands and New Zealand, the tax treatment of agriculture is more-or-less the same as for any other business sector. That is, although generic support for business succession and income-smoothing may be available, no farm-specific exemptions or allowances are offered.
- 7.36 However, most countries do treat farm taxation differently, particularly with respect to the transfer of land between family members. For example, within-family transfers of farmland are often either entirely exempt from stamp duty, capital gains and/or inheritance tax, as in Canada and Poland, or artificially low valuations are used for taxation purposes, as in Ireland and Norway.

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<sup>17</sup> See <http://www.saava.org.uk/dispute-resolution.php>

<sup>18</sup> Although the few remaining perpetual and very long Crown leases are in the process of being converted to ownership.

- 7.37 Similarly, although some countries subject farmland to the same property taxes as other real estate, many countries offer exemptions or apply lower rates. For example, Canada, France and Norway.
- 7.38 In Scotland, farmland and associated buildings are exempt from business rates and from the highest rates of stamp duty on sales. Subject to certain eligibility criteria, Agricultural Property Relief and Business Property Relief (the latter is not unique to agriculture) are commonly used to reduce inheritance tax liabilities by up to 100% (some tenanted land is restricted to 50% relief). Capital gains tax liabilities can also be reduced through the use of Rollover and Holdover reliefs.

### ***Tax breaks on rental income***

- 7.39 To overcome land owners' reluctance to let land on longer leases (especially when longer leases are associated with other conditions that reduce owners' control), some countries offer tax breaks as incentives. For example, Ireland allows progressively higher exemptions for progressively longer leases whilst Belgium exempts all rental income from taxation for leases of at least 18 years and Hungary does the same for leases of at least five years.
- 7.40 In Scotland, no tax breaks are granted on rental income from farmland. Some landlords opt for partnership arrangements with tenants in order to gain more favourable tax treatment.

### ***Tenure support arrangements for new entrants***

- 7.41 The availability of land, either to buy or to rent, is widely acknowledged to be a factor influencing the ease with which new farmers can enter the industry. Farm inheritance is the dominant entry route in most countries, and is (as mentioned above) typically facilitated by tax breaks on business succession and/or the extension of leasehold security to family heirs.
- 7.42 Separately, for non-family succession, some countries make explicit provision for allocating land to new entrants. For example, bids for Crown land in Canada and New Zealand can be weighted in favour of younger farmers. Perhaps most notably, around 1/3 of interventions under the French SAFER system are to assist new entrants, of which around 2/3 are not from farming families.
- 7.43 In Scotland, no formal mechanisms exist for prioritising tenancy applications from new entrants or offering more favourable tenure terms to them.

### ***Other policy support for new entrants***

- 7.44 Several EU countries use Pillar II of the CAP to support new entrants (ENRD, 2013). This typically takes the form of capital grants or soft loans to aid with start-up costs, although budget constraints have limited such support (e.g. in Hungary). Preferential funding support (e.g. lower interest rates, higher loan-to-value limits, State-backed guarantee) is supported in countries such as Canada and Poland (although the latter is subject to EU State-Aid rules).

- 7.45 Acknowledging that entry into agriculture also depends on the exit of incumbent farmers, some countries have also attempted to hasten retirement dates. Typically, in return for transferring land to an eligible young farmer (e.g. under 40 with relevant experience or qualifications) an early retiree gains access to a pension at an earlier age than would otherwise be the case – either a separate time-limited payment until reaching State pension age (as under Pillar II schemes) or simply earlier access to a State pension (as in Norway). Tax incentives are offered in Ireland.
- 7.46 In Scotland, limited financial support for new entrants is available through the allocation of new Single Farm Payment entitlements. Equally, new entrants can also receive limited funding under the SRDP.

### ***New Entrant Partnerships***

- 7.47 Separately, some countries have a tradition of easing new entrants into agriculture through formal partnership or sharefarming arrangements. For example, “maatschap” in the Netherlands (and to a lesser extent in Denmark, Belgium and France – with some current attempts to promote them in England and Ireland; Ingram and Kirwan, 2011; Bogue, 2013) and sharemilking in New Zealand. Essentially this approach offers an opportunity for new entrants to gain experience alongside an established farmer in a more structured manner than simply being a farm employee, taking an initial stake (e.g. 20%) in a farm and then gradually accumulating capital towards buying the incumbent farmer out. At the same time, the incumbent farmer continues to draw an income from the farm whilst gradually withdrawing from active farming with the prospect of being able to retire when bought-out completely. The precise division of assets and managerial responsibility (and of farm income) will vary across different agreements but typically has the new entrant initially assuming a tenant-like role (e.g. owning livestock) and the incumbent assuming a landlord-like role (e.g. owning land and buildings), with the new entrant gradually taking fuller control.
- 7.48 Typically, the transfer price is below the market price and attracts preferential tax treatment and financing (including loans from the incumbent farmer). Nevertheless, new entrants are still faced with high debt levels and rising land values have increased the duration of partnership working required to accumulate sufficient capital to complete the buy-out (not least since incumbent farmers may also seek a higher share of farming income to ensure a reasonable return on their capital as its value is inflated by rising land values). Indeed, such arrangements rely on a farm being capable of generating sufficient income to support both partners – or to permit off-farm employment as an alternative means of accumulating capital. Consequently, although still accounting for 1/3 of new entrants to the dairy sector in New Zealand, sharemilking is now competing with other entry routes such as via contract farming or as a farm manager.
- 7.49 In Scotland, no formal support is offered to encourage partnership working as an entry route to farming.

### **Other non-tenure legislation**

- 7.50 Agriculture in all countries is increasingly subject to environmental regulations, notably with respect to water pollution and biodiversity conservation. For example, the Water Framework Directive within the EU or the Resource Management Act in New Zealand. Although not directly related to tenure, such regulations can impact on tenure arrangements indirectly. For example, at least anecdotally, compliance with manure disposal requirements (e.g. under NVZ regulations) has led to increased rental of land in Denmark, Ireland and the Netherlands.
- 7.51 Equally, although not dictating tenure arrangements, agricultural support in the form of production subsidies, quotas and (now) decoupled payments can influence tenure patterns and lead to disputes between landlords and tenants. In particular, a proportion of support payments are capitalised into land values,<sup>19</sup> which has implications for relative returns to owners and tenants.<sup>20</sup> In addition, again anecdotally, the advent of decoupled payments has led some farmers who might otherwise have sold land to let it out on short-term leases or to use contractors in order to retain support payments. For example in Belgium and Denmark. Equally, decoupling may also lead some farmers to use seasonal lets to ensure a sufficient area to activate entitlements and/or ease cross-compliance requirements. For example, in Ireland and the Netherlands.
- 7.52 Separately, demand for residential housing and associated infrastructure places farming in competition with non-farming land use - particularly if close to urban centres. This increases land values, but can also affect the type of landlords renting land out (e.g. homeowners, speculators). Managing the conversion of agricultural land to other use typically falls within the remit of Town and Country Planning, and official guidance for the preservation of agricultural land is commonplace.
- 7.53 In Scotland, agriculture is subject to a variety of environmental regulations. For example, the Water Framework Directive, the Nitrate Vulnerable Directive and the older Birds and Habitats Directives. Equally, as noted in earlier sections of this report, decoupling of production subsidies has altered some landlord-tenant relationships and on-going changes to CAP support are anticipated to drive further adjustments.

### **Discussion**

- 7.54 Intervention in land markets to influence agricultural tenure and the 3Fs (fair rents, fixity of tenure, and free sale) have a long history. For example, Tuma (1965) describes Egyptian, Greek and Roman attempts to do so whilst Linklater (2014) cites landlord-tenant statutes from Mediaeval England. Indeed, in the UK-specific context, comparing current debates with the survey

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<sup>19</sup> Swinnen et al (2013) estimate the degree to which decoupled farm payments under the CAP have been capitalised into land prices, revealing considerable variation attributed to implementation and contextual differences across different countries.

<sup>20</sup> Indeed, adoption of the historical SFP model in Scotland was partly due to concerns over other models' impacts on tenants – including the redistribution of livestock quota capital values.

by Shaw-Lefevre (1893) of the situation in England, Ireland and Scotland more than a century ago highlights the recurrent nature of the issues involved and indeed the proposed remedies.

- 7.55 Five main points emerge from the review literature and case studies. First, patterns of tenure vary considerably across different countries as do the nature and degree of government control (either through legislation and/or as a State landlord) over tenure arrangements. As Cardwell (2006) notes, unlike agricultural policy relating directly to production, tenure has generally not been constrained by either international (e.g. World Trade Organisation, WTO) or European (e.g. Common Agricultural Policy, CAP) restrictions and thus has been and remains essentially a domestic matter.
- 7.56 Second, this diversity reflects not only variation in the quality and abundance of land in different countries but also variation in (often inconsistent if not incoherent) political preferences, driven largely by historical factors including the local co-evolution of democratic principles and private property rights (Ladjensky, 1964; Harrison, 1985; Swinnen, 2002; Linklater, 2014). For example, the importance of Crown land in Canada and New Zealand stems directly from 18<sup>th</sup> Century colonisation processes whilst land reform in Eastern European countries such as Hungary and Poland is driven by more recent experiences of autocratic state control. Equally, current tenure in many Western European countries reflects political choices made in previous eras, for instance the Irish transformation from mainly rented to mainly owner-occupied farms.
- 7.57 Third, whilst the nature and extent of intervention in land markets varies, in almost all cases the implicit or indeed explicit policy preference is for family-operated farms, either as owner-occupiers and/or tenants. However, pressure for structural adjustment - notably from rising incomes in the wider economy, technological progress and market competition – means that size definitions of family farms need to be revised upwards over time. In turn, this can lead to the adjustment of other tenure controls. In particular, attempts to increase the availability of land to rent or buy, relaxation of restrictions on farm size and relaxation on foreign (and/or absentee) ownership controls.
- 7.58 Fourth, periodic reform<sup>21</sup> of tenure controls is often highly politicised. This reflects inherent tensions between different interests in land and the ebb and flow of divergent views on the appropriateness of different forms of land tenure and indeed on the distribution of wealth within society. These views vary across countries and also over time, leading to iterative attempts to maintain a tolerable (rather than optimal) level of efficiency and equity under changing circumstances. That is, it is difficult to design tenure arrangements to simultaneously balance and maintain interests of new entrants with those of incumbent farmers, of tenants with owner-occupiers and landlords, of farming with non-farming land uses and of rural with urban communities.

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<sup>21</sup> For example, Bergman (1985) notes that 50 pieces of legislation relating to agricultural tenancy arrangements were passed in France between 1946 and 1975; Dutch arrangements are currently being reviewed having already been amended twice in the past decade.

7.59 Fifth, formal evaluations of tenure controls are extremely rare<sup>22</sup> and case study informants caution against drawing causal inferences - as do previous review exercises (e.g. Northfield, 1979). In particular, the context-specific and dynamic complexity of tenure means that similar observed outcomes may have different causes in different countries. For example, recent apparent increased rental activity in (e.g.) England, Denmark, the Netherlands and Norway *may* reflect changes to legislative controls but also coincides with other changes, notably to agricultural support measures and environmental regulations as well as continuing pressure for structural change. Moreover, the ability of legislation to quickly influence tenure patterns may be limited (e.g. Butler and Winter, 2008). Consequently identification (and applicability to other countries) of measures to achieve particular outcomes is seldom straightforward. Indeed, the economic literature stresses that different tenure arrangements have different advantages and disadvantages with respect to different objectives under different circumstances and that land tenure is but one decision to be taken by a farmer (Cheung, 1969; Currie, 1981; Otsuka et al., 1992; Alan and Leuck, 2003; Swinnen et al., 2013).

### Case Study Conclusions

- 7.60 Different forms of land tenure can affect the efficiency of agricultural production and income generation in different ways. For example, by allowing scarce funds to be invested in working capital rather than buying land, leasing can increase short-term flexibility and allow a larger area to be farmed. However, leasing inevitably involves some dilution of management control, with responsibilities shared between landlords and tenants and thus there is potential for (principal-agent) coordination/conflict problems to reduce efficiency. Moreover, relative to more secure freehold arrangements, leasing may impair the planning and investment needed for sustained longer-term performance. Yet secure tenure can restrict the mobility of land between users, impeding new entrants and others wishing to expand.<sup>23</sup>
- 7.61 Shaped by political/ historical influences, tenure measures deployed across different countries generally promote security over mobility, either through support for owner-occupation or extended rights for tenants (e.g. compensation for improvements, long-term leases with renewal or succession, pre-emption etc.). Although this may have encouraged longer-term planning and investment, structural change has been relatively slow (often impeded further by production support) and many countries now have concerns about land mobility and the rate of generational renewal in agriculture constraining capacities to meet 21<sup>st</sup> century challenges.

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<sup>22</sup> A recurrent complaint in the review literature is of poor data hindering evaluation. In particular, data on ownership, leasing and management control are often incomplete and/or inaccurate (a fact confirmed by difficulties encountered in compiling the case studies). Moreover, Hill (1985) notes that *de facto* control of land may differ from the apparent *de jure* position due to 'grey' market activities to avoid rent controls or constraints on ownership or simply through different tenures masking managerial responsibility within family-controlled businesses.

<sup>23</sup> A crude analogy may perhaps be drawn here with debates about the optimal duration of public franchises (e.g. railways) to encourage investment yet expose holders to some degree of competition from other operators.

- 7.62 Although commonplace, financial support for restructuring or for new entrants is typically offset by limited land availability and thus may need to be accompanied by encouraging incumbent holders to release land. For sales or inter-generational transfers, this typically takes the form of tax breaks or enhanced pensions offered in return for sales/transfers made earlier than they might otherwise have been – in effect incentivising incumbents to partially or wholly exit the industry. A reduction in agricultural support payments might achieve similar results by reducing the cash income flowing to incumbent holders (Breustedt and Glauben, 2007; Raggi et al., 2013).
- 7.63 For increasing the supply of leased land, attempts can be made to entice potential landlords through measures such as tax breaks on rental income or clarification on the rules relating to landlord entitlement to and receipt of agricultural support payments. Landlords may also be enticed by the creation of leases conveying fewer rights to tenants. Responsiveness to different incentives may vary across different types of tenant (e.g. new entrant, established farmer with own land, SFP claimant, NVZ manure disposal) and different types of landlord (e.g. large estate, financial institution, retired farmer, State) plus with wider economic conditions.
- 7.64 Importantly, even if the availability of land to buy or lease does increase, this does not necessarily guarantee that new entrants will be able to access it. Rather, established farmers (often with preferential credit due to the collateral value of their existing land holding) may well outbid new entrants (e.g. Whitehead et al., 2002). Hence some countries explicitly allocate public or private land to new entrants through formal regulatory controls or other preferential treatment. The administrative cost and bureaucratic burden of such an approach are, however, unclear – as indeed are those for highly regulated land markets more generally.
- 7.65 Balancing the effects of different tenure arrangements and the potentially competing interests of different holders of tenure is difficult; no single measure in isolation is likely to achieve and sustain desired outcomes. Account has to be taken of dynamic incentive effects and perceived risks over the long-term, and arrangements need to be capable of evolving to reflect changing circumstances in both agriculture and the wider economy. Nevertheless, whilst international comparisons need to be made with care, the range of measures deployed by other countries offers some interesting possibilities for consideration.

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## ANNEX A: ADDITIONAL STATISTICAL OUTPUTS

**Table 15 Number and proportion of holdings renting land and area rented by region, 2000 and 2013**

Region	2000				2013			
	Holdings	% Total	Ha	% of Total	Holdings	% Total	Ha	% of Total
Argyll and Bute	450	30.8%	144,917	32.2%	344	23.1%	122,743	26.1%
Ayrshire	438	16.5%	70,314	29.9%	315	11.2%	52,605	21.7%
Clyde Valley	449	14.7%	59,724	27.3%	341	10.5%	47,650	22.5%
Dumfries and Galloway	958	25.6%	176,285	39.7%	778	19.0%	140,236	30.5%
East Central	274	19.8%	60,715	33.3%	211	13.7%	55,544	28.9%
Eileanan an Iar	837	67.7%	9,770	16.6%	732	58.2%	7,942	15.8%
Fife	286	20.9%	23,629	24.0%	225	14.8%	18,462	18.9%
Highland	1,286	28.6%	381,615	23.4%	903	18.7%	262,177	15.8%
Lothian	318	21.7%	38,531	30.1%	247	16.4%	28,552	22.2%
NE Scotland	1,725	20.8%	194,990	30.8%	1,354	15.3%	167,293	24.2%
Orkney	204	12.5%	11,120	13.0%	162	9.5%	9,704	10.7%
Scottish Borders	580	26.7%	164,695	43.2%	470	18.8%	130,478	34.0%
Shetland	262	41.6%	13,313	37.7%	143	27.4%	10,772	34.0%
Tayside	979	27.7%	243,147	38.5%	650	17.7%	135,858	21.3%

**Table 16 Number and proportion of BRNs and area rented by region, 2009 and 2013**

Region	2009				2013			
	BRNs	% Total	Ha	% of Total	BRNs	% Total	Ha	% of Total
Argyll and Bute	314	32.9%	130,454	27.3%	289	29.4%	120,126	24.1%
Ayrshire	290	18.5%	57,958	25.4%	268	16.9%	57,073	24.8%
Clyde Valley	272	17.3%	58,518	27.9%	256	15.9%	44,616	23.1%
Dumfries and Galloway	700	27.7%	144,703	33.6%	647	25.0%	138,931	31.4%
East Central	187	23.9%	51,802	29.7%	173	21.3%	54,118	29.0%
Eileanan an Iar	489	68.9%	8,081	22.2%	430	61.7%	6,242	16.2%
Fife	190	26.4%	19,311	18.8%	179	23.9%	17,852	16.5%
Highland	776	29.3%	313,829	21.8%	692	25.3%	249,959	16.7%
Lothian	200	27.1%	32,497	23.5%	188	24.3%	26,689	21.7%
NE Scotland	1,163	24.1%	176,243	26.4%	1,078	22.1%	164,330	24.4%
Orkney	153	15.1%	9,153	12.2%	136	13.4%	8,053	10.7%
Scottish Borders	419	28.8%	135,093	36.1%	403	26.5%	132,058	34.6%
Shetland	150	40.8%	11,388	36.8%	104	31.1%	10,321	34.1%
Tayside	579	28.0%	181,082	27.6%	528	25.2%	142,567	21.6%

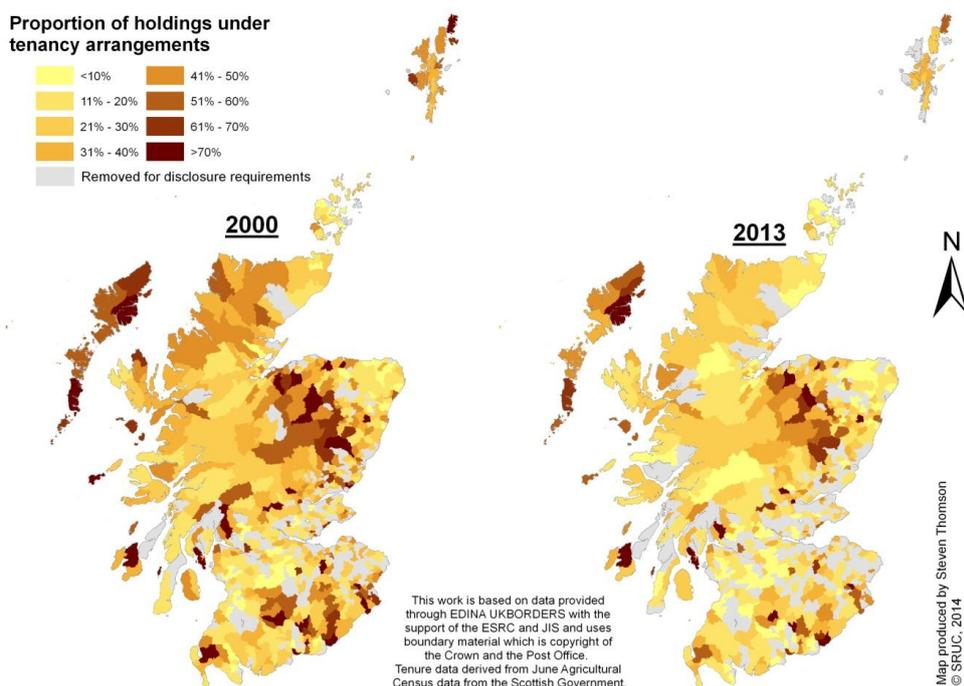
**Table 17 Number and proportion of holdings renting land and area rented by size grouping, 2004 and 2013**

Region	2004				2013			
	Holdings	% Total	Ha	% of Total	Holdings	% Total	Ha	% of Total
Very Small	4,400	16.0%	137,420	17.1%	3,703	12.4%	118,000	12.2%
Small	1,206	31.7%	144,749	26.4%	901	28.0%	129,645	23.3%
Medium	883	36.2%	172,791	29.8%	629	32.1%	118,723	21.8%
Large	1,040	39.3%	349,582	35.0%	835	36.5%	287,599	28.6%
Very Large	851	43.6%	678,532	29.6%	807	38.6%	536,048	23.5%

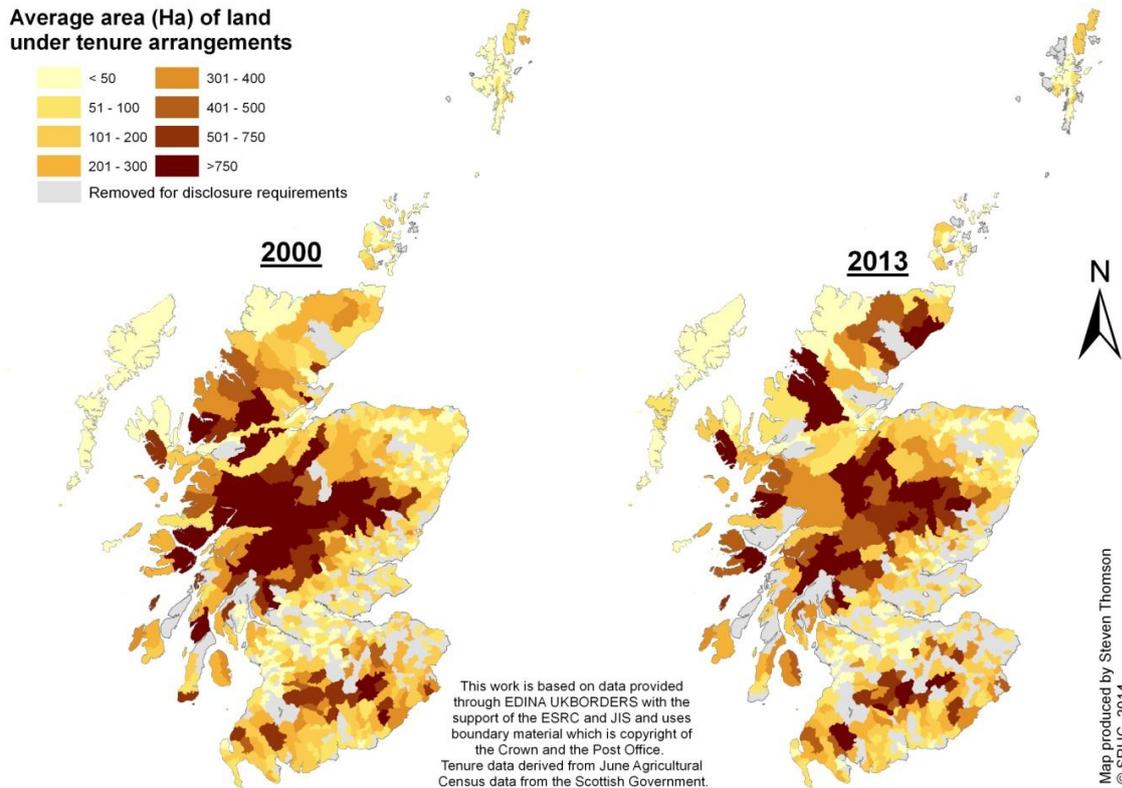
**Table 18 Number and proportion of holdings renting land and area rented by robust farm type, 2000 and 2013**

Region	2000				2013			
	Holdings	% Total	Ha	% of Total	Holdings	% Total	Ha	% of Total
Cereals	1,056	29.3%	97,611	28.4%	851	23.1%	85,029	19.9%
General Cropping	862	38.0%	97,535	32.7%	533	27.6%	65,114	20.8%
Horticulture	90	15.6%	853	14.4%	95	12.0%	2,051	7.9%
Pigs	23	15.1%	1,264	8.6%	23	8.6%	327	2.8%
Poultry	68	11.0%	620	8.7%	109	5.9%	1,116	5.0%
Dairy	502	28.5%	44,452	23.0%	310	27.4%	29,456	18.9%
LFA Cattle and Sheep	3,788	38.4%	1,120,184	38.9%	2,624	30.8%	834,639	31.6%
Lowground Cattle and Sheep	305	19.9%	14,694	22.4%	296	15.8%	12,489	19.5%
Mixed	716	33.6%	92,529	31.9%	541	27.8%	87,657	29.0%
Other	1,636	11.2%	123,021	11.1%	1,466	8.5%	70,859	5.2%

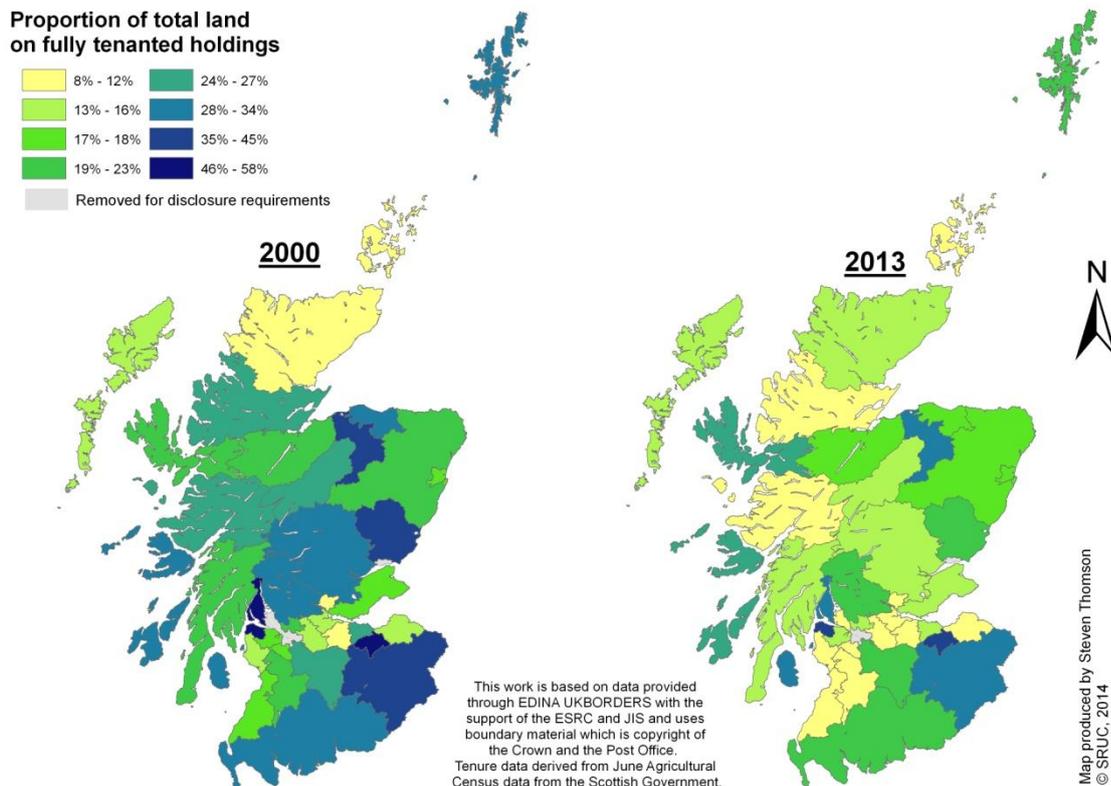
**Figure 30 Proportion of holdings under tenure arrangements by parish, 2000 and 2013**



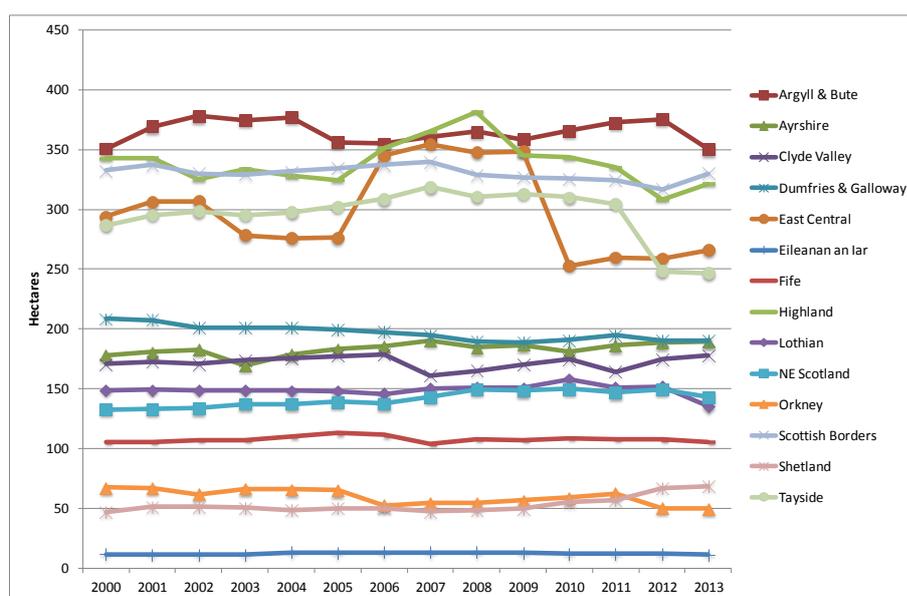
**Figure 31 Average area of land under tenure arrangements by parish, 2000 and 2013**



**Figure 32 Proportion of area on full tenancy holdings by NUTSIV Region 2000 and 2013**



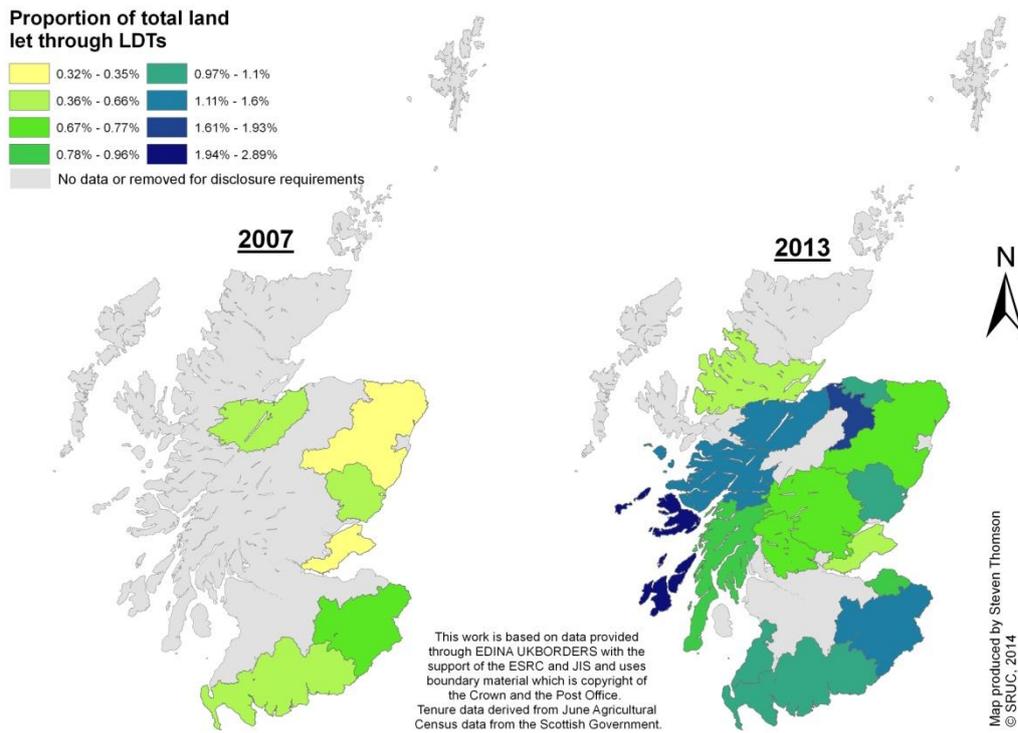
**Figure 33 Average area of fully rented holdings, by region: 2000-13**



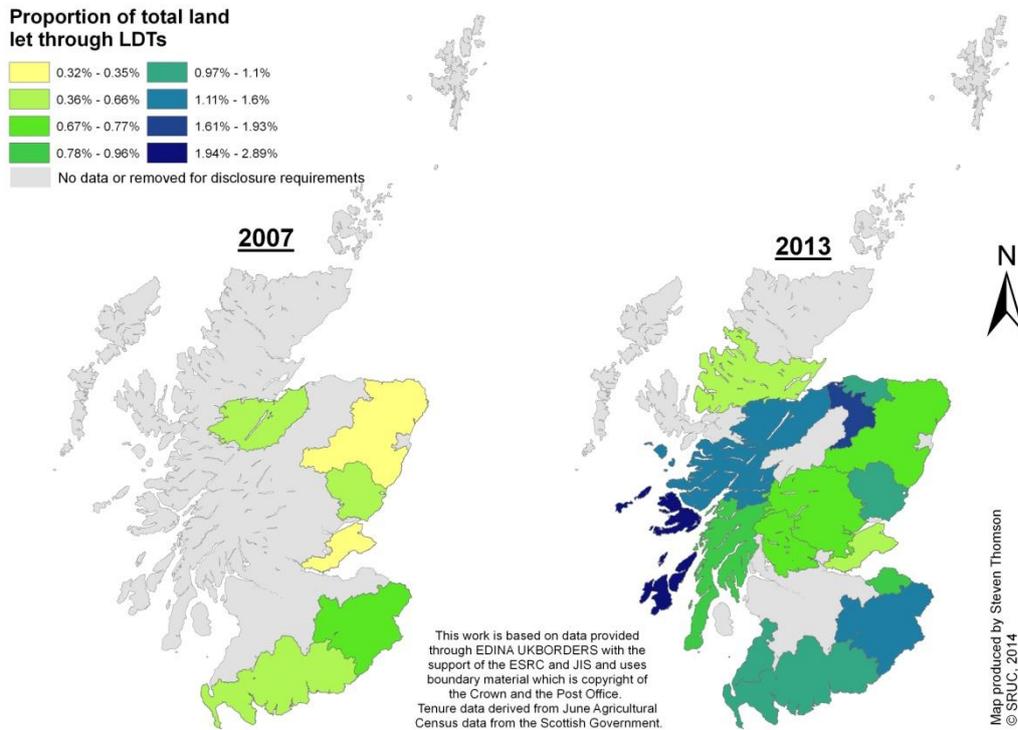
**Table 19 Number of holdings and area under different modes of tenure, 2007-2013**

Tenancy Type		2007	2008	2009	2010	2011	2012	2013
Small Landholders Act	Hectares	1,884	1,906	3,753	3,785	5,343	5,696	5,197
	Holdings	31	61	60	84	98	102	118
LDT	Hectares	27,202	29,951	32,325	44,615	46,100	61,496	76,177
	Holdings	107	134	169	192	228	256	292
SLDT	Hectares	50,956	64,208	72,713	70,796	67,564	70,639	87,210
	Holdings	257	332	367	387	431	447	508
1991 Ltd Partnership	Hectares	213,630	230,292	169,904	159,160	163,582	146,814	134,593
	Holdings	611	635	497	461	431	430	418
Estimated 1991 Act	Hectares	1,150,634	1,091,403	1,077,261	1,029,491	996,412	926,537	886,838
	Holdings	7,129	6,794	6,700	6,327	6,163	5,985	5,793
Reported 1991 Act	Hectares	848,358	872,612	914,723	903,175	887,423	823,717	791,970
	Holdings	3,474	3,734	4,007	4,455	4,680	4,641	4,547

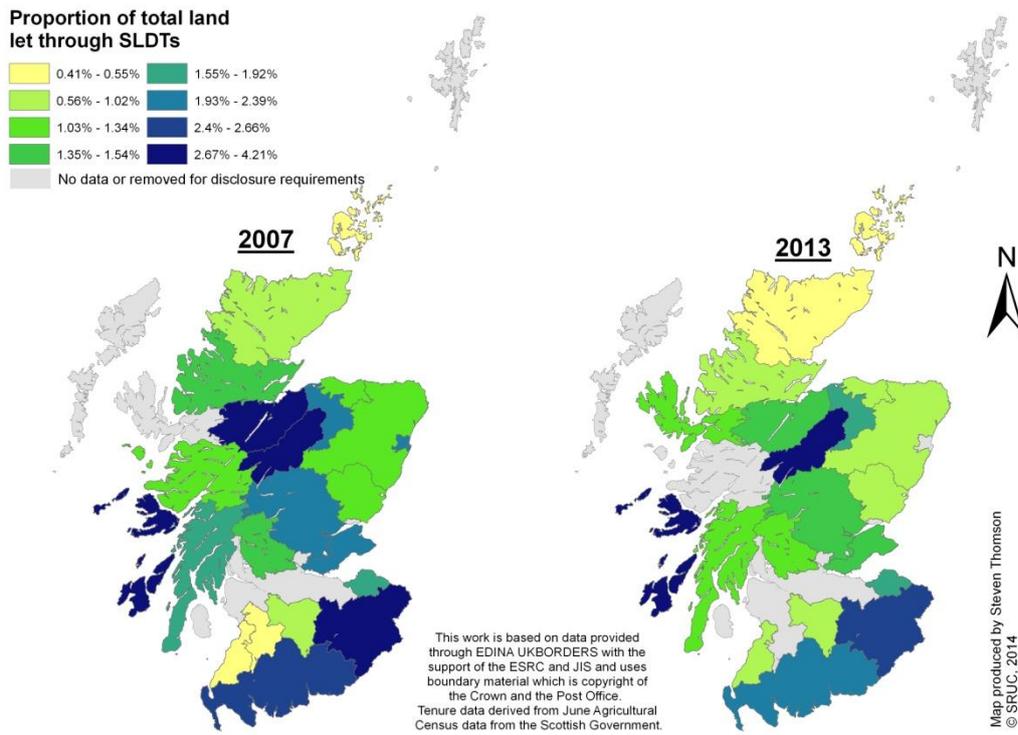
**Figure 34 Area let under SLDTs by NUTS IV region, 2007 and 2013**



**Figure 35 Area let under LDTs by NUTS IV region, 2007 and 2013**



**Figure 36 Area let under Ltd Partnership arrangements, by NUTS IV region: 2006 and 2013**



**Table 20 Regional distribution of seasonally let-out and let-in land 2013 and change from 2000**

Region	Seasonally Letting Out						Seasonally Letting In					
	Holdings Letting Out		Area Let out		Average Area Let out		Holdings Letting-In		Area Let-In		Average Area Let-In	
	2013	2000-13	2013	2000-13	2013	2000-13	2013	2000-13	2013	2000-13	2013	2000-13
Argyll and Bute	245	2%	48,264	151%	197	147%	215	6%	28,907	67%	134	58%
Ayrshire	701	-5%	31,210	4%	45	10%	479	-14%	24,280	29%	51	50%
Clyde Valley	770	1%	25,511	3%	33	2%	455	-19%	22,857	7%	50	32%
Dumfries and Galloway	849	-8%	40,739	5%	48	14%	752	-11%	49,232	33%	65	51%
East Central	319	6%	13,097	6%	41	0%	174	-4%	8,807	3%	51	8%
Eileanan an Iar	79	10%	13,115	549%	166	491%	11	-62%	1,013	559%	92	1637%
Fife	291	-24%	8,601	-15%	30	12%	185	-16%	10,440	3%	56	23%
Highland	786	6%	242,859	191%	309	176%	393	-12%	70,422	41%	179	60%
Lothian	310	-21%	8,416	2%	27	29%	173	-21%	11,634	50%	67	91%
NE Scotland	1,873	-19%	70,685	17%	38	44%	1,146	-14%	99,972	63%	87	89%
Orkney	446	-2%	17,930	100%	40	104%	276	-19%	10,141	32%	37	62%
Scottish Borders	539	-6%	19,644	1%	36	7%	329	-9%	21,465	30%	65	42%
Shetland	58	2%	1,600	130%	28	126%	17	31%	1,078	149%	63	91%
Tayside	1,002	-17%	54,333	16%	54	39%	476	-10%	45,995	15%	97	28%
<b>Scotland</b>	<b>8,268</b>	<b>-10%</b>	<b>596,002</b>	<b>63%</b>	<b>72</b>	<b>81%</b>	<b>5,081</b>	<b>-13%</b>	<b>406,244</b>	<b>37%</b>	<b>80</b>	<b>57%</b>

## **ANNEX B: COUNTRY CASE STUDIES**

- B1. This Annex contains short case studies of agricultural tenure arrangements in ten countries: Belgium, Canada, Denmark, France, Hungary, Ireland, the Netherlands, Norway, Poland and New Zealand.
- B2. Key points from the case studies are incorporated in the main report alongside insights from the more general literature. However, the case studies are presented in full here since they offer slightly more detail that may be of interest.
- B3. The ten countries were suggested by the project's Steering Group as examples of potentially interesting different types of tenure patterns and traditions. For instance, Belgium and France have relatively high shares of rented land, Denmark and Norway (although different in approach) are Scandinavian in outlook, Ireland and the Netherlands have very high land prices, Hungary and Poland have reformed following the demise of communist control, and Canada and New Zealand were dominated by colonial Crown control of land allocations.
- B4. Each case study starts with a description of current agricultural production and land patterns plus agricultural policy. This is followed by a summary of key legislation affecting farm tenure, both past and present. Very brief summaries are then given of how agriculture and land are taxed plus how new entrants to agriculture are supported, before some concluding discussion points are made. A list of the main information sources used is given. Table 21 summarises key points for each country.
- B5. Information was collated from a variety of sources, including published and on-line academic, government and grey literature plus personal communications with government bodies and academic experts. The assistance and guidance provided by individual local civil servants and academics is gratefully acknowledged. In most cases, two or more sources were used to verify particular points or statistics.
- B6. Although care has been taken to portray the situation in each country as accurately as possible, the information presented has inevitably been subject to summary translation and interpretation that may have missed subtle nuances or exceptions. For example, the tenure and tax legislation are often complex, particularly where central and local government both have some influence. Equally, regulatory controls are often reformed repeatedly and administered by different bodies.
- B7. In addition, it should be noted that information on ownership, lessors and the relative abundance of different types of leases is often missing whilst data on rental areas, rents and land values can be incomplete. Moreover, formal evaluations of particular tenure control measures are rarely undertaken.
- B8. As such, each case study should be regarded as indicative of the broad approach to policy and associated tenure patterns rather than a guide to specific details and causality. Nevertheless, they are sufficient to reveal differences across countries and to identify and categorise different policy approaches.

# BELGIUM

## Context

Belgium has a federal structure, with the central, northern and southern regions of Brussels, Flanders and Wallonia each having responsibility for a range of policy areas. These include agriculture and the environment, but taxation plus land tenure and inheritance rules are reserved to the federal government. There are no specific courts connected with agricultural land.

Nationally, agriculture is a very small (<1% of GDP and employment) component of the economy but the utilised agricultural area of around 1.37m ha<sup>24</sup> covers about 45% of the country. Although the number of farms is decreasing (at 3-4% per year) as the average size increases (currently 30 ha), there remain around 48k holdings – of which about 2/3 are in Flanders and 1/3 in Wallonia. In the more densely populated Flanders, production methods are relatively intensive (e.g. horticulture, pigs and poultry) but more extensive systems (i.e. cattle grazing and arable) dominate the less densely populated Wallonia. Brussels is almost exclusively urban.

Over half of all farms have livestock, with 14% being categorised as dairy and 18% as beef farms, but 14% are classed as arable. Farm size varies considerably, with 11% smaller than 2ha but 19% bigger than 50ha. Farms in the 20-100ha category account for 2/3 of the total area. Approximately 92% of farms are sole-proprietorships, with partnerships accounting for most if not all of the remaining 8%; 6% of farmers are under the age of 35, 53% over 55 years. Family labour accounts for 79% of the workforce. Farm incomes vary significantly across farm types and sizes (and over time) but average net farm income in 2009 was around €41k (£34k) or €26k (£21k) per farm work unit.<sup>25</sup>

Over 2/3 of farmland is rented, a proportion that has been relatively stable for at least 150 years. Sales of farmland are very limited, tending to occur only if a farmer exits the industry with no successors and chooses not to rent land out. Most land is rented-out by farmers, indeed some farms both rent-in and rent-out as a mechanism for overcoming land fragmentation arising from adherence to the Napoleonic inheritance code (i.e. equal division between heirs). Land prices are generally increasing, and are currently around €8k/ha (£6.5k) in Wallonia and €15k/ha (£12k) in Flanders, whilst agricultural rents are constrained by legislation and rise more slowly, currently averaging around €150/ha (£120). Local factors can drive some prices extremely high as, for example, neighbouring farmers seize a rare opportunity to expand and/or non-farming interests (especially in Flanders) seek land for other uses.

## Agricultural Policy

The CAP dictates agricultural policy in Belgium, but the two farming regions have used available flexibilities. Both adopted the historic model for decoupling and remain reticent about a switch to flat-rates. Initially, activation of entitlements was easier for tenants than land owners, but the rules were aligned in 2008. Depending

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<sup>24</sup> This rose in the 1990s with the introduction of some area payments and regulatory requirements for sufficient land for manure disposal, but has declined slightly since then.

<sup>25</sup> By comparison, the UK average was around €43k (£35k) per farm, €33k (£27k) per FWU. See [http://ec.europa.eu/agriculture/rca/database/report\\_en.cfm?dwh=SGM](http://ec.europa.eu/agriculture/rca/database/report_en.cfm?dwh=SGM)

on the precise model followed, switching to flat-rate payments is anticipated to cause some redistribution between regions and farm types, and from older to younger farmers. In recognition of the fragility of beef production, and mindful of policy choices in neighbouring France and the Netherlands, both regions retained a coupled suckler cow premium, and Flanders also retained the slaughter premium.

### **Tenure control measures**

Statutory protection for tenants was first introduced in 1929 (The Tenancy Act), with successive strengthening in 1951, 1969, 1988, 1999 and 2003. Seasonal (less than a year) lets are not covered by the legislation, but all other farm leases are, provided that proof of payment of some form of rent (cash or other) can be provided. Legally, most such leases are for nine or 18 years, with (repeated) automatic renewal for a further nine years the norm – unless the landlord is (e.g.) looking to farm the land himself or to develop it, in which case up to three years notice and/or compensation payments to the tenant may be required. Long leases and automatic renewal confer security of tenure, reinforced by landlords only rarely seeking to avoid renewal (as evidenced by the stable share of rented land). As a variant on this, the duration of a lease can be set as the expected career length of the tenant, defined as the difference between their age and the retirement age of 65 – with a minimum duration of 27 years. Shorter (non-seasonal) leases are interpreted as having a 9-year duration. Tenants have a pre-emptive right-to-buy if the landlord sells (except if to a family member or business partner) and tenants and their spouses have the right to pass tenancies (or sub-let) to their children without requiring the landlord's approval, although the landlord does have to be informed of the transfer.

Maximum rental values are calculated with reference to a nominal historical rental value, multiplied by a local rent coefficient. The latter are set every three years by a commission for each Provence comprising members of the regional governments plus representatives of agricultural organisations, taking account of changes in agricultural profitability across the country. The nominal rental value (based on factors such as soil quality and agricultural profitability) was estimated through a cadastral survey (i.e. a mapped land registry) last conducted in 1975 and is not index-linked; on average it is approximately €50/ha (£40) whilst rent coefficients tend to be between two and three. Consequently, rental values are typically around €120-€150/ha (£100-£120). To reflect the greater security offered by longer leases, rent coefficients are inflated by 36% for 18-year leases or 50% for a lease of 27 years or longer. Unregulated seasonal rents are higher, and there is anecdotal evidence that some tenants pay additional undeclared rent to access preferred land. Data on the relative abundance of different lease types are not available.

In addition, tenants enjoy freedom to farm – including erecting buildings and other structures (but not planting trees, or conducting non-agricultural activities) – without necessarily requiring the landlord's consent. Moreover, tenants are entitled to compensation for any improvements they leave (although landlords may also be compensated for damage to the land, which is also grounds for early termination of a lease). Non-agricultural uses of land are not covered meaning that, for example, leasing land for use by horses is not constrained with respect to rent or other terms and conditions.

As with other countries operating under the Napoleonic code, legislative attempts to address farm fragmentation by facilitating land consolidation have been made in Belgium, and have been since 1949 with current rules dating mainly from 1970. Perhaps 20% of agricultural land has been consolidated, either through reallocation of parcels of land and/or through improved infrastructure connectivity. Such consolidation can be initiated by Ministers or by a group of at least 20 local stakeholders. In each case, the process is overseen by a commission of local representatives (supported by regional government officials) with attention paid to business disruption (e.g. changes in landlords' tenants and vice versa) and financial compensation. To aid the process, the regional government can take temporary ownership of land through a State pre-emptive right to buy.

## **Taxation**

Income from farming is taxed relatively lightly with tax for owner-occupiers or tenants with leases of at least nine years being based on the cadastral survey value rather than the actual income generated; only income from seasonal lets is taxed at actual value. Income from renting-out is also taxed at the cadastral survey value (less 10% for expenses) rather than the actual rent for nine-year leases, but income from longer leases is exempt (as an incentive to offer career leases). Tax rates range from 25% to 45%.

An annual property tax ("advance levy") is levied on land, but is paid by the owner rather than the tenant unless the lease is for 50+ years. The tax comprises a base levy for the regional government plus add-ons for the local province and/or community. In aggregate, these separate components may amount to a significant percentage tax rate (e.g. >40%). However, the tax is, again, levied on a notional rental income rather than what is actually achieved from the land, with the income value used being an index-linked figure based on the 1975 estimate cadastral survey value (on average, approximately €50/ha in 1975, €73/ha as indexed now). As such, the effective tax rate is somewhat lower. Moreover, it is low relative to current land values – although it remains high relative to rental values (given the controls on these, as described above).

Although the precise tax rate varies slightly with sale value and region, buying land can incur a tax charge of 15% to 20%, comprising registration, notary fees and other administrative costs. This probably inhibits sales and/or encourages tax avoidance, as well as further reinforcing preferences for renting (including possibly within families). Inheritance tax is levied on farmland, but at a lower rate if from older to younger generations rather than within-generation and with possible exemptions if already involved in the business.

## **New Entrants**

Security of tenure across generations means that inheritance of a tenancy is the normal route into farming, with buying out of the previous generation and/or competing heirs (to avoid fragmentation) assisted by soft government loans as well as tax breaks. The same soft loans (under Pillar II) are available to non-family entrants, but thin markets in tenancies and land are likely to constrain such opportunities. Anecdotally, the advent of the SFP has led some retiring farmers to retain land and rent-it out on seasonal lets or use contractors to meet cross-compliance requirements rather than sell or offer longer leases – further limiting land availability.

## Discussion

Belgian tenancy law has long offered protection to tenants, in particular through security of tenure and rent controls. Consequently, rented land dominates. Structural change is happening, but has been slowed by the transaction costs of land sales and the inheritability of tenancies constraining the availability of land both for new entrants and existing farmers wishing to expand.

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# CANADA

## Context

Canada is a large federal state comprising ten Provinces and three Territories. Under the Constitution Act, most land and agrarian law are determined at the Provincial level with municipal and local government also playing a key role in planning issues. Although Federal taxation exists, regional taxation accounts for a higher share of total tax revenues. Quebec follows the European model of a civil code whereas the rest of Canada essentially follows English common law. Different Provinces have different administrative arrangements for handling farm tenure matters – some have specific tribunals/courts, others do not.

Most land in Canada is Crown land, held by Provincial (48%) or Federal government (41%), with the latter dominating the northern territories but being restricted to (e.g.) National Parks in the Provinces. Only 11% of land is held privately (much of it farmed). This distribution reflects a colonial legacy of settlement by the British and French during the 17<sup>th</sup> and 18<sup>th</sup> centuries, although prior claims of the indigenous population were recognised and remain protected.

At the aggregate level, agriculture accounts for 1.7% of GDP and 1.8% of employment. However, this varies significantly with farming being almost non-existent in the Northern Territories but more important in (e.g.) Ontario and Saskatchewan. The nature of farming also varies substantially, with dairying being common in the east and grain production dominating the mid-west prairie lands. The utilised agricultural area of approximately 65m ha accounts for 7.2% of the total land area.

Reflecting an historical preference for small family-operated farms rather than larger estates, approximately 60% of farmland is owner-occupied - although this has been declining slowly from a peak of 70% in mid-1970s. Leased Crown land accounts for around 13%, but has also been declining slowly whilst private rentals have risen from 18% to 24% over the last decade. Around 3% of land is under cropshare arrangements. Average farm land prices have nearly trebled over the past 20 years to Can\$1500/acre (£2k/ha), but vary from Can\$523/acre (£700/ha) in Saskatchewan to Can\$5000/acre (£7k/ha) in Ontario. Rental values are similarly variable (£20 - £130/ha, more for horticulture), with leases varying from short-term lets to 10 years or longer.

Approximately 55% of the agricultural area is devoted to arable cropping and 58% of farms are classified as cropping. Livestock farms account for 42%, of which beef producers represent 18% - down from around 27% in the wake of BSE. The number of farms has declined from a peak in the 1940s to around 206k currently. Average farm size has increased over this period and is currently 312ha overall, but this varies regionally from 61ha in Newfoundland and Labrador to 667ha in Saskatchewan. Although around 55% of farms are sole-proprietorships, this proportion has been declining steadily from over 80% in the 1980s in favour of incorporated businesses (currently 20%), of which almost 90% are family (rather than corporate) farms. Partnerships and other business forms account for around 25%, but are also declining slowly in favour of incorporation as farm size and turnover increase. Family labour accounts for around 50% of the workforce in terms

of employees; 48% of holders are older than 55, 8% younger than 35. Around 46% of farmers report some level of off-farm employment.

The ratio of farm expenses:receipts varies regionally and across farm types, with larger dairy and grain producers being most profitable.

## **Agricultural Policy**

As a significant exporter of agricultural commodities, Canada is an active member of Cairns Group<sup>26</sup> promoting further liberalisation of farm trade. Overall farm support has declined significantly since the 1980s, with grain and beef production now largely market-oriented. Nevertheless, Federal and Provincial support is offered to farmers, primarily in the form of measures to even-out fluctuations in farm income levels. For example, through incentives for farm savings and assistance with disaster recovery. In addition, dairy, eggs and poultry are subject to production quotas and price support measures. The policy framework for 2014 onwards (Growing Forward 2) stresses the need for innovation, risk management and competitiveness.

## **Tenure control measures**

Although private leasing is increasing slightly, the historical pattern of land settlement with owner-occupation being the dominant form of farm tenure meant that private leasing arrangements for farmland have only ever been subject to generic contract law. Each Province has a Tenant and Landlord Act specifying obligations of each party to a lease and sanctions to be applied if these are not met, together with arbitration processes. Although some Provinces have had rent controls for residential properties, this did not extend to farmland and no specific requirements have been imposed on rights to renewal, succession or pre-emption.

By contrast, arrangements for the leasing of Crown farmland are regulated more tightly. For example, applications to lease land typically have to be made via formal public tenders and accompanied by business plans detailing how land will be used. Bids are assessed on a range of criteria, which may include the area of land already controlled, distance to such existing land and an applicant's age, qualifications and experience. Leases vary regionally from 10 years to 33 years, with an option to renew for the same period. Rents may be tied to a percentage of the estimated land value (e.g. Saskatchewan) or linked to the estimated profitability of enterprises (e.g. New Brunswick) but may also increase over time to allow for early years development.

In some Provinces, Crown tenants are actively encouraged to buy farmland through discounted (by up to 10%) sale prices and phased payment arrangements. In addition, financing is facilitated through specialist lending through Crown corporations such as Farm Credit Canada or Financière Agricole du Québec that exist solely to provide finance to the farm sector (broadly defined). Some Provinces (e.g. Saskatchewan) have also intervened in land markets directly by buying land (using State pre-emption rights) for reallocation to new entrants or farms needing to expand.

Many Provinces have also intervened actively to slow the loss of agricultural land to non-farm uses and to constrain ownership. Development of farmland is generally

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<sup>26</sup> See [http://cairnsgroup.org/Pages/wto\\_negotiations.aspx](http://cairnsgroup.org/Pages/wto_negotiations.aspx)

regulated through planning controls, although some (e.g. Ontario) rely on general planning guidance whilst most have more active Ministerial oversight. Expansion of farms and the concentration of land holdings in some Provinces have been subject to scrutiny and control by local Land Boards in the past, but such restrictions have now largely been relaxed for Canadian owners.

However, controls on foreign ownership (including leasing) remain in place for many Provinces, notably Alberta, Manitoba, Prince Edward Island and Saskatchewan. These are motivated by concerns over the effect of capital inflows on land prices, the availability of land for local and/or new farmers, and negative impacts on rural communities. By contrast, Newfoundland and British Columbia have no restrictions and wish to attract inward investment. In some cases (e.g. Saskatchewan) controls previously extended to out-of-province Canadians in an attempt to further restrict ownership to local farmers; such controls have since been abolished. Ownership bids for more than (e.g.) 8 ha are subject to scrutiny by Land Boards which can choose to permit them or not.

### **Taxation**

Taxation is determined partly at Federal level, partly at Provincial level and partly at municipal or local level. Consequently, tax liabilities can vary greatly. However, in general, Canadian farmers benefit from a range of tax advantages not available to other citizens and businesses, although the extent of the advantages varies with business status: hobby farmers receive none, part-time farmers a proportionate share, and full-time farmers all of them. In particular, farms are either exempt from or face lower rates of property taxation and farm assets can be passed between generations without being subject to capital gains tax. Incorporated farms face much lower rates of taxation on income than sole-proprietors, but incur capital gains tax unless the company is structured carefully. In addition, Federal encouragement for business investment in the eastern Provinces offers additional tax incentives, as do national programs aimed at improving risk management and innovation.

### **New Entrants**

The Canadian Agricultural Loans Act 2009 capped interest rates chargeable on farm loans, easing access to finance for all farmers. However, it also specified that young farmers (with less than six years experience) could receive loans of up to 90% of the purchase price rather than the 80% limit for older farmers. Some lenders, such as Financière agricole du Québec, explicitly offer further subsidised and fixed rates to young farmers. In addition, several Provinces offer one-off grants or interest rate rebates to new entrants – with eligibility conditional on age, qualifications and minimum share of a farm business.

Separately, tax exemptions on inter-generational transfers of farm assets ease succession for family farmers and succession planning is actively promoted by government at all levels and by financial bodies. Inheritance is the dominant route into farming, but some funding initiatives explicitly target entrants from non-farming backgrounds whilst some Provinces (e.g. Saskatchewan) give greater weight to younger applicants wishing to lease or purchase Crown land.

## Discussion

Canadian Provinces differ in both their legislative controls and administrative structures relating to agricultural tenure (as well as farm types and size). However, in general, efforts have been made to promote family-farms and to constrain both farm size and ownership. In particular, constraints on foreign ownership remain in place for the majority of Provinces. Private leasing is subject to light regulation, but is increasing in popularity as some farms seek to expand. Crown leasing is more tightly regulated, but tenants are encouraged to buy, aided by various preferential funding options.

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# DENMARK

## Context

Denmark is the southernmost Nordic country and comprises the Jutland peninsula plus an archipelago of several hundred islands situated in the Baltic Sea.<sup>27</sup> Although a member of the EU since 1973, Denmark has not adopted the Euro. It has three tiers of administration: central government, five regions and 98 municipalities. Although central government retains control of most policies, municipalities have tax-raising powers and have significant spatial planning responsibilities. There is a separate Land Registration Court.

Agriculture accounts for less than 2% of GDP and of employment, but is highly export-oriented. The utilised agricultural area of around 2.6m ha covers approximately 3/5 of the country, and has been protected from development within the planning system. Land prices are high, peaking at around €35k/ha (£29k) in 2007 but have fallen since the financial crisis to perhaps €20k/ha (£16k) currently. Approximately 34% of farmland is rented, an increase of five percentage points on the position a decade ago and almost double the rate in the 1980s. Average rents are around €500/ha (£400).

Approximately 55% of the agricultural area is devoted to grain production and less than 10% to permanent grass. Nevertheless, animal numbers are high at over 4.5m livestock units – reflecting very intensive production systems. There are significant water pollution pressures, and manure disposal is a challenge. Approximately 38% of all farms are specialist cereal producers and 10% specialist dairy.

Farm size varies considerably, with 44% being smaller than 20ha and 18% bigger than 100ha, but the latter account for over 60% of land and livestock. Farm size is increasing over time (currently 60ha) as the number of farm holdings reduces (around 44k in 2007, down from 51k in 2005, 102k in 1982), but the number of very small holdings has actually increased as they transfer land (but not houses) to farms that are expanding. Around 98% of farms are sole-proprietorships. Family labour accounts for around 61% of the workforce in terms FTEs; 44% of holders are older than 55, 6% younger than 35.

Farm incomes vary significantly across farm types and sizes (and over time) but average net value added (including Pillar I direct Payments) in 2008 was around €80k (£66k) or €50k (£41k) per Agricultural Work Unit. Part-time farming is common, with 48% of farmers having some other gainful activity.

## Agricultural Policy

The CAP dictates agricultural policy in Denmark, although Danish governments are typically in favour of reduced Pillar I expenditure and further liberalisation. Decoupling was implemented with no regionalisation through the dynamic hybrid model, combining elements of historic entitlements with flat-rate payments - but with clear expectations that it would eventually move to a fully flat-rate-system (as now obligated for the 2014-20 period). Coupled payments were retained within the beef sector (75% beef special premium) and the sheep sector (50% sheep premium).

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<sup>27</sup> Greenland and the Faroe Islands are self-governing overseas territories of Denmark.

## **Tenure control measures**

Dating from the late 18<sup>th</sup> Century when around 2/3 of tenants gained ownership of their farms through the demise of feudal arrangements (notably adscription – the tying of people to the estate of their birth), Denmark has a long-tradition of small, owner-occupied farms. Further sub-division of large holdings was encouraged through a State Land Law Committee during much of the 20<sup>th</sup> century, leading to the number of individual farms peaking at 204k in the 1950s.

This focus on owner-occupation meant that lease arrangements have been less important, with tenanted farms being almost non-existent and rental activity relatively low (although rising recently). Rents are set by the market, and leases are for a maximum of 30 years with no rights of renewal or pre-emption to buy. In addition, there are limits on the number of individual let-in leases that one farmer may hold (currently five) and on the distance that rented land may be from other parts of the farm (currently 10km). These constraints echo more general controls on the ownership of farmland that were in place until recently under the Agricultural Act (previously Agricultural Holdings Act).

For example, although progressively relaxed since the 1990s, relatively strict controls were in place regarding both the maximum area that a farming family could usually own (recently 150ha, previously 125ha and 70ha prior to that) and the number of individual holdings (currently three, previously two and prior to that one). More land could be acquired, but only if neighbouring (within 2km) farms did not wish to buy the land (NB. pre-emptive rights were but are no longer accompanied by price controls, so despite having first refusal locals can be outbid). The 150ha ownership limit was removed in 2010, but neighbours' pre-emptive right remain. Ownership of land in excess of 30ha did require either prior farming experience or formal agricultural qualifications, but this constraint has also been waived recently. Conversion of farm holdings to other uses remains difficult, but an obligation to farm actively has (subject to CAP-requirements) been abolished.

Ownership of farmland is restricted to EU nationals (previously only Danish nationals) and owners are obliged to reside on the holding (or to have a representative in residence) within a few years of acquiring it and to do so for several years after that. Companies cannot own land, unless the majority share holder can satisfy the residency requirements. In the case of multiple holdings, residence only applies to one holding (which has released some former farmhouses) and co-owners or family members have more flexibility over time limits and residency requirements than others.

Separately, consolidation of fragmented holdings has long been encouraged under the Land Distribution Act (and its predecessors). Specifically, two regional Commissions (now subsumed back into government) and local land acquisition boards have powers to reallocate land between farms and land uses (e.g. infrastructure, conservation) through facilitating voluntary exchanges between landowners and/or through compulsory purchase.

## **Taxation**

Denmark has relatively high tax rates and farmers and farm businesses are subject to the same taxes as other Danish citizens and businesses. That is, there are no concessional rates or exemptions specifically for farm income or for property (wealth)

or sales taxes on agricultural land. Similarly, all businesses – whether agricultural or not – are subject to the same rules on inheritance and succession. This reflects Danish government preferences for all sectors and citizens to be treated equally in terms of taxation and social security arrangements. Tax rates are generally progressive, including for property – so larger farms will face higher marginal rates.

### **New Entrants**

There are approximately 700 new entrants to Danish agriculture each year, with inheritance the usual entry route. Beyond providing specific work-experience, vocational and university education for aspiring farmers, specific policy measures have not generally been adopted to aid these farmers (although aspects of previous tenure controls may have helped to dampen demand and thus prices). However, formal contractual (partnership or joint venture) succession between generations on a farm is recognised under Danish law and is supported by private credit associations (which are not restricted to agriculture and do receive government funding) which can fund leases or purchases (typically the latter).

Essentially these contractual arrangements provide a phased transition, over ten or more years, for a young farmer to gradually take over from a parent or other older farmer. This provides an opportunity for joint working but also staggered purchasing of land and assets – with the older farmer using the proceeds to fund their retirement (retirement homes on farms are treated favourably within the planning system).

Backed by a State Guarantee, the credit agencies offer soft loans at 2% below market interest rates for up to 70% of the purchase price. In addition, they run tax-efficient savings accounts that aspiring farmers can pay into to build up capital (for the balance) in the years prior to buying into a farm. Nonetheless, high land prices mean that new entrants accumulate significant debts under this process – indeed Danish new farmers suffer the highest debt repayments within the EU. Moreover, a farm has to be able to generate sufficient income or (more typically) permit off-farm working to support two partners for the duration of the transition.

To be eligible, a new entrant must be younger than 40 and have minimum agricultural qualifications and experience plus they must have sufficient capital to buy at least 20% of a farm on which they will work for at least 833 hours a year. The price paid for the farm can be around +/-15% of the agreed market value, with different tax benefits (e.g. capital gains vs. depreciation allowances) flowing to the buyer or seller depending on the over or under-valuation.

### **Discussion**

Until the late 20<sup>th</sup> Century, stated policy preferences for small, owner-occupied farms were enacted through strict controls on land ownership. Compliance with EU requirements (e.g. foreign ownership) and acceptance of the need for farm expansion to maintain farm incomes led to gradual relaxation of these controls. In particular, allowing individual control of greater areas and of multiple holdings combined with less stringent residency and activity obligations has facilitated the transfer and/or amalgamation of land from owners seeking to exit farming to those seeking to expand within it. Some of this has been achieved through land sales, but (notwithstanding no significant changes to the regulation of leases) some has been achieved through an increase in the amount of land leased. The resulting reduction in the number of holdings and increase in average farm size may have structural

benefits, but land prices remain high and new entrants from outwith farming families are still likely to be disadvantaged.

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# FRANCE

## Context

In France, agriculture accounts for around 2% of GDP and 3% of employment but the utilised agricultural area of around 27 million hectares covers approximately 51% of the continental country. The average farm size is currently around 55 ha; an increase from 42 ha in 2000. There were 490k holdings recorded in the 2010 agricultural census. Only 23% of the utilised agricultural area is owned. There is however, a regional contrast with farms tending to be small and farmed by the owner in the South while in the North tenant farming is much more common.

Over half of all farms have livestock, with 11% being categorised as dairy farms and 13% as beef farms; 23% are classed as arable. Farm size varies considerably: 18% are smaller than 20ha, 31% are between 50 and 100ha category, while only 6% of farms are 200ha or more; 27% of farms were at least 100ha and were responsible for around 58% of the total area farmed. Approximately 59% of farms are sole-proprietorships, with farming companies accounting for the remaining 41%. Of these, 13% were agricultural joint operating groups, and 21% were limited companies. Family labour accounts for 70% of the workforce. Farm incomes vary significantly across farm types and sizes (and over time) but average net farm income in 2009 was around €15k (£12k) or €11k (£9k) per farm work unit. Finally, 38% of farmers were aged 55 years or over, 8% 35 years or younger.

Sales of farmland are limited. In 2012, 326k of agricultural land was sold, compared to 428k in 1999. Since 1997, the average price per hectare of 'free land' in France increased, on average by 4%. Currently, the price of agricultural land is around €5k/ha (£4k), although this does vary considerably across regions – €12k/ha (£9.8k) in Nord-Pas-de-Calais and €2.6k/ha (£2.1k) in Franche-Comté. The sale price of leased land has also increased since 1997 at an average 3% per year. It currently commands a price of around €4k/hectare (£3.3k) and displays much less variability between French regions (€2.4k/ha to €6.5/ha; £2k to £5.3k). Approximately 2/3 of plots sold are bought by farmers.

## Agricultural Policy

The CAP dictates agricultural policy in France with successive reforms influencing the French rural sector. France adopted the historic model for decoupling, although they also retained the maximum permitted coupled support – most notably in the beef, sheep and goat sectors, but also in the arable sector. France has received the most absolute and relative money from CAP, because of its large agricultural sector, and under the latest reforms, it is likely that the share of first pillar envelopes will be over 18%, although per hectare payments will be only marginally above the EU-15 average.

## Tenure control measures

The 1960 Agricultural Act created the Safers (Sociétés d'Aménagement Foncier et d'Etablissement Rural; Land Development and Rural Settlement Companies) system to regulate the land market. The main aim of the 23 Safers operating across continental France is to regulate the transfer of agricultural land with the specific objectives of settling farmers, especially young farmers; to support land and farm consolidation; and to support rural development and environmental protection. The

Safer is entitled to purchase (under pre-emptive rights), transfer and exchange land, farms (land and/or buildings, equipment, livestock) or cultivated woodland. A land owner who intends to sell land should notify the local Safer that then has two months to either accept or reject a presale market purchase.<sup>28</sup> The law determines the preconditions to which a presale can be undertaken (e.g. settling, resettling or helping farmers; enlargement of existing farmers; helping farms survive if some of a farmer's land is expropriated for public works; preventing real estate speculation; and assisting viable farms that are under financial stress because buildings and land are separated). For approval of presale to a Safer, two government Commissariats, one representing the Ministry of Agriculture and other from the Ministry of Finance must explicitly sanction the sale. Furthermore, representing the state, each has a veto on all of the Safers' decisions. The role of the state is to ensure that each presale results in a better arrangement than would have occurred via a free market sale.

Laws concerning the status of tenancy date from the 1940s<sup>29</sup> and are now part of the body of legislation referred to as the 'Code Rural'. The legislative aim was twofold: to limit the power of a landlord on what were then "their" farmers and, correspondingly, to limit the amount of rent that a landowner levied on income from a farm's income. To improve security of tenure, the Code Rural relating to leases entitles a tenant to a legal minimum term of nine years (whether contracts are written or verbal) although longer terms are possible including 18, 25 and career tenancies (whose term is fixed to the retirement age of the tenant). In addition, a tenant is also entitled to renew a tenancy for a further nine years, except in cases of termination for cause or exercise of the right of recovery by the landlord. In the event of a tenant's death, his or her successor (i.e. spouse, descendants and ascendants) are entitled to continue the tenancy providing they were actively involved in the farm's operations for five years before the incumbent's death. Improvements to the rented land (through labour or investment) are also recognised, with compensation payable from the landlord on the expiration of the tenancy.<sup>30</sup> The farmer also has the pre-emptive right to buy if the owner of the land decides to sell the farm.

Rental values in France are also regulated. The 'Prefet'<sup>31</sup> sets a price index. This 'indice des fermage' as it is known, is calculated as a weighted sum of average gross farm income measures: at the *département* level; at the National level, and farm income in specific production categories, all of which are averaged over five years to reduce variability. With weights specific to each *département*, the index is re-evaluated each year. This index is then used to set a minimum and maximum rental values to enable the landlord to agree with the tenant appropriate rental value.<sup>32</sup>

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<sup>28</sup> Budget constraints mean that a Safer may not be able to intervene as much as desired. Moreover, as a Safer takes commission on a sale, there is a potential conflict of interest between seeking to boost budgets and serving individual local farmers' needs. Official recommendations to improve Safers have been made recently.

<sup>29</sup> In particular, amendment of the Civil Code 04/09/43 and 10/17/45 with extension sharecropping in 1946. The status of tenancy was then passed by the House of Representatives but rejected by the Senate, on which many landowners sat. The original law has also been regulated several times (1960-1962, 1975, and 1984).

<sup>30</sup> Initially, the share of investment operations that could be recovered was quite small but the Act covering this was strengthened in 1960 to enable the lessee opportunities for investment and modernization while trying not to damage the financial interests of the owner.

<sup>31</sup> The 'Prefet' is the local government (NUTs 3 level - *département*) representative.

<sup>32</sup> For certain crops (i.e. permanent fruits), the Prefet can issue different minimum and maximum rental values.

National rental values in the final quarter of 2013 ranged from €36/ha (£30) to €154/ha (£125), which represents a 25% increase since 1998.<sup>33</sup>

## Taxation

In France, owners of land are required to pay tax on their property based on its estimated value. The rate at which this tax is charged depends on the characteristics of a property. Tax on undeveloped properties (TFPNB) is payable. Specifically, farm houses are taxed while other agricultural buildings are exempt. While this tax is the responsibility of the owner of the land, a proportion of the tax may be paid by the tenant in agreement between both parties. In the absence of an agreement, the tenant's fraction is set at 20% in the Code Rural. A higher rate can be agreed between the two parties but the landlord is not allowed to charge the tenant the entirety of the property tax.

The TFPNB is calculated by multiplying the taxable amount shown on the tax notice, a rate which is fixed by the local authority. The imposition of the TFPNB base is equal to the cadastral rental value and is reduced by 20%. Furthermore, a farm owner may obtain a tax discount should their crops be damaged as a result of an extraordinary event, livestock losses because of a disease outbreak, or the concerned parcel of land has disappeared. A 50% tax discount is available to young farmers, during their first five years of taking on their farm. In addition, some local authorities grant discounts on the remaining 50% of the TFPNB.

In France, the transfer of land is subject to a 5.09% tax payable by the buyer. This is comprised of a state tax (0.2%), a *département* tax (3.6%, on which an additional State tax of 2.5% is levied), and a municipal tax (1.2%). This tax is levied on both built and non-built land but is reduced to 0.6% at the *département* level and 0.1% at the state level for non-built agricultural land. For young farmers, the tax rate is 0.715% of the land price. Transactions done by or via the Safer are exempt from this tax.

## New Entrants

The Safer system provides a route for new entrants into French agriculture. In 2012, 34% of sale interventions by Safer were made to install new entrants. In total, 1,230 installations were made, with the majority (65%) of these new farmers from outwith farming families. In total, new entrants were responsible for managing nearly 30k hectares. Since 1993, new entrants through the Safer system had increased from 800 to over 1200 per year. Furthermore, in recent years, since 2004, there has been a divergence with increasingly more new entrants being installed from outwith farming families and fewer from within farming.

However, security of tenure across generations means that inheritance of a tenancy is still the normal route into farming provided, as mentioned above, the successor was actively involved in the farm's operations for five years before the tenant's death.

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<sup>33</sup> [http://www.indre.chambagri.fr/fileadmin/cda36/documents/Fermages/Indices\\_fermages1994-2013.pdf](http://www.indre.chambagri.fr/fileadmin/cda36/documents/Fermages/Indices_fermages1994-2013.pdf)

## Discussion

The majority of farmers in France are tenants. French tenancy law has long offered protection to tenants, in particular through security of tenure and rent controls. In particular, the Code Rural stipulates length of tenancies, property taxes and its allocation between the land owner and tenant. Provided particular criteria are met, the Safer system enables a degree of structural change, particularly as one of the remits of the system is to provide a route for new entrants in to farming. Indeed the Safer system and favourable tax rates enable young farmers, particularly those outwith traditional farming families, to establish farm businesses more easily than elsewhere. It also allows consolidation of farms to increase the possibility of financial stability.

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# HUNGARY

## Context

Hungary is a small landlocked country in Central Europe, administered through three tiers: central government, 19 counties and 174 sub-regions. Central government retains responsibility for agricultural, tenure and tax policies, but local government has some discretion over property taxes. As of 2013, an arbitration tribunal for tenure disputes is run by the National Chamber of Agriculture.

Hungary experienced a turbulent 20<sup>th</sup> century, including the demise of the Austro-Hungarian Empire after World War I, Nazi-influenced autocratic government in the period leading up to and during World War II and then subsequent occupation and assimilation by the Soviet Union. Amongst other consequences, these events resulted in over 70% of territory being lost to neighbouring countries and the coercive mass collectivisation of farming. Parliamentary democracy was achieved in 1990 and Hungary joined the EU in 2004 (although remains outside the Eurozone with its own currency, the Forint). Agriculture accounts for approximately 3% of GDP and employment.

During the 1990s, many state-owned assets were distributed through a variety of mechanisms including direct restitution to previous owners, allocation to workers in collectives and privatisation auction sales. In the case of agricultural land, 5.6m ha were transferred to 2.6m private individuals through these processes. As a consequence, land ownership is extremely fragmented with many small plots. However, farming operations are more concentrated with many owners leasing land to other private farms or to large cooperative or corporate farms: over 60% of land is rented.

Agricultural holdings cover around 5.5m ha (60% of the country), with over 1m ha of woodland and a utilised agricultural area of 4m ha dominated by cereals (55%) and other arable crops (30%). Around 55% of farms are classed as specialist arable, but livestock enterprises are widespread and much arable output is used as animal feed. Although rising, land prices are low relative to many other countries, currently around €2k/ha (£1.6k). Rents are also relatively low at less than €100/ha (£80).

Farm size varies considerably, with over ¾ being smaller than 1 economic size unit and over 80% of the remainder being smaller than 20ha and only 5% bigger than 100ha. However, the latter account for over 20% of livestock, 30% of labour and 70% of land. Average farm size is increasing over time (currently 29ha) as the number of farm holdings reduces (around 626k in 2007, down from 711k in 2005), but the size distribution remains dominated by the multitude of very small holdings vs. relatively few very large farms. Around 96% of farms are sole-proprietorships, but this falls to 60% for farms over 100ha. Family labour accounts for around 58% of the workforce in terms FTEs; 48% of holders are older than 55, 7% younger than 35.

Farm incomes vary significantly across farm types and sizes (and over time), not least since part-time farming is reported for over 80% of holdings, and 55% of holdings are farmed primarily for home consumption. Average net value added (including Pillar I direct Payments) in 2008 was around €30k (£25k) or €18k (£15k) per Agricultural Work Unit.

## **Agricultural Policy**

Accession to the EU in 2004 brought Hungarian agriculture within the influence of the CAP. However, as a New Member State there has been a ten-year transition period and the nature of support has been slightly different. In particular, decoupled Pillar I payments are through the simplified, uniform Single Area Payment Scheme (SAPS) rather than the Single Farm Payment (SFP). However, coupled payments were offered through a system of national support and permitted CAP coupled payments CAP will be used from 2014 onwards. Relative to the position before the 1990s reforms, the level of public support for agriculture is much reduced whilst, post-accession, exposure to competition is much greater and recourse to intervention buying has not been uncommon.

### **Tenure control measures**

The redistribution of agricultural land during the 1990s was largely under two “Compensation Acts” passed in 1991 and 1992. These offered partial compensation for the loss of private property during the period 1939 to 1989. This took the form of “compensation notes” (effectively IOUs) which could then be used to bid for land through auctions (of which there were around 30k). The amount of compensation offered was based on land valuations dating from the 19<sup>th</sup> century (in “golden crowns”), but auction land was valued on the same basis. In addition, unless they voted to remain as a collective, employees of State farms were allocated shares in the land farmed. It appears that many recipients of land had no prior experience of farming and many subsequently either sold or (more often) leased land to others. Moreover, relatively few active new landowners have chosen to farm jointly, preferring instead to farm individually. Allegations of corruption in allocation and auction processes emerge periodically. The State still retains some land for reallocation and leasing.

Under the 1994 Land Act (revised with effect from May 2014), leasing of land has been relatively unregulated beyond generic contract law. In particular, rent levels and rent changes are left to the market. Lease duration is flexible, but for no longer than 20 years and there are no specific obligations for lease renewal – although if the land is leased again, the tenant has first right of refusal. Pre-emptive rights to buy are granted, but only for leases of at least three years and then only if other close relatives or business partners of the landowner are not interested. However, a maximum lease area of 300ha was set (2500ha for collective or corporate entities). The same limits applied to owned land, with collective and corporate entities being forbidden to buy farmland. Pre-emptive rights to buy extend to other local farmers.

In addition, the purchase of agricultural land by foreign interests was forbidden. On accession to the EU, a grace period of seven years (subsequently extended to ten) to remove the ban with respect to EU nationals was granted. Notwithstanding intense domestic debate (reflecting, in part, memories of the loss of territory in the 1920s), the ban will be lifted from 2014 for EU nationals. Although un-quantified, it is believed that constraints on foreign ownership have been circumvented in some areas close to borders with neighbouring countries through the use of “pocket contracts” (i.e. kept hidden in a pocket) which give *de facto* ownership to foreign interests whilst maintaining apparent *de jure* Hungarian ownership. Relaxation of constraints on ownership by EU nationals may lead to a rapid conversion of such arrangements into legal ownership.

However, foreign buyers will still have to comply with eligibility criteria which include agricultural qualifications and at least three years working in agriculture in Hungary plus a commitment to farm the land (i.e. not sell or lease it) for five years. Corporate purchases are still forbidden and there will be limits on the area that can be purchased – typically 300ha. Up to 1200ha may be leased, less if some land is already owned. Eligibility (for purchases or leases) will be judged by a committee of local stakeholders. Indeed, the criteria apply to Hungarian as well as foreign buyers – meaning that land markets will remain tightly controlled. Local farmers have pre-emption rights with respect to land offered for sale or lease (provided that no family, close relatives or business partners take precedence).

Recognition of the need for land consolidation to improve productive efficiency, and pilot studies showing consolidation to be hampered by insufficient financial resources and a lack of technical and organizational competency, prompted establishment of a National Land Fund (in 2001) and the Hungarian State Holding Company (in 2007). These have powers to facilitate, via local land committees, consolidation through voluntary exchange but also to use compulsory purchase as a means of configuring land holdings to better suit agricultural, infrastructure or development purposes. However, pending completion of privation programmes, consolidation has not been promoted actively to-date, although this may change with the updating of the Land Act and relaxation of foreign ownership constraints.

### **Taxation**

Hungary has a progressive tax system for both citizens (18 - 36%) and businesses (10 – 19%), but no special provisions are applied to agriculture or rental income from land (unless on a lease of at least five years, in which case rental income is exempt from taxation). That is, farms benefit from the same range of exemptions and allowances available to all businesses and farm income is treated the same as any other income source. Land sales are subject to a transfer tax (2%) as well as a possible capital gains tax (19%) whilst inheritance and gift taxes (5 – 40%) may be applicable depending on the amount involved and the family relationship between parties. Farmland is also subject to local property taxation.

### **New Entrants**

Data on new entrants are not available, but the relatively low price of farmland and abundance of rented land suggest that land availability may not necessarily be an issue. Nevertheless, Hungary has made use of provisions under Pillar II to support new entrants via capital grants and subsidised loans. This is intended to continue for the 2014-20 period, at least partly in response to possible greater bidding power from incumbent farmers and (especially) from foreign investors.

### **Discussion**

The privatisation programme of the early 1990s led to widespread ownership of farmland, but the resulting fragmentation of both farms and farming assets had a negative effect on efficiency. The downward pressure of this on overall output and farm incomes was exacerbated by reductions in agricultural support levels and exposure to competition with other EU countries. However, notwithstanding significant transaction costs of multiple leases, widespread renting facilitates the operation of larger farming units and structural adjustment is occurring as land is amalgamated through sales (although these remain relatively thin). Relaxation of

controls on foreign ownership of land is anticipated to increase capital investment, but land prices and rents are likely to increase.

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## IRELAND

### Context

Ireland gained independence from the UK in 1922, and joined the EU alongside the UK in 1973. Although there are 34 local authorities (currently due for reform) with some planning powers, the Dublin government retains responsibility for agricultural, tenure and taxation matters. There are no specific courts connected with agricultural land, although these did exist in earlier periods.

Prior to the 1980s, agriculture was a significant economic sector but declined in relative terms as other parts of the economy grew. The financial crisis following the banking collapse in 2007/8 reversed this slightly as the economy shrank, with agriculture currently representing around 2.5% of GDP. Although the number of farms is decreasing slowly as the average size increases (currently 33ha), there remain around 140k holdings and the utilised agricultural area of around 4.2m ha covers about 64% of the country.

Approximately 80% of the agricultural area is devoted to grass and a further 11% is rough grazing – with over 90% of all farms having some livestock. Beef and dairy herds dominate, with 6.5m cattle contributing significantly to overall output value (much of exported). Farm size varies considerably, with 39% smaller than 20ha but 4% bigger than 100ha. Farms in the 20-100ha category account for around 70% of the total area. Over 97% of farms are sole-proprietorships, with other forms of ownership being rare, and largely confined to more profitable dairy farms; 55% of holders are older than 55, 5% younger than 35. Family labour accounts for 93% of the workforce. Farm incomes vary significantly across farm types and sizes (and over time) but average net value added (including Pillar I direct Payments) in 2008 was around €25k (£21k) or €20k (£16k) per Agricultural Work Unit. Part-time farming is common, with around 1/3 of holdings requiring less than one annual work unit of labour and 43% with some other gainful activity. Land values are high at around €25k/ha (£21k) on average, although this is more than 50% lower than their peak immediately prior to the financial crisis – indicating the extent to which non-farming interests invested in rural land. Agricultural rents fluctuate, reflecting variation in agricultural profitability over time and regionally.

Official data on lease types and areas of rented land are not available. However, it is estimated that around 11% of land is rented – mostly on unregulated seasonal lets (conacre), often agreed orally. Longer leases are extremely rare<sup>34</sup> and, although in written form, are also unregulated. The dominance of ownership largely reflects an historical legacy from the end of the 19<sup>th</sup> century/early 20<sup>th</sup> century when the UK Treasury offered favourable mortgage terms to tenants wishing to buy their farms and then the Irish Government (post-1922) promoted State purchase of land for division and reallocation via mortgages to tenants (a process that only ended in 1992, when the Land Commission was dissolved). Given that mortgage repayments were significantly lower than most rents, over time, most tenants pursued this option. Ingrained cultural preferences for owner occupation may be being reinforced by the Single Farm Payment encouraging continued occupation rather than leasing-out.

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<sup>34</sup> Although, anecdotally, this may be changing as farmers seek guaranteed access to land for spreading manure in order to comply with NVZ requirements.

## **Agricultural Policy**

The CAP dictates agricultural policy in Ireland. The historic model was adopted on a national basis with no regionalisation or intention to move towards a flat-rate system, although the latter will now have to be adopted during the 2014-20 period. No coupled payments were retained, despite pressure from some stakeholders for partial coupling of beef payments. However, a suckler cow payment was subsequently introduced.

### **Tenure control measures**

Historically, a succession of Land Acts from 1881 to 2005 sanctioned significant state intervention in land markets. Notably, this included establishment of the Irish Land Commission and the provision of soft loans to tenants. The Commission was dissolved in 1992 and provisions under the 1965 Land Act for controls on leases were repealed in 2005. Under the controls, no land could be let, sublet or subdivided without formal approval (which typically had attached conditions) – a response to problems of land fragmentation arising from the splitting of land under inheritance rules.

By contrast, agricultural leases are now subject to market forces as a private matter between the lessor and lessee. Regulation is essentially limited to conveyancing law and the normal dispute resolution procedures, including the courts, although there are some generic landlord-tenant regulations.

### **Taxation**

Although farm income was exempt from income tax until 1974, it is now taxed as any other business income. For the minority of incorporated farms, this equates to 12.5% Corporation Tax but for the majority of sole-traders it is 20% to 40%. In addition to general allowances, there are some specific reliefs available for agriculture. For example, capital gain allowances for increased livestock valuations – 100% for young farmers, 50% for partnerships, 25% otherwise.

Income from land rented-out is taxed as any other income, but has a separate code (Case V) since it cannot be offset against capital expenditure. In an attempt to encourage longer leases, tax exemptions increase with length of lease. For example, the first €12,000 (£10k) of annual leasing income is exempt where the lease is for a term of at least five years, €15,000 (£12k) where the lease is for a term of at least seven years and €20,000 (£16k) where the lease is for a term of at least ten years. Leases between immediate relatives do not qualify and the lessor must be aged 40 years or over.

There is no additional tax levied on land ownership in Ireland, but land transfers are subject to Capital Gains Tax (CGT), Stamp Duty and inheritance tax. However various reliefs are available on these taxes, with some enhancements for transfers to young farmers.

For example, “retirement relief” is available on CGT for farmers aged 55 or over if they have owned and farmed land for at least ten years and transfer ownership to somebody else to farm. Full relief is available to farmers aged 55-65 for transfers to children, up to a limit of €3m (£2.5m, it was previously uncapped). If land is subsequently sold within six years, claw-back charges apply. Relief for transfers not to children is capped at €750k (£600k) for farmers aged 55-65, but €500k (£400k) for

those aged over 65. Although referred to as retirement relief, a farmer may continue to farm other land – allowing for a gradual withdrawal from farming.

In addition, within-family transfers of farmland have long been subject to lower stamp duty charges than residential property. Currently, consanguinity relief reduces stamp duty to 1%. In addition, young farmers are exempt from stamp duty, provided that they satisfy educational and age criteria.

Finally, agricultural Relief has been available for gift and inheritance tax since the introduction of a Capital Acquisitions Tax in 1976. The relief reduces the market value of agricultural property by 90% with this lower 'agricultural value' used for tax purposes. In general, the relief applies provided the beneficiary qualifies as a 'farmer' - an individual for whom at least 80% of their assets (after taking a gift or inheritance) consist of agricultural property on the valuation date of the gift or the inheritance. An equivalent relief is available to other (non-farm) businesses on succession.

### **New Entrants**

Data on the number of new entrants to agriculture are not available. Nevertheless, given the high price of farmland and the lack of long-term leases, it is generally accepted that the number of new entrants is likely to be low – as reflected in the age profile of farmers. Inheritance is the main route for new entrants and various measures have been tried to encourage earlier inter-generational transfers. However, previous instances of early retirement schemes and installation grants proved ineffective and were withdrawn. Current support measures focus on tax breaks (described above, but not yet evaluated – partly due to some being relatively new), but active consideration is being given to targeted installation aid under the next Rural Development Plan.

In particular, collaborative farming approaches (i.e. multiple generations working the same farm) are being encouraged as a means of facilitating phased inter-generational transfers. This includes promotion of (e.g.) partnerships and co-operative business structures, but also the provision of information about (e.g.) tax reliefs, eligibility for the SFP and pension planning.

### **Discussion**

An historical legacy has resulted in Irish farmland being predominately owner-occupied. Government intervention throughout the 20<sup>th</sup> century favoured owner-occupation, and leases were tightly controlled. More recently, leases have been deregulated but seasonal lets remain the dominant form of leasing. Rapid growth in the Irish economy contributed to increasing farmland prices as non-farm investors purchased rural land. Although prices have fallen, land remains expensive and inheritance is the usual route of entry for new farmers. Structural change is happening, but slowly with the availability of land being constrained both for new entrants and existing farmers wishing to expand. Following the failure of previous early retirement schemes and capital grants for new entrants, various tax breaks are currently used to encourage earlier inter-generational transfers – although awareness of tax breaks appears patchy and leasing is viewed with suspicion by many farmers. More innovative, collaborative approaches are being considered.

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# NETHERLANDS

## Context

The Netherlands is a small but densely populated country with three levels of government: central, twelve provinces and around 400 municipalities. Central government retains responsibility for agricultural, tenure and taxation matters, but provinces and municipalities lead on local land use planning- which includes agriculture and nature conservation. Special courts exist for resolving tenancy disputes.

Dutch agriculture is highly productive, underpinning significant agri-food exports and accounting directly for around 2.8% of GDP and 2% of employment. The utilised agricultural area of around 1.9m ha covers about 60% of the country, although this is declining slowly over time through conversion to nature conservation, water management and (especially) urban development. Indeed urbanisation pressure largely accounts for land prices in many regions being extremely high at around €40k/ha (£33k) currently. However, prices can be volatile and fell by 17% between 2001 and 2005 having doubled in the previous ten years. Moreover, there are some regional variations. Approximately 41% of farmland is rented, a slight increase on the position in the 1990s but still lower than in the post-war period.

Approximately 40% of the agricultural area is devoted to grass with perhaps 2% for permanent crops, leaving arable as the dominant agricultural land use. This is a reversal of the position in the 1970s and 1980s. However, specialist dairy farms account for almost 1/3 of farms, as do other grazing livestock whilst indoor pigs and poultry account for a further 10%. Unsurprisingly, there are significant water pollution pressures from intensive livestock production, and manure disposal is a challenge.

Farm size varies considerably, with 58% being smaller than 20ha and 2.6% bigger than 100ha, but the average farm size is increasing slowly over time (currently 25ha) as the number of farm holdings reduces (around 77k in 2007, down from 82k in 2005). Around 93% of farms are sole-proprietorships, with incorporated firms representing 5% and partnerships around 2%. Family labour accounts for around 60% of the workforce in terms FTEs; 44% of holders are older than 55, 4% younger than 35.

Farm incomes vary significantly across farm types and sizes (and over time) but average net value added (including Pillar I direct Payments) in 2008 was around €112k (£92k) or €42k (£34k) per Agricultural Work Unit. Part-time farming is common, with around 1/4 of holdings requiring less than one annual work unit of labour and 27% with some other gainful activity.

## Agricultural Policy

The CAP dictates agricultural policy in the Netherlands. The historic model was adopted on a national basis with no regionalisation, but with clear expectations that it would eventually move to a flat-rate-system (as now obligated for the 2014-20 period). A shift to a flat-rate system is expected to favour arable farms over livestock ones. Coupled payments were retained within the beef sector (suckler cow premium and slaughter premium) plus the specialised starch-potato sector.

## Tenure control measures

Legislation to encourage agricultural development through consolidation and productivity improvements dates from at least the 1920s. However, the 1985 Land Development Act extended policy goals to include non-agricultural uses of rural land (e.g. conservation, recreation, housing). Consolidation (or non-agricultural development) can proceed through voluntary or compulsory transfer of land, with displaced owners and tenants being compensated by the State with money or alternative land – including farms in other regions.

Under the 1958 Agricultural Lease Act, leases were heavily regulated. For example, any form of rental contract (e.g. oral, written, short-term etc.) was deemed to be covered by the Act and had to be approved by a Land Control Board. All leases were *de jure* for either 6 or 12 years, renewal was generally enforced and rents were kept artificially low. Farmland prices were also strictly controlled (indeed price increases were forbidden for some years) by Boards until 1963.

Concerns that the 1958 Act was reducing the amount of rented land led to liberalisation of the legislation in 1995 and (given a continuing decline in rented area) again in 2007. In particular, the basis for regulated rents was altered (leading to rent rises) and unregulated leases of less than 6 years were permitted. Landlords favour such leases and they are increasing in usage (22k ha in 2008, 59k ha in 2012), contributing to an increase in the rented area from 460k ha in 2007 to around 500k ha in 2012. However, regulated tenancies still account for the bulk of rented land. Tenure legislation is, once again, currently being reviewed (on a similar time-line to the Scottish exercise).

Regulated rents are set through detailed analysis of farming conditions in each of 14 regions categorised on the basis of agricultural characteristics (e.g. soil, drainage, infrastructure, type of farming). A sample of farms is visited and detailed financial data collected to allow the agricultural economic institute (LEI) to calculate a maximum rent for each region, sufficient to provide an adequate return to the landlord whilst leaving sufficient income for tenants. For 2013, regulated rents were €373 to €823 (£300 to £675; higher for horticulture). Although such maximum rents apply only to regulated tenancies, the market seems to use them as an objective benchmark for setting rents for unregulated tenancies too.

## Taxation

Farmers and farm businesses are subject to the same taxes as other Dutch citizens and businesses. That is, there are no concessional rates or exemptions specifically for farm income or for agricultural land. However, generic flexibilities to manage cash flows by offsetting losses against income tax are available and around half of farms use these to reduce tax liabilities. Income from land rented-out is treated similarly.

Similarly, all businesses – whether agricultural or not – have exemptions from inheritance tax (up to €1m (£800k), plus lower rates on amounts in excess of this) to facilitate businesses succession. To qualify, the donor farmer must have been farming for a year prior to transferring the land and the recipient must farm the land for at least five years. Purchases of land are subject to a 6% transaction tax (i.e. stamp duty), unless the land remains in agricultural use for at least ten years.

Business assets (including farmland) are also exempt from annual wealth tax of 1.2%, levied through income tax (there is no capital gain tax).

### **New Entrants**

Data on the number of new entrants to agriculture are not readily available. Nevertheless, given the high price of farmland and the lack of long-term leases, it is generally accepted that the number of new entrants is likely to be too low – as reflected in the age profile of farmers. Inheritance is the main route for new entrants, either as owners or as tenants.

Beyond providing education and training, specific policy measures have not generally been adopted to aid new entrants. However, there is a tradition of formal contractual succession between generations on a farm via “maatschap” (partnership) associations. Essentially these provide a phased transition, over ten or more years, for a young farmer to gradually take over from a parent. This provides an opportunity for joint working but also staggered purchasing of land and assets from the parent – with the parent using the proceeds to fund their retirement (sale and leaseback through the State was offered as an alternative way of releasing retirement funds in the 1980s, but was seldom used). Notwithstanding that land is typically transferred below open market values, new entrants still accumulate significant debts under this process – although it can possibly be funded in a tax efficient manner with parental loans or venture capital. Moreover, a farm has to be able to generate sufficient income (or permit off-farm working) to support two partners for the duration of the maatschap. However, since over 3/4 of family transfers are through this process, it clearly offers some advantages over the alternatives.

### **Discussion**

Despite a relatively small average size, Dutch farms are highly productive. This reflects highly capitalised, intensive production systems. For example, many dairy farms deploy automated feeding and robotic milking systems. To an extent, this intensification has offset constraints on expanding farms through acquiring more land, maintaining farm incomes through higher output but also allowing for off-farm activities. Nevertheless, acknowledgement of the need to improve the availability of land to new entrants and to existing farmers wishing to expand has prompted several revisions to tenancy legislation in an attempt to increase the area of land made available for leasing. Urban pressures suggest that land prices will continue to be detached from agricultural incomes, implying that leasing land may be the main route for structural change.

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## **NEW ZEALAND**

### **Context**

New Zealand comprises two main (plus numerous other smaller) islands lying in the remote south west of the Pacific. It is a former British colony and underwent radical economic liberalisation during the 1980s. Central government retains most powers, but there are 11 regional councils with particular responsibilities for environmental regulation plus 67 territorial authorities responsible for local public services. There are no longer any specific land courts.

Although long-settled by Polynesians, European settlement of New Zealand began towards the end of the 18<sup>th</sup> Century with British sovereignty declared in 1840 following the Treaty of Waitangi. This secured pre-emption rights for the Crown over all land and much was subsequently purchased. Although Maori land rights were supposedly to be respected, rising demand for land led to conflict and further Maori land was confiscated during the 1860s.

The historical legacy of this is three forms of land tenure; Maori land held under traditional title or treated as such; Crown land managed by the State or leased-out; and freehold land, representing land granted or sold to private interests by the Crown at some point since 1840. Most Crown land is used for forestry or conservation purposes, but some is leased for agricultural use. Most (c.80%) agricultural land is farmed freehold, with Crown leases accounting for the majority (c.15/20ths) of rented land (notably several hundred leases for extensive upland pastoral land). Although displaying some volatility, average farmland prices more than doubled in the decade to 2012 and are currently around NZ\$22k/ha (£11k/ha) for dairying land, NZ\$16k/ha (£8k/ha) for other grazing land. Rental values have also risen, but less steeply to NZ\$1k/ha (£500/ha) for dairy land.

Agriculture is an important part of the economy, underpinning significant agri-food exports and accounting directly for 4% of GDP. Excluding on-farm woodland and bush, the total utilised agricultural area of 11.2m ha covers 42% of the country, with grassland accounting for 7.9m ha and other grazing land accounting for a further 2.7m ha. Of a total of 58k farms, c.21% are specialist dairy and c.45% mainly sheep and beef. Farm sizes vary, with 36% being smaller than 20ha but 39% over 100ha. Average farm size (currently 248ha) is increasing as the number of farms declines.

Official data on the demographic and business structure of farmers and farms (including tenure) are not available. However, industry sources suggest that reliance on family labour is high (c.80%), the age profile is skewed towards older farmers (3% under 35, 44% over 55) and sole-proprietorships are less common than partnerships (30%) or family companies (38%) in dairying but dominant (77%) amongst beef and sheep farms. Profitability is variable across farm types and sizes, and over time. In 2012, dairy profits were around NZ\$1400/ha (£700/ha), beef and sheep NZ\$200/ha (£100/ha). Debt levels are slowly rising and business structures are becoming more complex.

### **Agricultural Policy**

Although granted preferential access to the UK market following Britain's accession to the EU in 1973, New Zealand agriculture was adversely affected by the loss of a major traditional export market. Attempts to compensate for this through various

domestic support measures proved to be unaffordable and were abandoned during the 1980s as part of economy-wide reforms to de-regulate and adopt free-market approaches in all sectors. As a result, New Zealand agriculture currently receives virtually no direct government support. However, various government agencies and farmer-led bodies fund and promote innovation, competitiveness and trade whilst a high-degree of concentration of supply control through a few large co-operatives has been permitted (e.g. Fonterra has over 10.5k farm members and accounts for approaching 1/3 of global dairy exports). Government funding is also available in the event of disease outbreaks or other natural disasters. Pending agreement on measuring GHG emissions, plans to include agriculture in an economy-wide emissions trading scheme have been delayed until 2015.

### **Tenure control measures**

Early allocation by the Crown of both leasehold and freehold agricultural land during the 19<sup>th</sup> Century led to the establishment of large estates employing agricultural labour rather than a pattern of smaller, family farms. In the 1890s, legislation was passed to combat this trend through a policy of “closer settlement”, overseen by bodies such as a Land Settlement Board and a Land Valuation Tribunal. For example, smaller land purchases for family-farms were facilitated through favourable financing for Crown tenants and the compulsory purchase and sub-division of land for re-allocation, together with upper limits on the total area that an individual could hold. Leasehold arrangements were also promoted as a means of allocating scarce private capital to livestock rather than land.

Policies to “...foster the ownership of land by the greatest number of independent farmers...” continued throughout the 20<sup>th</sup> Century, most obviously through the 1948 Land Act and the 1952 Land Settlement Promotion and Acquisition Act 1952. The latter imposed bureaucratic oversight on all leases or sales of land of more than 2ha, with decision criteria for consent weighted against excessive aggregation of land. Although a 1982 review of the Act suggested that such constraints were largely ineffective since they could be avoided by the formation of farming companies, family farms remained dominant. The Act also constrained foreign ownership and leasing of farmland, again requiring all transfers to be subject to bureaucratic scrutiny. The Act was repealed in 1995, marking the end of constraints on land aggregation, but constraints on foreign ownership continued under more general legislation relating to foreign investment in New Zealand – indeed recent approval of overseas investment in large dairying enterprises has renewed debates about this.

As part of the wholesale economic reforms of the 1980s, Crown land defined under the 1948 Land Act was further delineated into unproductive (e.g. for conservation) and productive land, with the latter being managed more explicitly on a commercial basis by Crown bodies. This led to higher rents, but also to a renewed emphasis on promoting the sale of leasehold land to its tenants. Under the 1948 Act, such land was typically let on a 33-year perpetually-renewable lease with (effectively) an absolute right to buy.

However, under the 1948 Act, ecologically fragile “pastoral” Crown land used predominantly for extensive grazing (mainly in the uplands of the South Island) was let on perpetually renewable leases without a right to buy. This inconsistency was addressed by the Crown Pastoral Land Act 1998 which introduced a formal review process to consider converting some pastoral leaseholds to freeholds. The review

process has to balance farming and environmental interests, and conversion may be conditional on some land being transferred to conservation usage. To-date, very few reviews have been completed, several have been controversial and not all have led to conversion to freehold status. More recently, in response to concerns about rent increases outpacing farm income growth, the basis for pastoral rent calculations has been adjusted from 1.5% - 2% of land value to a system based on the carrying capacity of the land.

Given the historical dominance of Crown leasehold land and freehold private land, there is no tradition of regulation of private rental arrangements beyond generic contract law. Hence there are no requirements relating to private lease types, duration, renewal or pre-emption, nor for rent levels or reviews. Commercial guidance is available and some commercial entities (e.g. Fonterra) will act as intermediaries for agreeing terms and conditions and even (e.g.) arranging payment for rent from a lessee's milk cheque whilst others will buy land chosen by a tenant to then rent to that tenant.

All land tenure is subject to environmental regulation through the Resource Management Act 1991 which introduced explicit consideration of sustainability into land use policy. For example, with respect to water pollution and biodiversity impacts. The Act superseded and consolidated a large number of separate Acts – including those on Town and Country Planning, Water and Soil Conservation and Soil Conservation and Rivers Control – but also attempted to alleviate conflicts of interest within any given individual Crown body by separating responsibility for different aspects to different bodies, most notably with the creation of the Department of Conservation.

### **Taxation**

New Zealand has a relatively simple tax regime. For example, there are no liabilities for capital gains or inheritance tax. Agriculture is generally treated equally with other sectors, although there are some specific livestock valuation allowances, and farm enrolment in the GHG emissions trading scheme has been postponed until 2015. Property taxes vary regionally and may be applied to farmland.

### **New Entrants**

Notwithstanding the lack of official data on farm demographics, there is awareness of the need to promote business succession planning and to ease new entrants into agriculture. This is most evident in the dairy sector, where sharemilking has been commonplace since the late 19<sup>th</sup> century. Although the precise allocation of expenditure, revenue and management responsibility between the farm owner and the sharemilker can vary, this is essentially a system for existing farmers to gradually exit from active farming yet retain an income from their farm whilst new entrants gain experience and accumulate capital. Currently, around 1/3 of herds are managed in this way – approximately the same proportion as in previous decades. However, changing market pressures (especially rising land prices) mean that traditional sharemilking is now competing with other entry routes, including hired farm workers, professional farm managers, equity partnerships and contract farming. There are no government funded support measures for new entrants.

## Discussion

The historical legacy of Crown ownership of most land, controls on private ownership and an explicit preference for family farms have created and maintained a farming structure dominated by owner-occupation, with renting largely restricted to Crown leases. However, market pressures for farm expansion are leading to an increase in average farm size and a greater diversity of management structures.

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## **NORWAY**

### **Context**

Norway occupies the western part of the Scandinavian peninsula, stretching from about the same latitude as Wick to within the Arctic circle. Land use is dominated by mountainous and afforested landscapes with only 3% used for agricultural purposes. Although there are some specialised arable farms, livestock farms dominate – especially sheep and cattle plus dairying.

The current utilised agricultural area (UAA) is about 1m ha (55% arable, 45% grazing), effectively the same as in the year 2000. Similarly, the total number of livestock units has remained relatively constant at around 1.2m. However, the number of farms declined by over 1/3 during the same period to around 47k, with the bulk of losses being smaller farms. Unsurprisingly, the average farm size increased – from 14.7ha to 21.6ha. As in many other countries, despite being outnumbered by smaller farms, a high proportion of land and of output is accounted for by larger farms. Almost all farms are run under sole-proprietorship, with partnerships accounting for perhaps 6% and limited companies, financial institutions and state ownership accounting for less than 1%. Family labour accounts for 80% of the workforce; 8% of farmers are younger than 35, 36% older than 55. Farm incomes vary significantly across farm types and sizes (and over time) and non-farm income is important: average gross farm incomes in 2011 were around NOK 511k (€61k) of which agriculture contributed NOK 154k (€18.5k).

Historically, relatively little farmland was rented in Norway. For example, in 1959, 87% of all farm holdings were wholly owned and rental land accounted for only 12% of all farmland. However, the rapid decline in the number of farms has been accompanied by a sharp increase in renting, such that only 35% of farms are now wholly owned and rented land accounts for 42% of farmland (varying from 32% to 59% regionally). Although some (c.6%) farms are wholly rented, the relative abundance of these has not changed and the increase in renting is reflected instead by the rise of mixed tenure farms as owner-occupiers expand through renting. This expansion is also reflected by increases in the total number of leases in place (90k in 1999, 109k in 2010) and the average number of leases per farm (2.54 in 1999, 3.6 in 2010). Average rents range from £32/ha to £1600/ha (less on rough grazing, more for horticulture), but land prices are not recorded due to most transfers being within families and other transfer prices being regulated.

### **Agricultural policy**

As with many developed countries, Norway's agricultural policy during the second half of the 20th century focused on improving productivity and food production plus raising farm incomes. Policy measures to attain such objectives have included input subsidies, price guarantees and production quotas, typically with more generous support offered to smaller farms. More recently, environmental and wider rural development objectives have been included.

Norway remains outwith the European Union, but Norwegian agriculture is covered by Article 19 of the European Economic Area (EEA) treaty and the Agreement on Agriculture under the World Trade Organisation (WTO). Both of these have seen a gradual liberalisation of trade in selected agricultural outputs and (more so)

processed food products, and domestic policy places an increasing emphasis on deregulation and market orientation for commodity production – although livestock headage payments are still in place (with quota limits) and arable land currently receives an area payment.

### **Tenure control measures**

All Norwegian law derives from the Constitution of 1814 and the Norwegian Storting (Parliament) has supreme budgetary and legislative powers, with Ministers responsible for policy proposals and enforcement. Although the Ministry of Agriculture oversees agricultural policy, various other Ministries and parts of Local Government also have influence over tenure-related legislation. Municipalities (of which there are 448, within 18 Counties) are responsible for the procedural handling of tenure cases, through Municipal Land Boards and/or County Agricultural Boards comprising a mix of public officials and local stakeholders.

The Allodial Act of 1974 (but dating back centuries) conveys preferred buyer status on family members whenever farmland is offered for sale. That is, if any family member wishes to buy such land, their pre-emptive interest overrides that of any non-family buyer. There is no absolute right to buy per se, but if allodial rights have not been observed, the rightful family member can force the illegal owner to sell to them. Notwithstanding that definitions of “family” have been gradually tightened and that land of less than 2.5ha is exempt, 59% of all land transfers are still made within-family under the Allodial Act. Ownership of land for 20 years confers Allodial rights.

The Concession Act of 2003 (and earlier versions) applies to all real estate, including farmland, and essentially precludes acquisition of property without approval by the King – as delegated through the Ministry of Agriculture. Approval, or a “concession”, is typically conditional on, for example, new owners not being a company plus residing on farmland and managing it for at least five years. If land is sold without a concession, the state may take (temporary) ownership for reallocation. Although possibly now being relaxed, sale prices are also regulated under the Concession Act (to dampen price rises). Holders of Allodial rights do not need to obtain a concession.

The Agricultural Act of 1995 (evolving from the Land Act of 1955) promotes the use of land resources to benefit society, emphasising policy goals such as raising agricultural productivity, maintaining rural communities and protecting the environment. The Act places an obligation on landowners to actively manage their land, either themselves or through leasing to another farmer. It also generally precludes sub-division of farms to sell parcels of land – although exceptions can be made for farmers wishing to sell their land but remain in the farmhouse when retired.

The Act of Tenancy of 1965 lays down basic leasing rules, with effectively no regulation of leases of less than 10 years for bare land. Leases of longer duration have to be approved by the State. Leasing a farm with buildings requires a written lease and a cash rent, but the rent level is not regulated and need not be indexed. However, the Municipal Board can stipulate an appropriate rent if one cannot be agreed privately

The Land Consolidation Act of 1979 (originally enacted in 1821) seeks to facilitate the pooling, reallocation and redistribution of land to improve the operational efficiency of holdings, and can do so either through aiding co-operation amongst individual farmers and/or through (temporary) state acquisition of land (the latter

power is seldom exercised). The Act is implemented through the Land Consolidation Service (LCS) of the Ministry of Agriculture, which can proactively seek to intervene or can respond to requests from one or more farmers for action. The LCS has Court powers, with decisions taken by a Judge, two lay people and a small technical staff.

## **Taxation**

Taxation in Norway is levied through central government (86%), the counties (2%) and the municipalities (12%). The system was revised in 2006 to address inconsistencies between income and capital taxation but the new Norwegian government has recently proposed further adjustments. The general marginal income tax rate (including social security contributions) is 51%, but a general allowance of up to NOK170k implies that many farms will be paying nothing on farm income. Agricultural land is exempt from property taxes, but is subject to capital gains tax.

Land passing through family inheritance is exempt from capital gains tax (up to 51% for non-family transfers). Stamp duty of 2.5% is levied on all land transfers, but inherited land is valued at 25% below its market value for tax purposes. Inherited land is subject to a graduated inheritance tax (8-20% for children, 10-30% for others), but with an allowance of NOK250k. Moreover, if an inheriting farmer pays a pension to the outgoing farmer, the capitalised value of the pension is deducted from the taxable inheritance value.

## **New Entrants**

No specific policy measures are offered to aid new entrants from outwith farming families. Indeed it appears that renting farmland without already owning or renting some land is difficult to arrange – suggesting that inheritance is effectively the only route for new entrants. Moreover, the pension-related tax break on inheritance mentioned above is accompanied by provision for inheritance tax to be paid through (interest-free) instalments – further reducing the capital costs of inheriting farmland relative to buying land as an entry route. To encourage early retirement, the State pension can be paid from 62 (rather than 67) if an experienced farmer earning a reasonable income from farming (i.e. running a productive farm) transfers the farm to somebody else. This is intended to aid other farmers to enter the industry or to expand an existing farm, yet the average age of new owners is 50.

## **Discussion**

Norwegian agricultural policy has sought to maintain small family farms. Despite this, the number of farms has declined and the average farm size has increased – reflecting external pressures arising from technological change, increasing globalisation and rising incomes elsewhere in the economy. However, much of the shift in farm size has been achieved through renting of land rather than the transfer of ownership. That is, most farmers exiting the industry have chosen to retain ownership of their land and to lease it to others to farm. This may partly reflect cultural preferences, but is probably influenced by the Allodial Act favouring within-family transfers, the Agricultural Act limiting the scope for sub-division of farms and the Concession Act limiting the availability of farmland to external (non-farming) buyers. For example, the 'residency obligation' and 'active management obligation' under the Concession Act have been effectively used to preclude the purchase of land by companies, financial institutions or absentee landlords whilst

(notwithstanding possible exemptions) constraints on sub-division under the Agricultural Act and a presumption of family succession are perceived as difficult to overcome. Hence renting (out or in) is seen as easier than trying to sell or buy.

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## POLAND

### Context

Poland is a Central European country, the largest and most populous post-communist member of the EU. Administratively, it is divided into 16 provinces, 379 counties and 2478 municipalities. Central government retains responsibility for agricultural, tenure and tax policies, but local government has some discretion over property taxes. There are no special courts for agricultural land.

The borders of Poland were repeatedly redrawn throughout the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> centuries by neighbouring countries competing for territory and political power. Following both German and Russian occupation during the Second World War, Poland subsequently became a client state of the Soviet Union. Parliamentary democracy was achieved in 1990 and Poland joined the EU in 2004 (although remains outside the Eurozone with its own currency, the Zloty).

Although collectivisation of agriculture was attempted during the Communist era, this was (almost uniquely in Eastern Europe) effectively abandoned in the 1950s and highly fragmented privately-owned farmland dominated (some large estates were divided during the 1920s and many more during the 1940s). Yet State-owned farms occupied around 18% of farmland (co-operatives a further 4%) and State control of farm inputs and outputs was enforced. During the 1990s, unlike many other CEECs, privatisation of farmland was not required but large State farms were mainly divided and sold or leased-out. Currently, around 20% of land is rented – but this is dominated by leasing from the State rather than private landowners. Sales of State-owned land also significantly outweigh private sales. Agriculture accounts for approximately 3% of GDP and 13% of employment.

Poland is heavily forested, with woodland accounting for over 30% of the land area. However, the utilised agricultural area of 16m ha accounts for almost 60%, predominantly arable land with mixed farming being most common. With the exception of minor dips in 1994/5 and 2010/11, average land prices have risen year-on-year since 1992, registering a 40-fold increase over the period to over €5k/ha (£4k) currently. Rents are also rising, but are still relatively low at close to €100/ha (£80).

Farm size is dominated by very small holdings, with over 1.3m being smaller than 1 economic size unit and nearly 90% of the remaining 1.1m holdings being smaller than 20ha: less than 2% are bigger than 50ha. More than 80 % of the dairy cows and 60 % of the pigs are kept in farms with less than 50 livestock units. However, average farm size is increasing slowly over time (currently 12.3ha) as the number of farm holdings reduces. Over 99% of farms are sole-proprietorships. Family labour accounts for around 93% of the workforce in terms FTEs; 23% of holders are older than 55, 17% younger than 35.

Farm incomes vary significantly across farm types and sizes (and over time), not least since part-time farming is reported for over 75% of holdings and 30% have some other gainful activity. Average net value added (including Pillar I direct Payments) in 2008 was around €10k (£8k) or €3.5k (£3k) per Agricultural Work Unit.

## **Agricultural Policy**

Accession to the EU in 2004 brought Polish agriculture within the influence of the CAP. However, as a New Member State there has been a ten-year transition period and the nature of support has been slightly different. In particular, decoupled Pillar I payments are through the simplified, uniform Single Area Payment Scheme (SAPS) rather than the Single Farm Payment (SFP). Adoption of the SFP from 2014 is expected to lead to adoption of a regionalised flat-rate system. Some domestic coupled payments were offered through a system of national support, including from 2010 for beef and sheep production, but Polish governments have advocated complete decoupling under CAP reform. Relative to the position in 1990s, the level of public support for agriculture has increased and, notwithstanding many uncompetitive small farms, access to EU markets has generally offered opportunities for Polish agriculture.

### **Tenure control measures**

During the communist era, State-owned land was managed by the National Land Fund. Under the 1991 Act on Management of Agricultural Property of the State Treasury, responsibility was transferred to a new Agricultural Property Agency of the State Treasury, later renamed simply the Agricultural Property Agency (APA). Initially (1991 – 1995), the APA focused mainly on selling land (almost 1.5m ha then, now 2m ha) released by the liquidation of State farms. This resulted in over 300k private farms increasing in size, albeit modestly.

Subsequently (1995-2003), the APA also began to lease State-land (around 2m ha), often in larger blocks to co-operative and corporate entities. APA leases are typically for between 10 and 30 years, although longer (e.g. 99 years) is possible under exceptional circumstances. Lessees gain pre-emptive rights to buy if a lease has run for at least three years, but this does not apply to corporate entities.

APA land prices and rents are typically lower than those in the private sector, with rents index-linked to the prices of agricultural products. In addition, for APA land, payment of (already lower) prices and rents can be further reduced and/or delayed/staggered if various exemptions apply. Prices and rents for private land are not controlled, nor are lease duration or renewal (other than by a general Civil Code). However, pre-emptive rights to buy can apply – but not for corporate entities.

The 2003 Act on the Formation of Agricultural Systems expanded APA powers to include pre-emptive land purchases (for reallocation) and to intervene in private land sales. The aim was to avoid excessive concentration of land ownership (through a maximum individual area of 300ha) whilst facilitating consolidation of small farms. The 2003 Act also introduced requirements for those acquiring farmland to have agricultural qualifications or experience and to have been farming locally for at least five years. The latter constraint replaced a more general moratorium on foreign buyers of farmland and a system of permits for EU and EEA citizens (although there are suspicions that *de facto* foreign ownership may have occurred in some cases, particularly along borders).

Non EU and EEA buyers are still excluded from buying farmland, but (to comply with EU regulations) EU and EEA citizens can buy farmland if they have previously leased (and farmed) land for between three and seven years (depending on which

part of the country is involved). The constraints on foreign (including non-EU) ownership expire in 2016.

## **Taxation**

From 2014, Polish farmers will be subject to personal income tax for the first time. Until now, they have been exempt and have instead paid an Agricultural Property Tax. This has varied regionally, but has been unrelated to the actual value of land and has instead been based on a nominal value linked to an assumed yield of rye. Income tax liability will displace this property tax, and is intended to reduce abuse whereby many non-farmers have claimed exemption on the basis of owning a very small plot of land – although farmers will continue to benefit from lower social security contributions (via separate provision). Sales of agricultural land are exempt from capital gains and sales taxes, provided that land remains in production and is not sold again within five years (with an exemption for transfers to close relatives). Rental income from land is taxed as any other income. Tax incentives for farm expansion have now been withdrawn.

## **New Entrants**

Data on new entrants are not available, but Poland has a relatively high proportion of young farmers. Inheritance accounts for almost 85% of farm transfers and 80% of farmers report having children or grand-children to whom land will be passed (with around 1 in 10 planning to use the proceeds for retirement purposes). Nevertheless, various support measures are offered to aid new farmers – either directly or via encouraging older farmers to exit.

For example, access to preferential financing (soft loans) through the Agency for Modernisation and Restructuring of Agriculture (ARMA) is available to new farmers buying APA land (and to all farmers wishing to expand). The State absorbs the cost of interest-rate subsidies, although this is subject to EU State Aid rules (ARMA is also the accredited payments agency for EU support).

In addition, Poland has made use of provisions under Pillar II to support new entrants via capital grants and early retirement schemes. For the latter, this required somebody over the age of 55 passing actively farmed land of 3 or 6 ha (depending on region) to somebody under the age of 40. Funding for early retirement ceased in 2010, but could continue for the 2014-20 period.

Separately, as a means of encouraging retirement, the APA's powers extend to buying holdings (for reallocation) in return for providing a pension annuity. However, relatively strict eligibility criteria and modest funding mean that this has been exercised relatively infrequently.

## **Discussion**

The persistence of private ownership during the communist era meant that adjustments to land tenure since the 1990s were less disruptive in Poland than in many other CEECs. Nevertheless, the highly fragmented ownership pattern is acknowledged to weaken competitiveness and consolidation/expansion of family farms is encouraged through various means. However, given a dwindling stock of State-owned land, the scope for the APA to influence land tenure directly is diminishing and further structural change may be inhibited by the relatively low levels of private sales and leasing (although there are regional variations). Fears of land

speculation by foreign buyers have been allayed by, initially, an outright ban and, now, residency constraints. Moreover, size limits on farm size continue to favour a smaller family farm structure (which is actually mentioned in the Constitution as the basis for agriculture).

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Table 21 Summary points from each case study

Case Study % rented	Agricultural Policy	Tenure control	Tax	New Entrants
<b>Belgium</b>  <b>c.67% private rented (stable)</b>	CAP Adopted historic model for decoupling but retain coupled suckler cow premium	Legislation for all leases of more than 1 year. Leases generally 9 or 18 years, but can be 'career' up to age 65. Tenants have pre-emptive right to buy and can pass leases to family members. Rent levels are controlled. Local land consolidation mechanisms.	Lightly taxed based on cadastral survey value not actual income. Income from renting out is taxed (but career leases are exempt). Property tax is paid annually by owner not tenant but based on nominal income. High tax rates for buying land.	Inheritance normal route. Soft loans offered to assist generations to buy-out. These are also available to new entrants but a lack of land supply is problematic.
<b>Canada</b>  <b>24% private rented (increasing)</b>  <b>13% State lease, 3% cropshare</b>	Active promoter of liberalisation of farm trade but quotas and price support on dairy, eggs and poultry. Support offered to farmers to even out farm income levels eg. disaster recovery.	Dominant owner occupation reflects colonial land allocations. Private leasing relatively unregulated, subject only to fairly generic contract law. Leasing of Crown land regulated more tightly with rents linked to land value or profitability of enterprises and security of tenure. Specialist lenders support buying farmland. Controls on foreign ownership of land.	Tax liability varies across Canada. Range of tax advantages to farmers e.g. lower property tax, and no capital gains tax if structured appropriately.	Inheritance normal route.  Interest rates capped on all farm loans and young farmers allowed access to loans of up to 90% of price (80% for older farmers).  Tax exemptions ease inter-generational transfers of assets.
<b>Denmark</b>  <b>34% private rented (increasing)</b>	CAP Decoupling implemented with clear expectation of move to flat rate (from 2014). Coupled payments retained for beef sector and sheep sector.	Long tradition of small owner-occupied farms. Leases relatively unregulated with rents set by market, max term of 30 years and no right of renewal. Limits of number of leases held by one farmer (5) and on distance between land (10km). Controls on maximum farm sizes and number of farms held only recently relaxed. Ownership restricted to EU nationals and generally has residency requirements. Local land consolidation mechanisms	No concessional rates for farming.	Inheritance normal route.  Formal contractual succession between generations is recognised and supported by staggering purchase of land and assets. Still high cost/debt despite soft loans for up to 70% of purchase price and bespoke savings accounts.

Case Study % rented	Agricultural Policy	Tenure control	Tax	New Entrants
<b>France</b>  <b>67% private rented (stable)</b>	CAP – historic model for decoupling but also maximum coupled support for beef, sheep, goat and arable.	Land market heavily regulated by ‘Safer’. Main aim is to settle young farmers and support land/farm consolidation. Safer have pre-emptive right to buy and reallocate any land. Code Rural entitles a tenant to a minimum term of 9 years although longer and career terms are possible. Tenants entitled to renew lease or to succeed. Improvement recognised and compensation payable by landlord. Pre-emptive right to buy if owner decides to sell. Rental values and land prices controlled.	Tax is paid on property by owner (although proportion can be paid by tenants – up to 20%). 50% tax discount to young farmers for first 5 years. Land transfers (outwith Safer) are taxed but for young farmers this is set at 0.715%.	Safer system installed 1230 with 65% of these outwith farming families in 2012. (Still on 0.2% of holdings)  Inheritance normal route.
<b>Hungary</b>  <b>60% private rented (economy in transition)</b>	CAP since 2004 but 10 year transition arrangements. Decoupled Pillar 1 payments but some coupled payments offered.	Redistribution of land during 1990s under Compensation Acts. Leasing of private land through contract law. Tenant has first refusal on lease expiring but no automatic renewal. Pre-emptive right to buy for tenants and neighbours (with price controls). Ban on EU nationals owning land will be lifted in 2014 but buyers still have to comply with eligibility criteria of working in agriculture and farming the land. Corporate purchases are forbidden. Limits on area (300ha purchased and 1200ha leased). Land Fund in place to encourage voluntary exchange but also compulsory purchase to configure land better.	No special provisions for agriculture or rental income from land.  Land sales subject to 2% transfer tax, local taxes and capital gains tax.	Land availability probably not an issue but support for new entrants offered due to competition from greater bidding power of incumbent farmers and foreign new entrants.
<b>Ireland</b>  <b>11% private rented (increasing)</b>	CAP Will have to move to flat rate system from 2014. Retained partial coupling of beef payments.	Historically significant state intervention in land markets led to domination of owner-occupation. Leases largely unregulated and subject to market forces.	Farm income taxed as any other business. Tax exemptions of income from leasing out land increase with length of lease. Land subject to capital gains tax, stamp duty and inheritance tax but retirement tax relief if older farmers transfer ownership early.	Inheritance is main route.  Previous instances of early retirement schemes and installation grants proved ineffective. Now have retirement tax relief and encourage collaborative farming approaches.

Case Study % rented	Agricultural Policy	Tenure control	Tax	New Entrants
<b>Netherlands</b>  <b>41% private rented (slight rise)</b>	CAP – shift to flat rate expected to favour arable farms. Coupled payment retained within beef sector plus starch-potato sector.	Leases were heavily regulated but increasingly liberalised with unregulated leases of less than 6 years now permitted. Tenure controls currently being reviewed. Maximum rents are regulated. Local and consolidation mechanisms.	No concessions to farmers.  All businesses have flexibility to offset losses against income tax and exemptions for inheritance tax to facilitate succession.  Land purchase taxed at 6% unless land remains in agricultural use for 10 years.	Inheritance is main route. Land price high and supply limited. No specific policy measures beyond education and training.  Maatchap (partnership) working allows phased transition for a younger farmer to take over from a parent (or other) with staggered purchase of land and assets.
<b>New Zealand</b>  <b>5% private rented, 15% Crown leases (no official data but probably stable)</b>	Free market approaches in all sectors apart from natural disasters. High degree of supply control in co-operatives is permitted.	Dominant owner occupation reflects colonial land allocation and explicit policy of favouring family farms. Private leases regulated by contract law only. Crown leases more tightly regulated, with rent controls, good security and (mostly) pre-emptive rights to buy. Constraints on foreign ownership of land remain.	Agriculture treated as other businesses although some allowances for livestock valuation and potentially for farm enrolment in the GHG emissions trading scheme.	Not seen as an issue. Share-farming is important but under pressure from other entry routes as entry costs rise.
<b>Norway</b>  <b>58% private rented (increase)</b>	Focus on improved productivity and raising incomes. Emphasis on deregulation and market orientation.	Policy and legislation actively sought to maintain small family farms. Farms have got bigger generally through renting of land as current owners exit the industry but retain ownership. Presumption of family succession to land is difficult to overcome and residency and active management obligations generally preclude purchase by companies, institutions and absentee landlords.	High allowance on farms means most pay little tax. Land passing through families is exempt from capital gains tax. Stamp duty is paid on all transfer but inherited land is valued lower for tax purposes and inheritance tax can be paid in interest free instalments	No policy measures. The tax advantages favour inter-generational transfer.  State pensions can be paid from 62 if an experienced farmer transfers the farm to somebody else.

Case Study % rented	Agricultural Policy	Tenure control	Tax	New Entrants
<p><b>Poland</b></p> <p><b>20% mostly State leased (economy in transition)</b></p>	<p>CAP since 2004 but 10 year transition arrangements. Favour fully decoupled payments under CAP reform.</p>	<p>Highly fragmented private ownership persisted during Communist era and remains dominant. Maximum area of 300ha and requirement for purchasers to have agricultural qualifications and farmed locally for 5 years which restricts foreign ownership. Pre-emptive right to buy for individuals with leases over 3 years. Leased land almost entirely from State to large co-operative and corporate entities. Leases for 10-30 years, with controlled rents.</p>	<p>Will start paying income tax from 2014 rather than agricultural property tax based on a nominal value. Sale of agricultural land is exempt from capital gains and sales taxes provided land remains in production and is not sold again within 5 years.</p>	<p>Relatively high proportion of young farmers. Inheritance is normal route.</p> <p>Soft loans to new farmer buying land.</p> <p>Also used Pillar 2 to support with capital grants and early retirement schemes.</p> <p>State (APA) will buy holdings in return for providing a pension annuity to older farmers – but limited funding.</p>

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at [socialresearch@scotland.gsi.gov.uk](mailto:socialresearch@scotland.gsi.gov.uk) or on 0131-244 2111.

**Social Research series**

**ISSN 0950 2254**

**ISBN 978-1-78412-601-8**

**web only publication**

**[www.scotland.gov.uk/socialresearch](http://www.scotland.gov.uk/socialresearch)**

Produced for the Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
DPPAS32053 (06/14)

