

Farm Tenancies

General

Farm Tenancies are much more significant in England than in Ireland. The Land Purchase Act, which commenced at the end of the 19th century, saw the purchase out of most tenanted agricultural land in Ireland through the Land Commission. In England, estates have been broken down to a more limited extent.

The Department of Environment, Farming and Rural Affairs estimate that one third of agricultural land is held under agricultural tenancies. Many agricultural tenancies are long term rights in land which can be sold and which carry rights of succession.

There are two distinct codes governing the letting of agricultural land. The two codes have significant differences. Tenancies and leases granted before 1 September 1995 are regulated under the Agricultural Holdings Act 1986, which itself replaced and consolidated older similar legislation, which had been in force for a great many years before that .

Tenancies and leases granted after 1 September 1995 fall under the Agricultural Tenancies Act 1995 which significantly reformed and changed the law. Both types of tenancy are commonly found. In effect, the 1995 Act allows greater freedom of contract and allows much fewer mandatory rights for the tenants.

Older (1986 Act) Tenancies

It is still possible to grant tenancies with the rights in the 1986 Act. However, because of the freedom allowed by the 1995 Act, very few of these tenancies have been granted since 1995. Many existing tenancies pre-date 1995 and will have security of tenure (rights of renewal on termination of the letting) and enhanced rights under the old legislation.

The 1986 Act sets out certain model clauses which should be comprised in a farm tenancy agreement. If the model terms are not included, the tenant or landlord is

entitled to require the agreement to be modified to bring in the terms. If no agreement is reached on the modification, the matter can be referred to binding arbitration. There are model clauses in relation to several matters, including maintenance, repair and insurance of fixed equipment including farmhouse cottages, buildings and farming equipment etc.

The 1986 Act provides that tenants will generally have security of tenure (i.e. can continue as tenants after the original lease period has expired). The landlord and tenant may negotiate a varied rent for the further lease period. If agreement cannot be reached, the rent can be referred to arbitration.

The rent review provisions which apply under the legislation are complex. The rent is not quite a market rent, but is based on a formula linked to market rent. The basic principle is that the rent should be that at which the holding might be reasonable let by a prudent and willing landlord taking into account certain factors including the current level of comparable rents. The arbitrator is to disregard rent attributable to scarcity value and certain other factors. He is also to disregard certain improvements and dilapidations or deteriorations of land permitted by the tenant. The landlord is entitled to credit for improvements. Generally rent review arbitrations are required or permitted every three years. One year notice of rent review will generally be required.

Unlike post 1995 lettings, the 1986 Act provides for security of tenure. The older legislation effectively allowed security for life and in the case of pre-1984 lettings, security for up to two successors. This is subject to the tenant complying with the terms of the lease.

A notice from the landlord or tenant to terminate a letting must be at least 12 months.

The landlord can only terminate on the following specific grounds;

- a) certain retirements
- b) the land is required for use other than agriculture
- c) certificate of bad husbandry
- d) Non-payment of rent and un remedied breaches
- e) serious breaches of lease
- f) tenant's insolvency
- g) death of tenant

Under certain circumstances the tenant's interest can pass on death to a successor. To inherit a pre 1995 letting, a person who is to succeed must apply to the Agricultural Land Tribunal. They must satisfy three tests namely; that they are a close relative; that their principal livelihood for not less than five years, **has derived from agricultural work; that they are not inhabitable commercially in the land.** There are certain grounds upon which a landlord can defend a claim for succession.

The tenant is entitled, upon the end of the tenancy, to compensation for certain improvements carried out. Generally landlord's consent must have been obtained for the improvement, although under certain circumstances, compensation is available notwithstanding the absence of consent.

Under certain circumstances, the tenant will be entitled to compensation for disturbance, where the tenancy terminates by reason of notice given by the landlord. Basic compensation can be an amount equal to one years rent. The maximum cannot exceed two years' rent. Additional compensation is available under certain circumstances. Under certain circumstances the landlord is entitled to compensation due to deterioration of the holding.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.