

## **New (Post 1995 Act) Farm Tenancies**

The onerous and detailed regulation in the Agricultural Tenancies Act 1986 (which itself repeated a system that had been in place for many years) was thought to be responsible for the decline in the availability of agricultural land for letting. It was thought that the provisions for security of tenure and succession discouraged letting of farm land and that the strict definition of “agricultural holdings” discouraged tenants from diversifying into non-agricultural activities for fear of losing the protection of the legislation.

The Agricultural Tenancies Act 1995 marked a radical change. Generally all agricultural lettings after this date will be “farm business tenancies”. It is still possible for the landlord and tenant to agree that the 1986 Act will apply, but this would be very unusual. The major principle in the 1995 Act is freedom of contract. This means that the parties are free to negotiate the tenancy on whatever terms they can agree. There is minimal security of tenure beyond the length of the tenancy. There are no rights of succession. Therefore, when the period of the lease expires, the tenant must deliver back the land. There is a wider definition of what a “farm business tenancy” is, which permits diversification into non-agricultural activities.

All or part of the land must be farmed for the purpose of a farming business throughout the tenancy. Agriculture includes horticulture, food growing, seed growing, dairy farming, livestock breeding and the use of the land as grazing meadow/meadow land, market gardens, nursery ground and ancillary woodlands. There is a condition that the land is used fully or primarily for agricultural purposes. Unlike the previous legislation, a farm business tenancy can generally be terminated by at the end of the agreed term or by giving the required notice.

A farm business letting for more than 2 years, requires at least 12 months’ written notice to terminate. Even a fixed term of more than two years will not expire by passage of time; 12 months notice must still be given. This applies to both landlord and tenant.

The landlord and tenant are free to agree the rent at such a level as they wish. There is a mechanism providing for a statutory rent review procedure. However the parties can enter into a different agreement regarding rent review. The parties can agree to review the rent at whatever date they see fit. If they don't contract to the contrary, the rent can be reviewed under a statutory review notice every third year. At least 12 months notice of rent review must be given.

Once the review notice is served, the parties may appoint an arbitrator to determine the rent on the basis agreed. The rent reviewer will be appointed by an independent party if the parties cannot agree the appointment. The rent reviewer determines the rent payable by the holding on the review date, and may increase or reduce the rent or direct that it remains unchanged. The rent is the open market rent. The value of the tenants improvements are generally disregarded, other than ones that are done pursuant to an obligation.

An objective of the 1995 Act was to encourage investment by farm tenants. A tenant of a farm business has a right to remove any fixtures at the end of the tenancy. There are certain limited exceptions. A farm business tenant is entitled to compensation on leaving the property in respect of certain tenant's improvements. These must be physical improvements undertaken by the tenant at his own expense or an intangible advantage obtained by reason of the tenant's effort which become attached to the holding.

Compensation is only available if the landlord consented in writing to the improvement. If the tenant applies for consent to an improvement and the landlord refuses there are certain circumstances where a tenant can apply for arbitration to approve the improvement. The amount of compensation for improvements is the amount of the increase attributable to the improvement of the value of the holding at the termination of the tenancy.

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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.

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