

Land Reform Bill / Agricultural Holdings

Letter from Agricultural Law Association, 11 March 2025

Good afternoon

We write on behalf of the Agricultural Law Association which sits on the Tenant Farming Advisory Forum, in connection with additional correspondence presented to the Committee and in particular to the letter from STFA published on 17 February 2025. Members of the Agricultural Law Association advise agricultural landlords and tenants and the owners of land that could be the subject of future agricultural lets.

Taxation and a Reduction in Tenancies

In our experience there are a variety of factors for the reduction in the letting of land, of which taxation is one. The primary disincentive we hear about from landlords / prospective landlords is the punitive nature of some of the provisions of the agricultural holdings legislation and the direction of travel under land reform to further enhanced rights solely benefitting tenants. Other than, potentially, the introduction of a Land Use Tenancy, it is very difficult for the owner of land to see a benefit in granting an agricultural lease against the backdrop of the current land reform Bill and rights it gives to tenants. The balance has moved so far in favour of statutory rights favouring the tenant as to make letting undesirable.

Model Lease for Environmental Purposes (Land Use Tenancy)

We are very concerned that applying a fixed percentage (e.g. 50%) to the level of agricultural activity that is permitted would be impractical. If there is a fixed percentage of 50% and in say year 3 of the lease the agricultural use is 51% does the lease cease to be a Land Use Tenancy? The Land Use Tenancy will be of interest to environmental organisations who may want to let land where 100% of the activity is agricultural (e.g. grazing) but with stocking density restricted and grazing excluded for parts of the year (so as to benefit ground nesting birds for example) and this would be defeated by any maximum percentage being set. Against the backdrop of statutory tenancies “auto converting” from one type of tenancy to another under the existing law, a fixed percentage level of activity to qualify as a Land Use Tenancy is particularly concerning to clients of members.

Small Landholdings

There would be no change if small landholders were to be subject to aspects of crofting legislation. This is what the legislation currently provides. There is no current provision for small landholders to have rights under agricultural holdings legislation so this would be a significant change to the status quo.

Tenant's pre-emptive right to buy

The current legislation contains a very limited number of scenarios in which land can be transferred without triggering a registered right to buy. Our members would like to see a transparent process for ensuring those claiming this right have the type of tenancy necessary in order to do so (i.e. a system to record 1991 Act tenants who wish to utilise the right to buy should the landlord elect to sell). The issue about automatic registration has been discussed in detail in TFAF and the outcome of these discussions has been reported by the Tenant Farming Commissioner. Under the present regime a great number of the plans that have been submitted by tenants when registering a right to buy are incorrect. With the passage of time, the removal of hedges and other boundary features and changing landscapes a large number of landlords and tenants will be unsure about the exact boundary of the holding. It is as inequitable that a landlord can inadvertently trigger a right to buy in respect of land that the landlord did not know was part of a tenancy as that a tenant can be deprived of a right to buy land the tenant did not know was part of the tenancy. There needs to be a process whereby the boundaries of a let farm are established to the satisfaction of both parties before a right to buy applies to that land.

Resumption

We are of the view that there should be a consultation and greater scrutiny of this issue. It will almost certainly further upset confidence in the letting of agricultural land, where landowners consider that a contract that has been freely negotiated (i.e. the lease) has been retrospectively amended so overwhelmingly in the tenant's favour and to the very significant disadvantage of the landlord.

Section 14. Updating Schedule 5 to modernise the list of tenant's improvements eligible for compensation

The proposed principle-based headings are confusing and will lead to cases where tenant's fail to give requisite notice and lose out on compensation. The position needs to be simplified, not complicated.

Game Damage

Giving agricultural tenants full shooting rights over the holding could cause unintended consequences for third party rights already in place and further disincentivise landlords from letting to agricultural tenants in future.

Further stakeholder engagement is required on deer management to ensure that a fair system can be devised, particularly in light of the fact that deer damage may be caused by deer travelling across from other estates / holdings over which the landlord has no control.

Rent Review

In light of the history of complex and uncertain litigation in connection with rent review it is unhelpful to potentially upset the current understanding and case law built up concerning “comparable holdings” and replace the term with a new term “similar holding” without any statutory definition or existing case law precedent. It is difficult to imagine that a “similar holding” is going to be easier to locate than a “comparable holding”.

Alternative Dispute Resolution for rent reviews

The rent review process is a complex legislation driven legal process that will inevitably involve parties taking legal advice and decisions being required on the law. It is open to the parties to follow their own selected dispute resolution process at present and that should continue. The Land Court was introduced as the statutory forum for dispute resolution under the agricultural holdings legislation when the 2003 Act came into effect, replacing references to dispute resolution by arbitration contained in the 1991 Act. Part of the reason for that change was the complexity of disputes reaching arbitration and the legal questions which required to be resolved by the employment of legal clerks. Whilst some rent reviews might be well suited to arbitration, we are not aware of any reason to change the statutory dispute resolution forum back from the Land Court to arbitration.

Good estate management and deer management

As stated under the heading “Game Damage” above further stakeholder engagement is required on deer management.

Land and Communities Commissioner

It may cause confusion for landlords and tenants if the Tenant Farming Commissioner’s role were to become conflated with that of the Land and Communities Commissioner.

Kind regards

M R Holland MRICS

Secretary & Adviser

AGRICULTURAL LAW ASSOCIATION