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Farm Business Tenancies Agricultural Tenancies Act 1995

Introduction

The original aim of the legislation was to encourage landowners to let land. Hitherto the largest single disincentive was the tenant's rights of security of tenure and family succession. To avoid those problems landlords resorted to a number of short-term expedients such as Gladstone -v- Bower tenancies or leases approved by MAFF. This led to a lack of capital investment.

The 1995 Act created a new kind of tenancy called a farm business tenancy. The terms of such tenancies are very much a matter of negotiation. For example, the duration of the tenancy and the frequency of rent review can be agreed. The Act contains no bar on assignment or sub-letting so these matters can be dealt with in the agreement if required. A number of terms are imposed by the Act particularly in relation to notice, rent review procedure, fixtures, improvements and compensation. These are referred to more fully below.

If certain conditions are satisfied, land let on a farm business tenancy will be eligible for 100% relief from inheritance tax on the death of the landowner.

The Agricultural Holdings Act 1986 was effectively scrapped except in relation to continuing tenancies granted before 1 September 1995 and tenancies granted under the succession provisions of the 1986 Act. Grazing licences continue to be attractive in some situations, particularly to preserve eligibility for capital gains tax, retirement and roll-over reliefs, though the former is being phased out.

What is a Farm Business Tenancy?

As most farm tenancies are granted to a tenant in the course of his business it is important to distinguish a farm business tenancy covered by the 1995 Act from a business tenancy which is governed by the Landlord and Tenant Act 1954 Part II. The law relating to business tenancies is outside the scope of this leaflet, but, broadly speaking, the tenant enjoys security of tenure beyond the term of his lease which is not a feature of the farm business tenancy. To qualify as a farm business tenancy two tests must be satisfied:

1. "The business condition" - the land must be farmed throughout the tenancy as a trade or business.

2. Either (a) "the notice condition" - before the grant of the tenancy the parties exchange notices identifying the land concerned and stating the intention that the tenancy will be, and remain, a farm business tenancy.

Or (b) "the agricultural condition" - at the beginning of the tenancy the character of the tenancy is primarily or wholly agricultural.

It is important that there should be a covenant in the tenancy agreement that farming will be undertaken on the holding throughout the term. In ascertaining use for either the business or agricultural condition any activity in breach of covenant is disregarded unless the landlord has waived the breach.

How is a Farm Business Tenancy Terminated?

If the tenancy is granted for a fixed term of two years or less it will end automatically at the end of the fixed term without any notice from either party. If the tenancy is a yearly tenancy, or for a fixed term longer than two years, notice of between one and two years must be given by either party to expire on an anniversary of the commencement of the tenancy. Other periodic tenancies need a full period's notice e.g. a month for a monthly tenancy.
Landlords no longer have an automatic right to regain possession, e.g. of redundant farm buildings, for development simply because they obtain planning consent. Landlords must include a provision in the agreement entitling them to do so or wait until the end of the tenancy.

Rent Review

It is open to the parties to agree the frequency of rent review or that there shall be no review. If there is to be a review they can agree a formula. If nothing is agreed, either party can demand a rent review every three years. Unless a fixed basis for review is agreed, for example by reference to the Retail Prices Index, either party may require that any review is referred to arbitration.

Fixtures, Improvements and Compensation

Tenants may remove tenants' fixtures before the end of the tenancy and landlords have no right to purchase them.

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The Act contains a number of provisions dealing with compensation. Broadly speaking, tenants are only entitled to compensation for an improvement which:

1. Was consented to by the landlord; and

2. Remains on the holding at the end of the tenancy, and

3. Adds to the letting value.

The amount of compensation payable is an amount equal to the increase in the letting value.

The landlord's consent to an improvement may be in the tenancy agreement e.g. a contractual provision entitling the tenant to claim compensation for standing crops. Otherwise the tenant may apply for consent at any time during the tenancy and (with the exception of planning approval and "routine improvements") if the landlord refuses consent or imposes unacceptable conditions the tenant can refer the matter to arbitration.

Planning approval may well add to the letting value but if the landlord refuses to allow the tenant to apply for planning approval there is no right to refer to arbitration. However, the landlord cannot prevent the tenant making a planning application (unless the agreement itself precludes it) so a tenant may be able to obtain planning approval and then ask the landlord to consent to implement the approval leading to a further increase in the letting value. The right to refer to arbitration would then apply.

"Routine improvements" as defined in the Act are similar to tenant right.

Again there is no right to refer to arbitration but there is no reason why the tenancy agreement itself should not contain provisions with regard to matters which until now have been regarded as tenant right.

How can Warners help you?

Please contact one of our specialist lawyers who can assist you with negotiation of the individual terms of any agreement or any other related legal issues.

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You can find out more at
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