

THE AGRICULTURAL TENANCIES ACT 1995

Introduction

1. The Agricultural Tenancies Act 1995 (the 1995 Act) came into force on 1st September 1995 and introduces new provisions for the de-regulation of agricultural tenancies. The aim of the 1995 Act is to introduce greater flexibility, so that the relationship between landlords and tenants is primarily governed by the agreement between them rather than the legislation relating to agricultural holdings.
2. On 19th October 2006 the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006 SI 2006 No. 2805 (the 2006 Order) came into effect. Changes made by the 2006 Order are incorporated into this text. (The 2006 Order also makes changes to the Agricultural Holdings Act 1986 (the 1986 Act) which are noted in LTN 51).
3. Most of the changes noted below apply to new tenancies only (i.e. tenancies created after the 2006 Order came into effect). Two changes, however, apply to **all** tenancies (i.e. tenancies which were created before or after the 2006 Order came into effect). Those two changes relate to:
 - Notices to Quit; and
 - The criteria an arbitrator can take into account when conducting a rent review in respect of a Farm Business Tenancy.

Farm Business Tenancies

4. The 1995 Act introduces the concept of the Farm Business Tenancy which is a new term for “an Agricultural Tenancy”. According to section 1 of the 1995 Act, the tenancy must meet criterion A of the following criteria **and** either criterion B or criterion C to come within the ambit of the legislation: -
 - a. all or part of the land comprised in the tenancy must be farmed for the purposes of a trade or business throughout the whole term of the tenancy;

- b. where the parties have notices before the grant of a tenancy, having regard to: -
- i. the terms of the tenancy;
 - ii. the use of the land comprised in the tenancy;
 - iii. the nature of any commercial activities carried out on that land and
 - iv. any other relevant circumstances;

the character of the tenancy is primarily or wholly agricultural;

- c. the parties must have exchanged prior written notices confirming their intention that the tenancy is to be and will remain a Farm Business Tenancy.
5. An agricultural tenancy will need to suit the particular circumstances of the council concerned and in all cases a council should seek appropriate legal advice from those professionals listed at paragraph 34.
 6. There is a potential risk that where a council chooses not to exchange prior written notices, any subsequent significant changes in the character of the tenancy could take it outside the protection of the 1995 Act and therefore NALC recommends that all councils exchange notices to ensure certainty.
 7. Section 1(4) of the 1995 Act allows notices to be exchanged at any time before the day on which the lease is signed and dated or the beginning of the tenancy whichever is the earlier. The notice must be a separate document i.e. not incorporated into the lease itself.

Definitions/Terminology Pursuant to the 1995 Act

8. "Farmed" may include horse grazing but not the keeping of horses.
9. "Agriculture" is defined in section 38 of the 1995 Act and includes horticulture, fruit growing, seed growing, dairy farming and live stock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery gardens, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.
10. "Farming of land" is defined in section 38(2) of the 1995 Act. It includes references to the carrying on of any agricultural activity in relation to land.
11. "Trade or Business" – "Business" is a wider term than "Trade". The term "Business" is generally a regularly conducted commercial enterprise and can include a profession.

12. Section 2 of the 1995 Act defines tenancies which cannot be Farm Business Tenancies namely where: -
 - a. the tenancy began before 1st September 1995; or
 - b. it is a tenancy beginning on or after 1st September 1995 under the statutory succession provisions of the 1986 Act.
13. Therefore the 1986 Act (see Legal Topic Note 51) no longer applies to tenancies entered into on or after 1st September 1995 unless it is a succession tenancy under the provisions of Part IV of the 1986 Act. Legal Topic Note 51 therefore remains relevant to this limited extent.

Notice to Quit

14. Section 7 of the 1995 Act provides, if either party to a Farm Business Tenancy wishes to terminate it, they can only do so by giving formal notice in writing. For tenancies of a fixed term of more than 2 years at least 12 months notice must be given when either party wishes to end the tenancy on an agreed termination date. (The previous requirement that a Notice could not be served more than 2 years in advance has been abolished by the 2006 Order).
15. Section 5 of the 1995 Act provides, if neither party terminates a tenancy for a term of more than two years then at the end of the term the tenancy continues from year to year on the same terms as the original tenancy. The same period of notice is required to end a tenancy from year to year i.e. the notice takes effect at the end of the year of the tenancy and must be served a minimum of 12 months before the date on which it is to take effect.

Service of Notice

16. Section 36 of the 1995 Act requires that all notices to be given under the Act will only be valid if:-
 - a. served personally; or
 - b. left at the tenant's last proper address; or
 - c. the notice is given/or left in a manner authorised by a clause in the original lease i.e. at the farm office; or

if the "person" to be served is a company then the notice must be addressed to the secretary of the company and sent to the registered or principal office of the company.

Tenants Right to Remove Fixtures and Buildings

17. In accordance with section 8 of the 1995 Act, generally a tenant has a right to remove, at any time during continuance of the tenancy, or at any time after the end of the tenancy whilst he remains in possession, any fixture affixed by him to the land including any building erected by him on the land. This includes the right to remove non-agricultural and ornamental fixtures and those (including buildings) erected during a previous tenancy agreement between parties. The tenant is under a duty to cause minimal damage and immediately after removing the fixture or building the tenant must make good all damage to the holding that may result from the removal.

18. The exemptions to the right to remove fixtures include: -
 - i. a fixture or building erected pursuant to an obligation;
 - ii. a fixture or building in respect of which the tenant has obtained compensation under section 16 of the 1995 Act;
 - iii. a fixture or a building in respect of which the landlord has given his consent to, on condition that the tenant agrees not to remove it and which the tenant has agreed not to remove; and
 - iv. where the tenant substitutes a non agricultural trade fixture for one belonging to the landlord (NB usually the replaced asset belongs to the landlord).

Rent Review under Farm Business Tenancy

19. Part II of the 1995 Act gives the parties to a Farm Business Tenancy considerable flexibility to agree their own clauses in relation to the level of rent and as to the frequency of rent reviews.

20. Section 9 of the 1995 Act allows the parties to agree on a fixed rent with no reviews during the tenancy or to agree to review the rent by or to a specific amount or by applying an objective rent review formula. Where the parties decide against or fail to make provisions for a rent review clause in the tenancy agreement, then either party may serve a notice in writing on the other (a "Statutory Review Notice") requiring that the rent payable in respect of the holding shall be referred to arbitration (section 10 of the 1995 Act). (NB it is of course open to the parties to agree a revised rent without the necessity of going through the arbitration procedure).

21. The changes to the legislation introduced by the 2006 Order mean that where parties contract out of the default rent review arrangements, they can have complete freedom to negotiate their own provisions on rent, subject to the condition that these provisions must not preclude a reduction in rent. Similarly, there are no restrictions on the criteria that an arbitrator can take into account, other than any which would preclude a reduction in rent.

22. Under the new arrangements, where a landlord and tenant expressly agree that the default provisions of the 1995 Act do not apply or that a rent review should be referred to an independent expert, then they automatically contract out of the default rent review provisions and should say how the rent is to be reviewed. This only applies in relation to provisions in tenancy agreements made on or after 19 October 2006.
23. If parties do not wish to make their own specific arrangements on rent, then the existing default provisions apply. These provide that parties can choose how often a rent review should take place, but if they do not do so, either the landlord or tenant will be able to demand a rent review every three years.
24. In accordance with section 10 of the 1995 Act, the Statutory Review Notice must specify a “review date” being the date from which the rent will be set. The review date must be at least 12 months but less than 24 months after the day on which the Statutory Review Notice is given. In addition the review date must comply with section 10(6) of the 1995 Act in that it: -
 - a. must be an anniversary of the beginning of the tenancy or, where the landlord and tenant have agreed in writing that the review date for the purposes of this Act is to be some other day of the year, that day of the year; and
 - b. must not fall before the end of the period of 3 years beginning with the latest of any of the following dates:
 - i. the beginning of a tenancy;
 - ii. any date as from which there took effect a previous direction of an arbitrator as to the amount of the rent;
 - iii. any date as from which there took a previous determination as to the amount of the rent made, otherwise than as arbitrator, by a person appointed under an agreement between the landlord and tenant; and
 - iv. any date as from which there took a previous agreement in writing between landlord and the tenant, entered into since the grant of the tenancy, as to the amount of rent.
25. Section 11 of the 1995 Act provides that the right to require a rent review is not effected by the grant of a new tenancy or by severance of part of the reversionary interest.

26. Councils are reminded of the general restrictions on the appropriation and disposal of land. Section 127(2) of the Local Government Act 1972 provides that land may not be disposed of for a consideration less than the best that can reasonably be obtained. The section provides for two exceptions to this rule (see Legal Topic Note 45). Councils are therefore advised when either negotiating a premium or a rent or a rent review for a Farm Business Tenancy to seek the advice of either an independent valuer i.e. a qualified surveyor (fellow or professional associate) of the Royal Institute of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers or the District Valuer who can advise on what amounts to “best consideration”. Their advice should be obtained in writing and kept on file for production at audit. Surveyors, valuers and the District Valuer may charge a fee for the service.

Appointment of an Arbitrator

27. In the event that a statutory review notice has been served by either party but the parties cannot reach agreement as to the appointment of an arbitrator to determine the question of rent, then either party may at any time during the period of six months ending with the review date apply to the President of the Royal Institution of Chartered Surveyors (RICS) for the appointment of an arbitrator by him (NB the provisions of the Arbitration Act 1950. Part I with certain exemptions and of the Arbitration Act 1972 sections 1 – 5 shall apply to an arbitration so referred to the RICS). Section 13 of the 1995 Act sets out the basis on which the arbitrator must determine the rent properly payable – generally that the rent is to be set as that which might reasonably be expected if the holding was let on the open market by a willing landlord to a willing tenant.

Compensation on Termination of a Farm Business Tenancy

28. Section 16 of the 1995 Act contains mandatory provisions for the payment of compensation for improvements to the holding by the tenant. The definition of improvement is wider than the one contained in the Agricultural Holdings Act 1986 and in general terms includes any physical improvement made on the holding or any intangible advantage obtained for the holding (and becomes attached to the holding) which is capable of increasing the value of the holding.
29. Therefore, under section 18 of the 1995 Act the landlord may have to compensate the tenant for securing intangible advantages such as planning permission, removal of restrictive covenants, grants of easements over adjoining land etc.

30. Section 17 of the 1995 Act provides that on condition that the landlord has given written consent to the making of improvements, the landlord is required to pay full compensation at the end of the tenancy for all improvements remaining attached to the land which have been provided by the tenant either by his own effort or wholly or partly at his own expense.
31. The 2006 Order amends the compensation provisions under the 1995 Act. It was considered to be a failing of the 1995 Act regime that landlords only knew how much they were required to pay for improvements at the end of the tenancy and, consequently, were often reluctant to agree to them. The amendments introduced by the 2006 Order allow the landlord and the tenant to agree a cap on the cost – section 20(4A) and (4B) of the 1995 Act refers.
32. These provisions apply notwithstanding any agreement to the contrary i.e. they cannot be negated by any conditions in the original tenancy agreement and the tenant is able to refer the matter to arbitration if the landlord refuses consent for any improvements in accordance with section 19 of the 1995 Act, or if there is disagreement at the end of the tenancy on the amount of compensation payable, as provided under section 22 of the 1995 Act.
33. Councils are reminded that Farm Business Tenancies are legal documents and that they contain a number of complex provisions and it is therefore advisable to seek the advice of a qualified legal professional *before* entering into them.
34. The Solicitors Act 1974 makes it an offence for a person not qualified to act as a solicitor to prepare certain legal documents and instruments. Section 35 of the Agricultural Tenancies Act 1995 amends the 1974 Act so as to permit full members of the Central Association of Agricultural Valuers, Associates or Fellows of the Society of Valuers and Auctioneers and Associates or Fellows of the Royal Institution of Chartered Surveyors to draw or prepare documents creating or believed to create a Farm Business Tenancy.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
45	Disposal and Appropriation of Land by Local Councils	Sets out the terms and circumstances in which councils can dispose of land.
46	Registered land	Describes the benefits of registering leasehold ownership with the Land Registry.
51	The Agricultural Holdings Act 1986	Sets out the relevant provisions.

75	Lease Negotiations	Explains the process of negotiating important lease terms. Also defines and gives guidance on common lease terms.
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