Planning for succession

Succession Farm Partnerships are a welcome new option for farm families

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When people think of succession, they often associate it with the legal transfer of the farm. While farm transfer may be the end game, it is not what succession is about. Succession is the gradual transfer of management and decision making on a farm and at the beginning it tends to be task orientated.

When a son or daughter becomes involved in the day-to-day work on the farm; they learn new skills and in time become proficient or even expert in those skills. The required knowledge and many of the necessary skills are self-learned or passed down from the parents to the son or daughter.

Succession can be pictured as a ladder and it is important to be aware that every farm family is somewhere on this ladder, be it at the beginning with a young family or at the end on the point of farm transfer. Figure 1 outlines the various situations where farm families may find themselves on the succession ladder.

Step one is where a farming successor has not yet been identified. This may be due to the fact that there is no farming successor or simply that the family are too young to identify a successor.

It may also be due to the fact that there are no children in the family or there are children who have no interest in developing a career as a farmer.

In situations where no farming successor has been, or can be, identified, the term succession should be broadened out to include other possibilities. The succession plan may involve other options such as a partnership with: a relative (e.g. niece, nephew, etc); a young trained farmer or other alternative options such as contract heifer rearing, forestry, land leasing or the planned sale of the farm.

All of these options can be weighed up in the context of what the current farmer would like to do in the future. (i.e. remain farming in some capacity; step away completely; or avail of financial incentives).

Step two is where a farming successor has been identified but no plan is in place. There may have been little or no discussion about succession or the future. The identified successor or indeed his/her siblings may not be aware that a successor has been chosen. This is where the development of

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a succession plan comes into play.

Step three is about the development of a whole family succession plan. It involves the inclusion and communication with all family members including the farming successor. The key advantage of the succession plan is that it gives clarity to all family members on: the decisions of the parents; provisions for each family member and the future of the farm.

The Succession Farm Partnership incentive has been put in place to encourage farm families to create a succession plan and to put a definite timeframe on farm transfer.

Step four is the phase where the succession plan is implemented and put into action. The farming successor has been identified and that successor is ready (after education is complete, travel, gained experience outside the home farm) to become involved in the running of the farm.

This phase can last for many years up until such time as the parents decide to complete a transfer of farm assets to the successor. A farm partnership is the ideal business structure to formally involve the successor in the running of the farm. It is a business model that can facilitate the gradual transfer of management and decision making to the successor, while providing the parents with the opportunity to see how the successor will get on in the early years. It allows the parents the time to gain confidence in the successor's ability before assets are transferred at a later date.

A key point about a partnership is that it is not about transfer of assets but about the mutual running of the farm by the parents and their successor. Teagasc research conducted by Dr Áine Macken Walsh and experience of partnerships since 2002 has shown that partnership is a very good model for this transition phase, where the roles of the parents and the successor gradually reverse over time.

The role of the parents in this time period is vital as they have a vast amount of knowledge, skills and abilities that are hugely valuable to the farm business. They also provide a valued source of support and companionship to the ever developing farming successor even after the farm assets have transferred.

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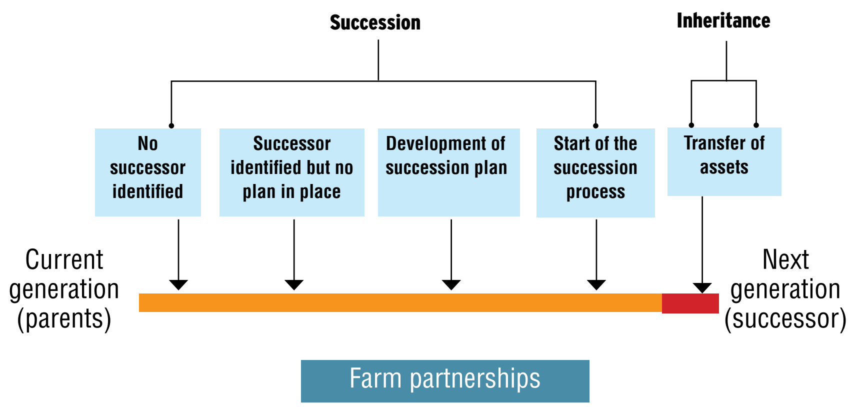
Figure 1: The succession ladder



Source: Tomás Russell

Succession Farm Partnerships – a key new incentive

Succession Farm Partnerships involve a new income tax incentive that is available to farmers from 2017 onwards based on the successful registration of a succession farm partnership with the Department of Agriculture, Food and the Marine. Under the scheme, an annual income tax credit of €5,000 is available to the partners in the partnership for up to five years after making a successful registration.

The aim of the incentive is to encourage the transfer of farm assets to the next generation in a planned way while also providing a level of protection for the transferors by allowing them to retain 20% of farm assets.

The four key requirements of a Succession Farm Partnership are:

- At least one partner must be a person who has farmed at least three hectares for two years prior to the formation of the Succession Farm Partnership. This person is defined as the "Farmer".
- At least one other partner must be a person who: has completed the required level of agricultural education; is under 40 years of age in each year that the income tax credit is claimed and is in receipt of at least 20% of the partnership profits. This person is defined as the "Successor".
- The Teagasc *My Farm My Plan* booklet must be completed and certified as satisfactorily completed by Teagasc. A copy of this certificate is required for registration purposes.
- The farmer and the successor must enter into a legally binding succession agreement where the farmer agrees to transfer to the successor (within three to 10 years of registering the Succession Farm Partnership) at least 80% of the farm assets owned by him/her in the partnership and at least 80% of the farmer's share of livestock and machinery owned by the partnership.

A date must be fixed for the transfer of farm assets as part of this agreement. The specific area of land to be transferred has to be clearly identified on a map.

Updating/making a will

It is vital that any previous will made is updated in line with the succession agreement to ensure that the documents are consistent with each other. In situations where no previous will exists, it is imperative to ensure that a will is put in place which is consistent with the terms of the succession agreement.

At least one partner must be a person who has farmed at least three hectares for two years prior to the formation of the Succession Farm Partnership.

Taking advice

As part of the process of completing the succession agreement, it is vital to seek the advice of your Teagasc advisor; solicitor; accountant and also any banking institution that may have a charge/security interest in lands that are intended for transfer.

Moving from an existing registered farm partnership

Partnerships in existence and registered with the DAFM partnership registration Office may opt to register as a Succession Farm Partnership.

What happens after the transfer of assets has taken place?

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There are two possible options available after the transfer of assets has taken place as specified in the succession agreement. They are: the partnership could continue for a further period of time involving the same partners or the partnership could end after the transfer of assets has taken place. Where the partnership has ended, the successor can farm in his/her own right using the assets transferred. Where the partnership is continuing, the partnership agreement and supporting documentation must be updated to reflect the change in ownership of assets or capital in the partnership.

Limited companies

Farmers who are farming through a limited company are not eligible to form a Succession Farm Partnership. Both the farmer and successor must be what is known as "natural persons" (i.e. not a limited company).

Registration procedure

The Succession Farm Partnership must apply for entry on to the Succession Farm Partnership register by completing the appropriate application form and be accompanied by the following documents:

- A farm partnership agreement and on-farm agreement.
- Evidence of land ownership (folios) or possession (lease).
- Evidence of appropriate agricultural education level completed.
- Teagasc certificate for the *My Farm My Plan* booklet.
- Legally binding succession agreement.
- Birth certificates as evidence that the "successor" is under 40 years of age at time of application.

Clawback

A clawback of the amount of tax credits claimed will apply where the farm assets do not transfer as specified in the succession agreement (a clawback of €25,000 will apply where the full tax credit has been previously claimed). The succession agreement must also be legally binding to afford a level of protection to the successor.