

November 2007

THE AGRICULTURAL HOLDINGS ACT 1986

Foreword

1. This Legal Topic Note relates to tenancies pursuant to the Agricultural Holdings Act 1986 (the 1986 Act). Most new agricultural tenancies will be subject to the Agricultural Tenancies Act 1995 which is covered in LTN 50. There are limited circumstances in which tenancies can now be granted pursuant to the 1986 Act (usually where a 1986 Act tenancy already exists) and councils should contact NALC for further details. Although not appropriate for tenancies which are wholly new, this Note will still be of relevance to those who have existing tenancies pursuant to the 1986 Act.

Amendments

2. On the 19th October 2006 the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006 No. 2805 came into effect (the 2006 Order). Changes made by that Order are incorporated into this text. (The 2006 Order also makes changes to the Agricultural Tenancies Act 1995 which are noted in LTN 50). Subject to the two exceptions given below, the new legislation applies in England and Wales to new tenancies or to variations and consents affecting existing tenancies made on or after 19 October 2006, and to arbitrations under the 1986 Act where the appointment of the arbitrator takes place on or after that date.

Introduction

3. Local councils sometimes own land which is, or may be, used for agricultural purposes. Such land is almost invariably occupied by a farmer or other person in return for a rent or similar payment. In some cases, the 'arrangement' between the council and the occupier is not evidenced in writing; in others, the only written note of the terms of occupation is an exchange of letters or a minute in the council's minute book. Councils may also be tenants of agricultural land.

4. The letting of land (in the broadest sense) for agricultural purposes will usually give the tenant statutory rights of tenure, arbitration on rent and compensation. Such a letting should not therefore be agreed without the council first taking legal advice. This Note is intended to give general advice on these matters but it may be needed to be supplemented in individual cases.

Agricultural Land

5. This Note is principally concerned with units of land let for agricultural purposes and known as 'agricultural holdings'. An agricultural holding is statutorily defined as "the aggregate of the land (whether agricultural land or not) comprised in a contract of tenancy which is a contract for an agricultural tenancy, not being a contract under which the land is let to the tenant during his continuance in any office, appointment or employment held under the landlord" (section 1(1) of the 1986 Act).
6. 'Agricultural land' means land used for agricultural purposes (section 1(4) of the 1986 Act).
7. 'Agricultural' is statutorily defined in section 96 of the 1986 Act to include horticulture, fruit growing, seed growing, dairy farming and livestock keeping and breeding, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes.

Agricultural Tenancies

8. According to the 1986 Act, an agricultural tenancy is a letting of agricultural land, or an agreement for letting such land, for a term of years or from year to year or for a period of less than a year. Such a tenancy enjoys the protective and other provisions in the 1986 Act (described in the immediately following paragraphs). There are, however, a number of exceptions; these are dealt with in paragraph 14 below.

Security of Tenure

9. The 1986 Act operates by limiting the effect of a notice to quit. When a contractual tenancy comes to an end (normally by expiry of the original term) it is, in effect, continued by statute until the landlord serves a notice to quit. This must (with some

exceptions not material to this Note) give at least 12 months' notice from the end of the current year of the tenancy (section 25 of the 1986 Act). Where that date is not specified (e.g. because there is no written tenancy agreement), the 12 month period should be measured from the day before the rent is due, that day being presumed to be the last day of the current tenancy.

10. A notice to quit should always be in writing (even though this is not a legal requirement). There is no statutory form; a specimen notice is attached hereto. A notice should be delivered personally or sent by registered post or recorded delivery.
11. Section 26 of the 1986 Act provides that within one month after a notice to quit has been given, the tenant may serve a counter-notice on the landlord, the effect of which is to prevent the notice to quit taking effect without the consent of the Agricultural Land Tribunal (ALT). There is no prescribed form of counter notice; a specimen is attached hereto.
12. The ALT may consent to the operation of a notice to quit on six grounds (and no others). Even if one of these grounds is established, the ALT may also refuse consent if in all the circumstances of the case it considers that a fair and reasonable landlord would insist on possession.
13. The six grounds (found in section 27 of the 1986 Act) are -
 - i The landlord's intention is desirable in the interests of good husbandry.
 - ii His intention is desirable in the interests of sound management of the estate of which the land forms part.
 - iii His intention is desirable for agricultural research, education, experiment or demonstration or for legislation relating to small holdings.
 - iv His intention is desirable for the purposes of the legislation relating to small holdings.
 - v To withhold consent would cause greater hardship than to grant it.
 - vi The landlord intends to use the land for a non agricultural purpose not falling within Case B (see paragraph 14 below). This includes a use for which planning permission is granted under the General Development Order, or for which specific planning permission is required but has not been obtained.

Exceptions to Security of Tenure Rule

14. According to Schedule 3, Part I of the 1986 Act, there are eight cases where the consent of the ALT is not required to the operation of a notice to quit an agricultural holding -

Case A applies only to certain smallholdings let by a smallholdings authority (a county council) to individuals.

Case B the land is required for a non-agricultural use for which planning permission has been granted pursuant to an application (thus excluding changes of use covered by the general development order), or for which such permission is not required otherwise than by virtue of the planning legislation (this covers use by the Crown and government departments).

Case C bad husbandry by the tenant. During the six months prior to the giving of the notice to quit the landlord must have successfully applied to the ALT for a certificate that the tenant was not fulfilling his responsibility to farm in accordance with the rules of good husbandry.

Case D the tenant has failed to comply with a written notice from the landlord requiring him within two months of service of the notice to pay any rent due, or requiring him within a reasonable period specified in the notice to remedy any breach of the tenancy agreement which is capable of being remedied (e.g. a failure to repair a fence). The written notice must be in the prescribed form. The tenant may challenge the written notice and require the matters therein specified to be referred to arbitration (see paragraphs 25 and 26 below).

Case E the tenant has committed an irremediable breach of the terms of the tenancy which has materially prejudiced the landlord. The tenant may contest to validity of the notice by requiring the matter to be referred to arbitration (see paragraphs 25 and 26 below).

Case F the tenant has become insolvent.

Case G the notice to quit is given (a) following the death of a person who immediately before his death was the sole (or sole surviving) tenant under the contract of tenancy, and (b) not later than the end of the period of three months beginning with the date of any relevant notice and it is stated in the notice to quit that it is given by reason of that person's death.

Case H where the Minister of Agriculture (in England) or the Secretary of State (in Wales) gives notice to quit in order to carry out a statutory farm amalgamation scheme.

15. In every case the notice to quit must state that the reason for the notice is the matter specified in the case.

The Terms of an Agricultural Tenancy

16. It is highly desirable that the terms of an agricultural tenancy are set out in writing, whether in a formal lease or some other document. There can be no dispute over the terms.
17. If there is no written agreement, or an incomplete one, either the landlord or the tenant may refer the terms of the tenancy to arbitration (section 6 of the 1986 Act). An agreement is incomplete if it does not cover all the following points found in schedule 1 of the 1986 Act –
- (1) Names of the Parties.
 - (2) Description of the land, by reference to a plan.
 - (3) The length of term.
 - (4) The rent and when it is payable.
 - (5) The responsibility for rates, including drainage rates.
 - (6) A tenant's covenant to insure against damage by fire all dead stock and crops grown for consumption on the holding **and** to return to the holding the full manorial value of any such crops destroyed by fire.
 - (7) A landlord's power to re-enter if the tenant fails to carry out his obligations.
 - (8) A tenant's covenant not to assign, sublet or part with possession of all or part of the holding without the landlord's consent.

18. If one party refuses a request by the other to enter into a written agreement, he may refer the matter to arbitration (section 6 of the 1986 Act) (see paragraphs 25 and 26 below for the procedure).

The Rent Payable under an Agricultural Tenancy

19. The basic rule is that the rent payable is the amount agreed between the parties. Before letting land, or taking a lease, a council should obtain professional advice on the correct level of rent, normally from the District Valuer.
20. The rent of an agricultural holding can be revised by agreement. In the absence of agreement the rent can be revised not more often than once every three years by either the landlord or the tenant requiring the rent to be referred to arbitration (a specimen notice is attached hereto). A demand for arbitration can take effect only –
- i Where the tenancy could have been determined by a notice to quit (e.g.. at least 12 months' notice of arbitration, expiring at the end of the current year of the tenancy, must be given), or
 - ii Where the tenancy agreement has a break clause, allowing a more frequent review.
21. For tenancies under the Agricultural Holdings Act 1986, at least three years must elapse from the beginning of the tenancy or the previous rent change, for either the landlord or the tenant to have the right to a rent review (Schedule 2, paragraph 4 to the 1986 Act). Prior to the 2006 Order if land was added to the holding, creating a new tenancy in law, the three year period would start again. This often deterred parties from restructuring holdings as it meant they would have to wait longer for the next rent review. The changes to the legislation introduced by the 2006 Order mean that where land is added to or removed from a holding, and there has been no change in rent, other than an increase or reduction to take account of the adjustment in the size of the holding, the next rent review must be at least three years from the beginning of the original tenancy or the previous rent review for the original tenancy (Schedule 2, paragraph 7 to the 1986 Act).
22. The amount of rent to be fixed by an arbitrator, as provided by the 1986 Act, is the rent at which the holding might reasonably be expected to be let by a prudent and willing landlord to a prudent and willing tenant, taking into account ... all relevant factors, including (in every case) the terms of the tenancy (including those relating to rent), the character and situation of the holding (including the locality in which it is situated), the

productive capacity of the holding and its related earning capacity, and the current level of rents for comparable lettings (Schedule 2, paragraph 1 to the 1986 Act). Various factors such as scarcity have to be disregarded; they are not detailed in this Note (in the interests of brevity) but will be known to the District Valuer and other agricultural valuers.

23. When carrying out a rent review arbitrators were required to determine the rent for the holding as of the date of their appointment, no matter when the new rent would take effect. In accordance with section 12(2) of the 1986 Act arbitrators are now required to determine rent as from the date at which the new rent will be payable.
24. The rent can also be increased if the landlord carries out an improvement. The increase can take place otherwise than at the end of the statutory three year period. Broadly speaking, the increase can occur only if the tenant agrees to the improvement or the landlord is obliged to carry out the improvement pursuant to a direction from the ALT (section 13 of the 1986 Act).

Arbitration

25. The 1986 Act set out detailed procedures for resolving issues by arbitration. These procedures were inflexible and time-consuming, and were often resolved by reference to a hearing, which could be costly for the parties involved. The 2006 Order repeals the 1986 Act arbitration procedures and replaces them with the procedures in the Arbitration Act 1996 (The 1996 Act). The 1996 Act procedures will already be familiar to a number of landlords and tenants, as these are the procedures used for resolving disputes under the Agricultural Tenancies Act 1995. The 1996 Act procedures give greater flexibility, and, for example, will enable parties to agree to resolve a dispute by a written representation procedure, thereby avoiding the costs of a hearing.
26. The 1996 Act procedures apply to any arbitration where the arbitrator is appointed after the 2006 Order came into effect (e.g.. 19 October 2006). Where a 1986 Act arbitration is in process at the time the 2006 Order came into effect, the procedures set out in the 1986 Act will continue to apply.

Compensation

27. Compensation may be payable on the termination of an agricultural tenancy, either by the landlord to the tenant or vice versa (sections 60 – 63 of the 1986 Act).
28. Compensation is payable by a landlord to a tenant as follows –

- i Basic compensation if one year's rent without proof of loss, or on proof of greater loss up to a maximum of two year's rent can be claimed, except where notice to quit is given under Cases C,D,E,F and G (see paragraph 14 above for details).
 - ii Additional compensation of four times the annual rent is payable in the same cases as attract basic compensation, except Cases A and H (see paragraph 14 above), and the grounds set out in paragraph 13 above.
29. Compensation is payable by the tenant to the landlord for any dilapidation or damage to any part of the holding when the tenant leaves. The amount of compensation is the cost of making good the damage etc. plus any general depreciation caused to the holding which the landlord can prove (section 71 of the 1986 Act).

Exceptions to the Security of Tenure Provisions of the 1986 Act

30. In the following cases a tenancy of agricultural land is not protected under the 1986 Act (see sections 2 – 5 of the 1986 Act)
- i A letting for grazing or mowing only for a period of less than a year;
 - ii A letting approved by the Minister of Agriculture;
 - iii A letting for a fixed term of more than a year and less than two years;
 - iv Service tenancies (e.g.. those connected with employment under the landlord) – see the definition of agricultural holding in paragraph 5 above;
 - v A licence not granting exclusive possession (e.g. the licensor reserves the right to graze his cattle on the land during the term of the licence);
 - vi A gratuitous licence which is not legally enforceable;
 - vii An allotment garden tenancy, e.g.. a tenancy of an area of land not exceeding 40 poles (0.101 hectares) in extent which is wholly or mainly cultivated by the occupier for the production of vegetables or fruit crops for consumption by himself or his family. This falls outside the 1986 Act because the use of the land is not for trade or business purposes. A tenancy or other types of allotment land may come within the 1986 Act because the land is in fact used for the purposes of a trade or business and thus falls with the statutory definition of an agricultural holding (see paragraph 5 above). In order to avoid creating an agricultural tenancy of allotment land a council must –
 - a. Use a form of agreement which prohibits commercial use (the NALC model form of tenancy agreement does so), and

- b. Ensure that the actual use of the allotment is for non commercial purposes. Acquiescence in commercial use might convert the letting into an agricultural tenancy.

Eligibility for statutory succession to a tenancy – “the livelihood test”

- 31. The 1986 Act sets out certain tests for eligibility for statutory succession to a tenancy, including what is known as “the livelihood test”. Previously, this required a potential successor to have earned their principal source of livelihood from agricultural work on the holding for 5 out of the last 7 years. Potential successors to a tenancy could jeopardise their right to succession, by drawing significant income from non-agricultural activities on the farm (sections 36, 50 and Schedule 6, Part 1 paragraph 2 of the 1986 Act). This has had the effect of inhibiting tenant farmer diversification, since it is often the younger members of a farming family, and therefore potential successors to the tenancy, who take the lead in setting up diversified businesses.
- 32. The changes to the legislation introduced by the 2006 Order enable a successor to a tenancy to earn income from diversified activities on the farm or from activities off the farm, and for this income to count towards “the livelihood test”, where the landlord gives written agreement to this diversification after the Order has taken effect. To have effect, the landlord’s agreement must be given in writing and it must have been given on or after 19 October 2006, the date the changes to the legislation came into force. These changes do not affect a potential successor’s right to succeed to a tenancy where the principal source of income is from agricultural work on the holding.

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

LTN	Title	Relevance
50	The Agricultural Tenancies Act 1995	Sets out the relevant provisions.

SPECIMEN NOTICE TO QUIT AN AGRICULTURAL HOLDING

I the undersigned, Clerk of the Parish/Town/Community Council of _____, your landlord, hereby give you notice to quit and deliver up to the Council on the _____ day of _____ 20 * possession of the holding known as _____ held by you as tenant from year to year.

[This notice is given for the reason specified in Case _____ in Part 1 of Schedule 3 to the Agricultural Holdings Act 1986 (as amended)] **

Dated the _____ day of _____ 20

[Signature of clerk]

To [name and address of tenant]

*The date should not be earlier than 12 months from the end of the current year of the tenancy

**This section should be included only where the council relies on one of the clauses set out in paragraph 14.

