



**“ The latest news and views
from Mac and Mac’s
Rural Land Team ”**

mm Rural Round Up

AUTUMN – 2011

Welcome to Rural Roundup Autumn 2011. We live in difficult times, and changes in the law can lead to uncertainty. In this edition, we have focused on the latest changes in Crofting and Agricultural Law, as well as taking a look at renewables in the context of diversification from mainstream agricultural activities. If you require further information relating to any of the topics covered, or if you wish to receive our newsletter either by post, or email on a quarterly basis, then please contact: rural@macandmac.co.uk

Autumn Roadshows

Our Rural Land Team will be back on the road in October and November with a series of roadshows centred around the theme of finding alternative solutions to rural land issues. We will be covering a range of topics including crofting reform, renewables, diversification and the importance of powers of attorney. To book a place at one of the following events, then please email rural@macandmac.co.uk, or call Colene Garden on 01463 239393.

Wednesday 26 October Dingwall Mart 12.30 to 2pm

Monday 31 October MacPhail Centre Ullapool 12.30 to 2pm

Wednesday 2 November Aros Centre Portree 12.30 to 2pm

Tax issues on sale of land or, tenancies

When considering the sale of an area of rural land, or the assignation, or re-letting of a croft tenancy, then the potential Capital Gains Tax (CGT) consequences of the transfer are often overlooked, or at least not considered until the sale, or assignation has taken place, by which time the chargeable event for tax purposes has already taken place. It is therefore important to seek the advice of a tax advisor, or accountant at the earliest possible opportunity, to ensure you are not faced with a hefty tax bill which could have been reduced, or avoided.

In the circumstances, if you are considering a sale, or transfer you should bear in mind the following:-

- Capital Gains tax is charged on the VALUE of the asset being transferred, whether or not any money actually changes hands;
- Gifts to family members, excluding spouse, are NOT exempt from this, and therefore the assignation of a croft tenancy or gift of a house plot to a family member for example, will result in a charge to CGT;
- The reletting of an owner occupied croft to a family member to avoid absentee action by the Commission is also potentially taxable.

We can advise you in relation to the options available, and can work alongside your accountant, or tax advisor to ensure your tax position is fully investigated prior to any transfer taking place. For further details please contact Gail Jamieson: gail.jamieson@macandmac.co.uk

macandmac mobileoffice

Following the success of our Summer Mobile office, we are pleased to announce that the Mobile office will now be returning to Portree and Ullapool on a monthly basis. All mobile offices will be open from 10am to 4pm. The dates for the next 6 months are detailed below. To arrange an appointment at one of the mobile office dates below, or to find out when a member of the Rural Land Team will next be in your area, please email mobile.office@macandmac.co.uk, or call Colene Garden, or Caroline Bailey on 01463 239393.

Portree:

Wed 12 October 2011

Wed 2 November 2011

Wed 7 December 2011

Wed 1 February 2012

Wed 7 March 2012



Ullapool:

Wed 19 October 2011

Wed 16 November 2011

Wed 18 January 2012

Wed 15 February 2012

Wed 21 March 2012

Changes to Agricultural Holdings legislation

As readers of our Summer Newsletter will have noted, the Scottish Government introduced a number of fairly minor changes to Agricultural Holdings legislation by way of the Public Services Reform (Scotland) Act 2010. At the same time, the Government launched a public consultation inviting comments on more substantial changes to the Agricultural Holdings (Scotland) Act 1991 and the Agricultural Holdings (Scotland) Act 2003. These proposals are summarised as follows:-

1. The definition of a "near relative" in the 1991 Act should be extended to include grandchildren. At the present time a "near relative" includes only a surviving spouse, a surviving civil partner, or a child of the tenant (including an adopted child). The significance of being a "near relative" is that the landlord of the tenancy can serve a notice to quit on any successor as tenant if they are not a "near relative".

2. A prohibition will be introduced on "upward only" or "landlord only" rent reviews in Limited Duration Tenancies (LDTs). At the present time the landlord and tenant are free to negotiate, as a matter of contract, any rent review provisions contained in the LDT lease. It is proposed that this change will be prospective only, and will affect future LDTs only. The proposed change would introduce an additional statutory protection for the tenant.

3. Any variation in rent as a result of the addition/exclusion of VAT (or the variation of the VAT rate) will not prevent an application being made to the Land Court to determine the rent. There is some uncertainty following the English case of *Mason v Boscawen* in England that a change of the VAT rate, or the exercise of an option to tax, could prevent the landlord and tenant having a statutory rent review under the 1991 Act. In terms of the 1991 Act an application may not be made to the Scottish Land Court within 3 years of the last variation of the rent. The Act does not specifically make provision to disregard any option to tax, or variation in the VAT rate from this section of the Act. The proposed changes will make it clear that the exercise of an option to tax, or a variation in the VAT rate will not prevent a statutory rent review. Both landlords and tenants will be aware of the changes in the VAT rates during recent years and may be surprised to learn that this may prevent a statutory rent review within the 3 year period.

The Government has published a summary of the consultation responses. There would appear to be broad support for the proposals, but a number of concerns have been raised by consultees regarding the transitional arrangements for the proposed change to the definition of a "near relative". The Law Society of Scotland pointed out that a notice to quit by the landlord should be affected by the proposed new legislation only if the deceased tenant died after the date when this part of the proposed Bill comes into force and not before, as the definition contained in the 1991 Act will still apply. A number of concerns have also been raised regarding the limited scope of the proposed changes.



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solicitors, estate agents and financial advisers

Crofting Law Reform Update

Most readers will be aware that the Crofting Reform (Scotland) Act 2010 was passed in August 2010, and various parts of the Act came into force earlier this year. As we have gone to press, a second commencement order has been announced, confirming the date or dates when the remaining provisions will take effect. The main changes will be as follows:-

- Reform of the Crofters Commission – the new Crofting Commission will be democratically elected and will consist of between 5 and 9 members. Up to 6 members will be elected by Crofters.
- Amendments to the 1993 Act – these are aimed at tackling neglect of croft land and speculation on development value of croft land.
- Tenant Crofters and Owner Occupiers will become subject to similar duties.
- There will be new rules relating to bequests of croft tenancies.
- The residency requirement will be extended from 16km to 32km

Further details relating to the above changes will be available on our website in due course, or you can find out more by coming along to one of our Autumn Roadshows. For information relating to how these changes may affect your personal circumstances, please contact our Rural Land Team.



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