



## Tenant Farmers

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- Tenant farmers have played a major part in British agriculture for hundreds of years. However, it has proved difficult to decide how much security of tenure to grant them. If they have too little security, they have no incentive to improve the land. If they have too much, landowners are seriously discouraged from letting out their land.
  - The amount of security increased until the 1970s when it reached security for the tenant and the following two generations.
  - Later legislation allowed tenancies to be granted without all that security. In 1995 a new class of farm business tenancies was introduced, allowing the landowner much more freedom to end the tenancy. However, many tenants retain security of tenure under earlier legislation.
  - Tenant farmers tend to be poorer farmers because they have not benefited from the increase in land values over the past decades.
  - Although there was concern that CAP reform might disadvantage tenant farmers, it is not clear that that has been the case.
  - Tenant farms owned by county councils have been a traditional way for farmers to get started. Farmers are concerned that councils are selling them off, so as to realise the capital tied up in them.

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## Contents

<b>1</b>	<b>Background</b>	<b>2</b>
<b>2</b>	<b>Tenancy Reform Industry Group and Regulatory Reform Order 2006</b>	<b>2</b>
<b>3</b>	<b>CAP reform and tenant farmers</b>	<b>3</b>
<b>4</b>	<b>Threat to County Council Farms</b>	<b>4</b>
<b>5</b>	<b>Issues for tenant farmers</b>	<b>6</b>
	5.1 Nitrate Vulnerable Zones restrictions	6
	5.2 Uplands Entry Level Stewardship	7
<b>6</b>	<b>Tenant Farmers Association criticises short-term thinking</b>	<b>7</b>

## 1 Background

Tenant farmers remain an important part of British agriculture. Tenants farm 30% of farmed land in the UK. They are also a traditional means of entry for young farmers who do not happen to inherit a farm. Tenancy law is a complex balance of advantages shared between tenants and landowners, which has frequently been altered. The 1970s saw the high tide of security with tenants secured for three generations. Since then, the law has moved to allow much freer contracts with the introduction of Farm Business Tenancies in 1995. Further reforms were introduced by *The Regulatory Reform (Agricultural Tenancies) England and Wales Order 2006*.

## 2 Tenancy Reform Industry Group and Regulatory Reform Order 2006

The Tenancy Reform Industry Group was reconvened after the Curry Report,<sup>1</sup> and produced a report in May 2003, calling for greater flexibility for Farm Business Tenancies.<sup>2</sup> The proposals were implemented by the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006. *Farmers Weekly* gave an overview of the effect of the Order:

A regulatory reform order, which will amend traditional Agricultural Holdings Act [AHA] and farm business tenancies to allow greater flexibility and make it easier for tenants to diversify, was laid before parliament last week and should become law by the autumn if it is not opposed.

Included in the RRO, which is part of the recommendations of the cross-industry Tenancy Reform Industry Group formed in 2002, are measures that remove the ban on adding extra land or buildings to existing AHA tenancies, make it easier for tenants and landlords to agree rental terms and put a cap on tenant's compensation at the end of a tenancy.<sup>3</sup>

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<sup>1</sup> Policy Commission on the Future of Farming and Food, *Farming & Food: a sustainable future*, January 2002

<sup>2</sup> Tenancy Reform Industry Group, *Final Report*, May 2003

<sup>3</sup> "Law reform to give tenant sector a shot in the arm", *Farmers Weekly*, 12 April 2006

The new legislation came into effect in October 2006:<sup>4</sup>

The changes introduced will:

- \* Enable a successor to a tenancy to earn income from diversified activities without losing the right to succession, where the landlord consents;
- \* Enable landlords and tenants to reach their own agreements on rent reviews and end of tenancy compensation;
- \* Make it easier for landlords and tenants to restructure holdings held under a 1986 Act tenancy;
- \* Remove the need for unnecessary applications to the Agricultural Land Tribunal where a landlord agrees on the successor to the tenancy;
- \* Enable landlords and tenants to agree the length of a notice period to suit their particular circumstances, providing it is longer than the minimum period of 12 months.

The changes are the culmination of the work of the Tenancy Reform Industry Group and reflect the Group's recommendations to Government on the way forward on tenancy reform...The new legislation comes into effect as the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006 amends the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995...<sup>5</sup>

### **3 CAP reform and tenant farmers**

In June 2006, Defra published research on the effect of the CAP reform on tenant farmers:

The Government has always said that it was aware that the introduction of the Single Payment might have particular implications for tenant farmers and that it intended to monitor the effect of CAP reform on the tenanted sector. The primary purpose of the Coventry University research project was to look at the potential impact of CAP reform on the diversified activities of tenant farmers, and also the impact of the Single Payment on landlord/tenant relationships more generally. The research by Coventry University has produced a baseline study, which will be followed up by a further study in the next few years, when the impact of CAP reform would be expected to have emerged more clearly.

The main findings of the baseline research are:

- \* More than two thirds (70%) of tenant farmers have already diversified
- \* Most diversification activities take place on larger farms and where the main tenancy is held under the Agricultural Holdings Act 1986.
- \* Most tenant farmers do not expect to change their intentions in relation to diversification as a result of CAP reform.
- \* Tenants of wholly tenanted farms regard themselves as least likely to change or diversify as a result of CAP reform.
- \* Both tenant farmers and landlords predict a process of consolidation which might lead to fewer and larger farms with tenanted land.
- \* Both landlords and tenants are uncertain about the impacts of CAP reform on farm businesses.

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Professor Brian Illbery [leader of the project] from Coventry University, said:

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<sup>4</sup> *The Regulatory Reform (Agricultural Tenancies) England and Wales Order 2006* SI 2006/2805  
<http://www.opsi.gov.uk/si/si2006/20062805.htm>

Tenancy Reform Industry Group/Defra Guide to the Order is at  
<http://www.defra.gov.uk/foodfarm/farmmanage/tenancies/index.htm>

<sup>5</sup> Defra Press Release, *New legislation on agricultural tenancies in England and Wales*, 19 October 2006

"The research highlighted considerable uncertainty among both tenant farmers and landlords. This related more to the level and timing of the Single Payment and to issues surrounding entitlement than to future diversification activities. Nevertheless, more than a third of already diversified tenant farmers did suggest that the Single Payment is likely to influence their future diversification plans. Perhaps worryingly, most of those who have not diversified have no intention of doing so in the future. Further and more detailed research on landlord-tenant relationships, in different types of farming region, is now required."

A copy of the report by Coventry University can be found on the Defra website at <http://statistics.defra.gov.uk/esg/publications/diversification.asp...><sup>6</sup>

#### **4 Threat to County Council Farms**

In January 2007 David Drew had a short Westminster Hall debate on the threat to the Gloucestershire county council estate of farmland let to tenant farmers. Such estates have often offered a start to new farmers without land or money. He argued for early retirement schemes:

Let me move on to the issue of the retirement scheme. We argued in favour of that in the 2001 election manifesto. It disappeared in 2005 but, again, tenants would, to a person, always argue that they would want that matter to be considered. With the ageing of the farming population, we need, alongside Fresh Start, a way to encourage people to retire from the land. The average age of people on county farm estates is increasing considerably. I suspect that we have more 60-year-olds than 30-year-olds, which is not a good way for an industry to run.

He continued:

My main argument today is that the time is long overdue for the Government to launch a review of county council smallholdings. We have had no legislation on the matter for a considerable time. We have not even had a statement from the Government since 2003-04. Lord Rooker, in a previous ministerial post, made very good remarks about how he saw the strategic importance of these landholdings, but that is not the same as a proper review and guidance—I put it no more strongly than that—to local authorities on the importance of keeping these estates, rather than seeing wholesale or even piecemeal sales. There is a need, therefore, to examine how the Government plan to take the matter forward. The challenge to the Minister, and my fear, is that we are seeing a different and more threatening approach to the future of the estates. Death by a thousand cuts is still death, and even though there seems to be some lessening of the pressure for wholesale sales, piecemeal sales are certainly growing.<sup>7</sup>

Barry Gardiner replied for Defra:

Tenant farmers have a very important role to play in securing a sustainable future for the farming industry in this country. The Government are committed to ensuring a vibrant and prosperous tenanted sector. Only recently, my noble Friend Lord Rooker, speaking at the 25th anniversary conference of the Tenant Farmers Association, emphasised the importance of the tenanted sector. Tenancies give many farmers the flexibility that they need to adopt new farming practices. They also provide a much-

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<sup>6</sup> Defra Press Release, *Defra publishes research on potential impact of CAP reform on tenant farmers*, 6 June 2006

<sup>7</sup> HC Deb 9 January 2007 c51WH

needed way into farming, particularly for young people who do not have a farming background. I take on board my hon. Friend's remarks about the increasing age profile of tenant farmers on county farm estates. That seems to be at odds with part of the purpose that we have talked about, and we need to consider the issue.

Statutory smallholdings, or county farms as they tend to be called, have traditionally played a key role in helping new entrants to get a foot on the farming ladder. That role is recognised in the literature published to promote Sir Don Curry's fresh start initiative, which is aimed at getting new people into the industry, as well as helping older farmers to retire. The traditional image of county farms means that they are often thought of solely as agricultural holdings. As a result, some local authorities may be reluctant to allow tenant farmers to develop new business ideas. However, there are many examples of county farm tenants who have taken advantage of diversification opportunities in order to adapt to changes in consumer demands...

Faced with growing financial pressures and the need to consider the interests of all their taxpayers, many local authorities have sought to realise assets that are bound up in county farms. My Department will continue to support the county farm system, particularly—I stress this—in its role in providing opportunities for new entrants. We have encouraged local authorities to think carefully before disposing of farms. My noble friend Lord Whitty wrote to all smallholding authorities in January 2004, reminding them precisely of their obligations under the 1970 Act to make it their aim to enable people to farm in their own right. In doing so, he honoured a commitment that the Government gave in their response to the recommendations of the Tenancy Reform Industry Group.

The Government believe that county farms provide a valuable first step on the farming ladder, and they therefore urge smallholding authorities to consider all their options before deciding to sell their farms. However, the Government have no statutory powers to influence the management of county farms or to prevent their disposal. Those decisions are entirely for individual local authorities...

My hon. Friend suggested that there should be a major investigation into the role and value of county farm estates, but we have no plans to use the provisions of the 1970 Act to initiate a review of smallholdings. That idea was considered in the light of the TRIG [Tenancy Reform Industry Group] report, but after receiving advice that such a review could not prevent the further disposals of county farms we agreed that it would serve no purpose and would, moreover, be a burden on local authorities...

My hon. Friend raised several other issues that are relevant to tenant farmers to which I would like to respond. As he acknowledged, TRIG's fiscal recommendations are primarily matters for the Chancellor. The recommendation on business asset taper relief was implemented by the Chancellor in the 2003 Budget. The other recommendations are still under consideration and TRIG should pursue them directly with the Treasury.<sup>8</sup>

The Minister also rejected the idea of early retirement:

With regard to an early retirement scheme for tenant farmers, I know that fellow Ministers have considered this issue carefully in the past few years. The Government have decided against introducing such a scheme because it would not provide value for money compared with the large costs that are likely to be involved and because it would offer little public benefit. That view is shared by the policy commission on the

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<sup>8</sup> HC Deb 9 January 2007 cc52-5WH

future of farming and food. Further, funding a retirement scheme could mean having to close down or shrink other grant schemes that provide valuable public benefits, such as the agri-environment schemes. That would be a poor shift of resources.<sup>9</sup>

In April 2010 *Farmers Weekly* reported that three tenants had been given notice to quit without explanation by Somerset Council.<sup>10</sup> In May 2010 the Tenant Farmers Association welcomed Sir Don Curry's support for tenant farms, but deplored the extent of sales:

The Tenant Farmers Association is supporting Sir Don Curry's call for action to be taken to preserve a "farming ladder" in British agriculture.

TFA Chief Executive George Dunn said "For the vast majority of individuals who would seek to enter the industry from outside of agriculture, agricultural tenancies remain the only viable route available to them. There has been much talk in recent years about the need to ensure that viable opportunities exist for new entrants. Whilst share farming, share partnership and contract farming arrangements are all helpful at the margin, it is only within the security of an agricultural tenancy that farm businesses without access to owned land can become established, remain sustainable and improve".

"For many years, County Council smallholding estates have been a significantly important part of the landlord tenant system in England and Wales. However, it has been alarming to view the extent to which the size of the sector has diminished over the past 25 years. Over that period of time we have lost around half the number of holdings and a third of the area. The TFA believes that more needs to be done to protect county farms for the future of our industry and to that extent the TFA has been pleased to see that a number of local authorities including Devon, Norfolk and Hampshire have been taking a longer term view of their county farms estates and making the decision to retain them and manage them more effectively. However others like Somerset and North Yorkshire continue to take a blasé approach to the management of their estates which focuses only on disposal," said Mr Dunn.

"The gulf between the county farms sector and the private sector has widened, both in terms of farm size and capital requirement. Also, the number of opportunities for whole holdings in the private sector has greatly diminished over recent years. After 15 years the market in Farm Business Tenancies has failed to provide a sustainable basis for the development of the let sector in agriculture which is very much in our national interest. We therefore look forward to working with Sir Don in encouraging the big estates to work to preserve and enhance the farming ladder," said Mr Dunn.<sup>11</sup>

## **5 Issues for tenant farmers**

### **5.1 Nitrate Vulnerable Zones restrictions**

Compliance with regulations on Nitrate Vulnerable Zones is a serious issue for farmers. *Farmers Weekly* argued in 2009 that it is particularly serious for tenant farmers:

Anti-pollution rules mean tenant farmers face having to spend thousands of pounds to upgrade farms which don't belong to them. (...) Tenancy law expert Adam Winthrop, of chartered surveyors Windle Beech Winthrop, said the restrictions threatened to hit

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<sup>9</sup> HC Deb 9 January 2007 c55WH

<sup>10</sup> "Council farms sell-off is 'worrying change'. *Farmers Weekly Interactive*, 28 April 2010

<sup>11</sup> Tenant Farmers Association Press Release, Farming ladder vital to national interest, 18 May 2010

tenanted farm businesses particularly hard, with livestock producers among those worst hit. Some producers - especially those who must build new slurry stores - faced especially steep costs, Mr Winthrop told an NFU meeting of about 60 farmers who gathered at Pendleton Village Hall, south-east Lancashire.<sup>12</sup>

## 5.2 Uplands Entry Level Stewardship

The TFA disapproved strongly of the change in 2010 in the system of financial support for hill farms, because it excludes those with short-term tenancies:

The Tenant Farmers Association will not be welcoming Natural England's new Uplands Entry-Level Scheme (ELS) with open arms when it is launched this week due to the implications for hill farmers on short term land occupancy agreements and for those whose landlords already participate in ELS. (...)

Whilst HFA has been payable to claimants with land available to them for grazing on an annual basis, Uplands ELS will only be available to those who have 'management control' of the same land for a period of at least five years. This will have implications for individuals on short-term agreements or where it is envisaged that existing tenancy agreements will be ended within five years of now. Also, where landowners claim ELS or Uplands ELS payments themselves, the farmer will be ineligible to participate in the new scheme.<sup>13</sup>

## 6 Tenant Farmers Association criticises short-term thinking

In September 2009 the Tenant Farmers Association issued a press release criticising short-term thinking:

The Tenant Farmers Association's National Chairman, Greg Bliss will tell a congress of rural lawyers from across Europe that Farm Business Tenancies in England and Wales are failing to provide the long term security that farm tenants require.

Mr Bliss will be speaking at the opening ceremony of the 2009 Congress of the European Council for Rural Law at Queen's College Cambridge this evening.

"We are nearly 15 years on from the introduction of Farm Business Tenancies under the 1995 Agricultural Tenancies Act and whilst we have arrested the previous year-on-year decline in the area of let land which was evident before the introduction of the new legislation, there remain painfully few opportunities for new farm tenancies in England and Wales. Last year only 8.5% of lettings were of both land and buildings and less than 8 per cent included houses leaving 84% of lettings as bare land. On top of this, with an average length of term of only 3½ years on those tenancies which are being offered, there seems to be little if any long-term thinking amongst landlords and their advisers," said Mr Bliss.

"The landlord tenant system provides an excellent framework for the needs and aspirations of the landowner to be complemented by those of the farmer. Wealth and fixed capital can be combined with innovation, farm business acumen and drive to achieve joint ends. However, if landlords and their advisers continue to look short term these ends will not be met. What we need are landlords interested in promoting long-term sustainability, advisers who are seeking to facilitate sustainable businesses and tenants who are prepared to share fairly the rewards of farming their holdings," said Mr Bliss.

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<sup>12</sup> "Tenants to be hit badly by NVZ compliance costs", *Farmers Weekly Interactive*, 2 January 2009

<sup>13</sup> TFA Press Release, *Uplands ELS Blow to Short Term Holders of Land*, 8 February 2010

“Of course there are some legislative obstacles to long term thinking which cannot be ignored most notably the taxation framework within which land management decisions are made. It remains the case that it is more tax efficient to remain an owner occupier, even when you do not possess the required skills, than it is to grant a lease to a tenant farmer who does possess those skills. It is a major disappointment that despite the agreement that exists on the fiscal changes that should be implemented, as expressed through the Tenancy Reform Industry Group, the Government fails to recognise the need for change,” said Mr Bliss.<sup>14</sup>

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<sup>14</sup> TFA Press Release, *Farm Tenancies Suffer from Short Term Thinking*, 23 September 2009