

# Can You Have Too Much Security of Tenure?

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**Key words:** Land management, security of tenure, access to land, legislation.

## SUMMARY

It is generally taken as an axiom of land management and administration that strong security of tenure for occupiers of property is an important pre-requisite for rural and urban property management and development, particularly in developing countries.

This paper reviews developments in land tenure in the English and Welsh regions of the United Kingdom, with reference to agricultural, residential and commercial property. A comprehensive code for the letting of agricultural property was formulated in 1948, in the Agricultural Holdings Act of that year. This code was gradually extended to cover not only security of tenure, but also rent control, maintenance obligations, improvements and tenant's fixtures and tenancy succession. The period since 1948 saw a continuing steady decline in the number and area of let farms in the UK. Some of the blame for this decline was attributed to the legislation conferring security of tenure. Key stakeholders in the agricultural industry agreed to detailed reforms, which were implemented in 1995 under the Agricultural Tenancies Act. This introduced the concept of the Farm Business Tenancy, offering much more flexible terms and greater freedom to agree individual contractual terms between landlord and tenant.

The Rent Act 1977 consolidated a comprehensive framework for the protection of residential tenants. This included strict controls over the level of rents and also provided for tenancy succession. One consequence of this legislation was significant decline in the number of dwellings available for rental and deterioration in the condition of those that remained. The Housing Act 1980 saw the first efforts to dismantle these arrangements for new tenancies, with significant further developments taking place via the Housing Acts of 1988 and 1996. A consequence of these changes has been the development of an active market in let residential property, with greater choice for prospective tenants and attractive returns for the property investor.

The commercial sector has seen far less change, with the Landlord and Tenant Act of 1954 continuing to provide a fairly steady basis for lettings of commercial property. This Act has recently seen small changes to further reduce the role of the courts in regulating agreements between landlords and tenants. Of the three let property markets in the UK, it has been the most stable during the second half of the twentieth century.

This paper reviews some of these developments and their impact on the let sector, and discusses some of the conclusions which may be drawn concerning security of tenure in developed and maturing economies.

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## 1. INTRODUCTION

Landlord-tenant law in England and Wales has developed along three distinct strands, with separate statutory codes formulated during the twentieth century for agricultural, residential and commercial property. Of the three types of property, commercial property appears to have been the most stable. The codes for agricultural and residential property have changed significantly since the early-1980's in response to the apparent need to encourage letting activity by the reduction of security of tenure for occupiers. The proposition on which reduction of security has been based is that landlords are reluctant to let property if security of tenure is too strong. Rent control has also been seen as a factor in the reluctance of freehold property-owners to let property.

This paper reviews developments in agricultural tenancy law, and seeks to set them in the wider context of the codes for residential and commercial tenancies.

## 2. AGRICULTURAL PROPERTY

### 2.1 Historical development

The first attempt to regulate the relationship between agricultural landlords and tenants was not concerned with security of tenure at all. It was the Agricultural Holdings (England) Act 1875. This Act introduced a statutory compensation code for tenants at the end of their tenancies, and it introduced a dispute resolution procedure with a right of appeal to the courts. However, the Act permitted landlords to contract out of the statutory provisions, which was what most landlords did.

The ability to contract out of the compensation provisions was removed by the Agricultural Holdings (England) Act 1883. This Act also introduced a very limited security of tenure. Notice to quit of a full year had to be given, unless landlord and tenant had agreed otherwise.

The Agricultural Holdings Act 1900 supplemented the 1883 Act by introducing an arbitration procedure to deal with disputes.

The Agricultural Holdings Act 1906 introduced four new measures mainly for the protection of tenant farmers, the right to compensation for game damage, freedom of cropping, compensation for disturbance on leaving a tenancy and the right for either landlord or tenant to demand that a record of the condition of the holding should be prepared. Various minor amendments and consolidating measures then led to the Agricultural Holdings Act 1923, another consolidation measure.

Security of tenure, beyond the requirement for Notice to Quit of one year, was not a feature of any of this early legislation. Lifetime security of tenure for tenant farmers was introduced for the first time by the Agriculture Act 1947. This was rapidly replaced by the Agricultural Holdings Act 1948. The 1948 Act set out a comprehensive code to regulate the relationship between agricultural landlords and tenants which still applies, in modified form, to many tenancies today. Further changes were made in the Agriculture Act 1958, and in the Agriculture (Miscellaneous Provisions) Acts of 1949, 1954, 1963, 1968, 1976 and the Agricultural Holdings (Notices to Quit) Act 1977.

Of these Acts, the Agriculture (Miscellaneous Provisions) Act 1976 was very important because it extended security of tenure by the introduction of succession rights for up to two further generations of the original tenant's family.

By the late-1970's and the early-1980's, there was considerable concern about the shortage of farms to let. This was partly attributed to fear of the succession rights which had been introduced in 1976. Tenant farmers were however, also concerned about the high level of rents. The basis of a rent review was set out in the 1948 and 1958 Acts as open market rent. Given the high competition for the few farms which did become available to rent, new tenants were tendering high rents and these formed the uncomfortable basis for rent reviews for existing tenant farmers. This was made worse because most successful rent tenders were from established farmers, often owner-occupiers, who were already operating from a strong economic base. These two problems, the shortage of farms to let and the high level of rents, were the target of the Agricultural Holdings Act 1984.

The 1984 Act withdrew the right of succession from all new tenancies granted on or after 12 July 1984. Both old and new tenancies generally retained the lifetime security of tenure for the original tenant. Instructions were also set out for rent reviews, which required that the productive and related earning capacity of the farm should be considered as one of the factors in a rent review.

The Agricultural Holdings Act 1986 was another consolidation measure, because the statutes had become so fragmented. The effective legislation was to be found in various of the Acts from 1948 to 1984, and the 1986 Act bought all the statutes together in one place for the first time since 1947/1948.

However, farm tenancy law was very soon to begin the process of fragmentation again. The Agriculture Act 1986 was used to deal with milk quota and its effect on rent reviews and end-of-tenancy compensation, and the Agricultural Holdings (Amendment) Act 1990 had to be passed in order to overcome the unexpected consequences of a case concerning security of tenure on farm cottages, *Bell v. McCubbin*.

Despite the attempt in 1984 to reverse the decline in tenanted farms, the tenanted agricultural sector continued to decline. Far more radical measures were introduced for new tenancies in 1995, with the Agricultural Tenancies Act 1995. This introduced a completely new concept

for new lettings of farms, the Farm Business Tenancy, while leaving existing tenancies as they are.

The consequence of all this legislative development today is that we now have, in England and Wales, three distinct types of agricultural letting:

1. Lettings originally granted before 12 July 1984, which give the tenant comprehensive security of tenure and other protections, as well as succession rights.
2. Lettings originally granted on or after 12 July 1984, but before 1 September 1995, which are similar in all respects to earlier lettings other than the availability of succession rights
3. Lettings originally granted on or after 1 September 1995 which offer very limited statutory protection of any sort to the relationship between landlord and tenant.

These three areas will now be explored in more detail.

## **2.2 Agricultural leases granted before 12 July 1984**

The principal features of agricultural leases granted before 12 July 1984 as they exist today are as follows:

An *Agricultural Holding* is defined widely, as land let for agriculture for the purpose of a business. The land must be let for an agricultural use, which is broadly defined so as to include market gardens and nurseries for example, and the use must be for a trade or business. Buildings are included in the definition of land, and there is no minimum or maximum size for an agricultural holding. There were specified exceptions to the types of letting which were protected by the Agricultural Holdings Act, and these included grazing and mowing licences, licences and lettings which had the approval of the Ministry of Agriculture and tenancies which were for longer than 12 months but shorter than 24 months (sometimes called Gladstone-Bower or 18 month tenancies), as well as tenancies which arise as a result of employment by the landlord.

A key feature of the Agricultural Holdings Act 1986 was the extent to which it overrode private agreements between landlord and tenant. In particular, this affected rent reviews, security of tenure, the tenant's freedom of cropping, improvements made by the tenant and compensation for them and tenancy succession. Tenancy agreements did not have to be in writing, but if there was not a written agreement either landlord or tenant could demand one. If the parties were unable to agree the terms of an agreement, arbitration was available as a means to resolve their differences. An arbitrator's award of a written agreement would include the names of the landlord and tenant, the rent payable, a power of entry for the landlord and a prohibition on assignment, subletting and otherwise parting with possession.

### 2.2.1 Repair and Insurance obligations

Landlords and tenants were free to agree their own terms for repairing and insurance liabilities, but the law provided model clauses to cover cases where tenancy agreements omitted any or all of the repairing liabilities. These clauses varied over the years, those applicable depending on when the tenancy was first granted. Broadly however, the effect is to make the landlord responsible for the main structures of buildings, water mains, sewerage, reservoirs and fire insurance. The tenant is left responsible for everything else, typically hedges, ditches, roads and ponds. The Act also allows landlords to serve a notice requiring repairs to be undertaken by the tenant, which can ultimately affect the tenant's security of tenure if it is not obeyed or challenged effectively.

### 2.2.2 Rent Reviews

Rent reviews are closely governed by the Act, although the rent at the start of the tenancy was entirely for negotiation between landlord and tenant. Rent reviews are initiated by the service of a notice requiring arbitration of the rent, even though in practice nearly all rent reviews are settled by negotiation. Rent reviews can only take place every three years, other than in narrowly-defined circumstances and disputes are settled at arbitration, with the President of the Royal Institution of Chartered Surveyors given the statutory power to appoint an arbitrator if the parties cannot agree on their own appointment.

The valuation basis of a rent review is the "rent at which the holding might reasonably be expected to be let by a prudent and willing landlord to a prudent and willing tenant". "All relevant factors" must be taken into account, including the terms of the tenancy (other than rent), the character, situation and locality of the farm, and comparable rent levels. The farm's productive capacity and related earning capacity must also be considered. Certain factors must also be disregarded. These include the effects of scarcity and marriage value on comparable rents, disrepair and deterioration, grant aid on landlord's improvements, the fact that the tenant is in occupation and, if relevant, his high standard of farming (so-called 'high farming'). The effect of all this was that rents on review tended to be £25 or more lower per hectare than on a first letting of a farm.

### 2.2.3 Physical and other Improvements

Landlords and tenants were free to make building and other 'improvements' to farms and to decide the terms on which they would be undertaken. The landlord could increase the rent without disturbing the three-year cycle if he paid for an improvement. Some tenant's improvements did not need the consent of the landlord, e.g. mole drainage, liming, fertiliser application, but more substantial improvements did need consent, e.g. planting hops or fruit bushes and the provision of underground tanks. A third category could either be the subject of the landlord's consent, or if refused the consent of the Agricultural Land Tribunal. This important category included buildings and yards, fences, permanent land drainage, electricity and farm waste stores. Consent and its details are important to compensation for the tenant at the end of a tenancy.

### 2.2.4 Security of tenure

Security of tenure was achieved through the strict limits placed on the circumstances in which a Notice to Quit could be effective. Thus most tenancies must be subject to at least 12 months' notice to quit, and this period can only expire on a term day (normally the anniversary of the tenancy). Fixed term tenancies automatically become annual tenancies at the end of the fixed term. Annual tenancies continue from year to year, and the Act placed severe restrictions on the circumstances in which a valid notice to quit can be served. It is nevertheless necessary for a tenant to challenge a notice to quit if he is to secure his tenancy. Valid Notices to Quit can be served for very few reasons, but these do include

- bad husbandry by the tenant (a certificate of bad husbandry must be obtained from the Agricultural Land Tribunal, they were rarely granted)
- insolvency/bankruptcy of the tenant
- death of the tenant (but see the succession provisions)
- Irremediable breach of tenancy terms or failure to comply with a notice to pay rent or remedy a breach of the tenancy
- The landlord's requirement of the holding for a non-agricultural use for which planning permission has been obtained from the local authority, or for which planning permission is not needed (in practice there are few such uses other than agriculture itself)

In the absence of reasons like these, the landlord could still serve Notice to Quit but the Agricultural Lands Tribunal would consider issues like the relative hardship to landlord and tenant and whether a fair and reasonable landlord would insist on possession. Not surprisingly few notices like this ever succeeded.

The overall effect of granting a tenancy of a farm was therefore to grant the tenant a life interest in the property because of the very narrow circumstances in which the landlord could bring the tenancy to an end.

### 2.2.5 End of tenancy compensation

Where tenancies do come to an end, the Act entitled tenants to compensation for a wide range of matters including general disturbance in having to leave the farm of one to two years' rent (plus a further four years if for reasons of non-agricultural development).

'Tenant right' compensation covers the value of growing and harvested crops in store, seeds sown, cultivations and other husbandry, pasture, acclimatised sheep and the residual fertility value of certain grass leys.

Compensation for 'improvements', e.g. buildings and roads, can either be on a statutory basis or on terms agreed at the time between landlord and tenant (a ten-year write off period was common). Compensation was also available for 'fixtures' (similar to improvements but

lacking the consent of the landlord) if the landlord wished to buy them from the departing tenant. This would be based on the value of the fixture to the next tenant.

The landlord could also claim compensation from the tenant for damage and deterioration of the holding, although there were limits on the total amount which could be claimed.

### 2.2.6 Succession rights

Tenancy succession was not an automatic right. It has to be claimed by the successor. A succession tenancy will only be granted if the successor passes a number of tests concerning his or her *eligibility* and *suitability*.

The requirements for eligibility are to have been a close relative of the deceased tenant (e.g. wife, brother or sister, child), and to have derived the principal source of livelihood from the holding. A successor is disqualified if they already occupy another commercial farm (a farm capable of providing two incomes).

The applicant for succession must also be suitable in terms of their training and experience, age and health, and financial standing.

Applications are made to the Agricultural Land Tribunal. Two successions are allowed. There are provisions for succession to take place on retirement as well as on death.

## **2.3 Agricultural leases granted on or after 12 July 1984 (but generally before 1 September 1995)**

Succession rights were withdrawn for new tenancies granted on or after 12 July 1984. In all other respects these tenancies are regulated in the same way as those granted before 12 July. The consolidated legislation in the Agricultural Holdings Act 1986 covers both types of letting.

The law was to change again on 1 September 1995. A number of complications arise from the changes. For example, a first succession tenancy granted to a pre-1984 tenancy at any time after 12 July 1984 still carries a further right to succession.

## **2.4 Lettings granted on or after 1 September 1995**

The Agricultural Tenancies Act 1995 introduced a fundamentally different regime for farm tenancies with effect from 1 September 1995. Most tenancies granted after this date are subject to the new rules. Exceptions include succession tenancies granted under the earlier legislation after that date, and some leases which had been agreed earlier but did not come into effect until after 1 September 1995. The new types of tenancy are called Farm Business Tenancies.

A Farm Business Tenancy requires that the land is used for a business purpose. The use must be primarily agricultural unless the landlord and tenant have exchanged notices to acknowledge that the use is primarily agricultural at the outset, and that they intend to create a farm business tenancy.

#### 2.4.1 Rents of Farm Business Tenancies

There is a statutory rent review procedure which requires that a notice is served 12 to 24 months before a rent review is to take effect. If an arbitrator is appointed to settle the rent, the basis of the rent review must be the market rent as between a willing landlord and a willing tenant. Rent reviews can generally take place every three years under the statutory procedure.

The landlord and tenant can agree alternative methods to review the rent. These might include the use of pre-agreed criteria, e.g. indexation.

#### 2.4.2 Security of tenure

The tenant has no security of tenure beyond the initial term of the tenancy agreement. A tenancy granted for more than two years must be ended by a Notice to Quit served 12 to 24 months before the expiry date. A tenancy for two years or less automatically expires on its term day.

If notice is not given to end a fixed term tenancy of more than two years, it continues as an annual periodic tenancy running from year to year. Any tenancy from year to year is ended by the service of 12 to 24 months Notice to Quit.

The tenant farmer therefore has far less security of tenure than under the earlier legislation.

#### 2.4.3 End of tenancy Compensation

Two types of improvement are recognised in the statute, physical improvements (e.g. buildings, drains etc) and 'intangible advantages' – for example the transfer of quota (production/subsidy rights) on to the holding, or planning permission for development.

Compensation is available for both types of improvement, but only if the landlord's consent has been obtained beforehand. If the landlord refuses consent to a physical improvement, the consent of an arbitrator can be sought instead.

Compensation is payable at the end of the tenancy for an improvement, based broadly on the improved value of the holding as a result of the improvement.

It is not possible to contract out of these provisions, and this has been seen as a disincentive to longer-term lettings under the Agricultural Tenancies Act.

Unlike the earlier legislation, the Agricultural Tenancies Act makes no provision for the allocation of repairing responsibilities, insurance obligations, dilapidations, the right to a written agreement, or any circumstances in which a landlord may have a right to end the tenancy prematurely. These matters are all left to the parties to agree. Neither does the Act give tenants freedom of cropping, and its intervention in the process of rent review is very limited by comparison with the rent regime for older tenancies.

## **2.5 Development of policy towards agricultural lettings**

The historical development of English agricultural holdings legislation should be seen in the context of the stakeholder interests represented by landowners, tenant farmers and government policy towards agriculture and the countryside – and therefore also in terms of the fluctuating power relationships between these three groups. A fourth group is also of interest, consisting of aspirant tenant farmers who wish to enter the agricultural industry by obtaining a tenancy of agricultural land.

Tenant farmers had the dominant position in this relationship from the 1940's to the 1970's because of the policy emphasis during this period first, on maximum food production and then on efficiency in agriculture. Strong security of tenure and a high degree of protection were seen as the way of ensuring that tenant farmers would be able to contribute most effectively to national agricultural output. The coincidence of government and tenant interests therefore dominated the development of the law during this period, with landowners losing out in terms of extended security and rent protection.

However, concern began to grow at the loss of land to the tenanted sector. This restored the balance of power to the landowners to some extent, leading to the abolition of tenancy succession rights for new tenancies in 1984 albeit at the expense of a greater degree of rental protection for tenants. Landowning and tenanted interests may perhaps be seen as coming into equilibrium at that time.

By the 1990's it was clear that the trend of long-term decline in the agricultural tenanted sector had continued. More generally the agricultural industry had come to be dominated by owner-occupiers, many of whom sought to add to the efficiency of their own businesses by being able to acquire the use of land on flexible terms. Government policy was by now less unequivocally on the side of an agricultural industry supported for reasons of self-sufficiency in food supply, and sought a reduction in the national cost of agriculture. A flexible and efficient industry was seen as an important component of this, and thus the government interest moved closer to the landowning interest in wanting land to be available on flexible terms. Against this background, the Agricultural Tenancies Act dismantled most of the apparatus of agricultural tenancy protection for new tenancies.

The impression conveyed during the 1990's and early 21st century has been that a more flexible and enlarged tenanted sector is important, and that the Agricultural Tenancies Act has been successful in achieving this. For example, the economic evaluation of the Act prepared for the government reported 'a significant proportion of new land coming into the

tenanted sector' and said that this demonstrated that the Act is meeting its first objective. Annual surveys of land since 1995 were said to have shown a net influx of 83,000 hectares compared with a net loss of 120,000 hectares before 1995 (Whitehead *et al* 2002). In 2003 the Central Association of Agricultural Valuers reported the letting of 45,000 acres in 2002 (18,211 hectares) that had not been let before (CAAV 2003).

Yet is this any more than a small drop in the ocean? The total area of agricultural land in the United Kingdom was 18.4 million hectares in June 2003 (DEFRA 2004), so less than one half of one percent moved back into the tenanted sector in the five years after 1995. Furthermore the percentage of land tenanted since 1990 has been no higher than 36%, a great reduction when compared with the earlier years of the twentieth century from a high figure of 88% in 1908. (Table One)

**Table One: Agriculture Land Tenure in Great Britain  
1908 – 2001**

Year	Percentage Land Tenanted
1908	88
1922	82
1950	62
1960	51
1970	45
1980	42
1990*	36
1995*	34
2000*	32
2001	35
* England	(Nix <i>et al</i> 2003)

The economic evaluation also found that most land let under the new rules comprised small areas of less than 25 hectares. Fewer than 10% of lettings were to new entrants, a disappointment to the Tenancy Reform Industry Group (essentially a stakeholder forum sponsored by the government) (TRIG 2003).

So the relaxation of security of tenure in agriculture does seem to have been successful in arresting the decline of the tenanted sector, but it seems to be an exaggeration to say that this decline has been convincingly reversed. We need to be cautious of the rhetoric arising from fairly small changes in land tenure which may be attributable to the legal changes, bearing in mind the expectations of the three key stakeholder groups. The fourth stakeholder group – the new entrants to the industry – seem to have achieved very little if anything from the legislative developments. So while farmers already established in the agricultural industry may have made some gains from the new rules, those who would seek to join their ranks have remained outside the industry's boundaries. Rhetoric has sought to challenge the importance

of security of tenure in agriculture, but reality has yet to support support this challenge convincingly.

It may be helpful to review more briefly the position of residential and business tenancies, both of which offer different models of statutory security of tenure.

### **3. RESIDENTIAL TENANCIES**

The early years of the twentieth century saw the first attempts to intervene in private rental agreements. These were aimed at controlling rents rather than confirming security of tenure, but security soon followed as landlords sought to circumvent the rent restrictions by bringing existing tenancies to an end. This first period of residential tenancy protection has been called the 'Dark Ages' (Estates Gazette 1999) - a landlord's perspective on the Rent Act 1977. Rents were strictly controlled to the level of a 'fair rent', principally one in which the supply and demand of property to let were assumed to be in balance and under the control of government rent officers. Tenants had lifetime security of tenure with succession rights. Most residential leases were 'caught' by the Rent Act 1977, with few exceptions (for example, leases at a very low rent). The mandatory grounds available to a landlord to recover possession of a let house were very limited and specific. These were complemented by discretionary grounds for possession, but a court may not make an order for possession unless it considers it is reasonable to do so.

The first substantive attempts to amend the law as far as privately rented housing is concerned came in 1989, arising from the Housing Act 1988. This introduced the twin concepts of the Assured Tenancy and its sibling, the Assured Shorthold Tenancy. Existing tenancies were not changed by the new law, and tenancies continue in existence which are still regulated by the Rent Act 1977.

Assured Tenancies still gave significant security of tenure to residential tenants but this was coupled with relative freedom from rent control. Assured shorthold tenancies however, provided a means for landlords to restrict security of tenure significantly. This was achieved by an exchange of notices between landlord and tenant before the tenancy began, acknowledging that the tenancy was intended to be an assured shorthold tenancy. The minimum length of term must be six months, and the tenant has the right to receive at least two months' notice to quit. A degree of rent protection was available to tenants under Assured Shorthold Tenancies, although probably little used.

The Housing Act 1996 took a further step in the deregulation of security of tenure for residential occupiers. From 28 February 1997, all new private sector residential tenancies have been presumed to be assured shorthold tenancies unless notices are exchanged beforehand to make them into assured tenancies. Effectively, the position of the two types of tenancy under the Housing Act 1988 has been reversed.

It should also be noted that all forms of residential property occupation are protected against actual physical eviction by the terms of the Protection from Eviction Act 1977, which

requires that a tenant can only be evicted under a Court Order. Furthermore the Criminal Law Act 1977 makes it a criminal offence to use or threaten violence to enter premises where it is known that somebody is on the premises who is opposed to entry.

Data on English households by tenure shows the decline of the private rented sector, as against the growth of the owner-occupied sector. Table Two shows the percentage of three different types of household by tenure, from 1953 to 2003-04.

**Table Two: Households by tenure, England 1953 to 2003-04**

Year	Percentage Households		
	Owner-occupied	Social Rented	Private Rented
1953	32	18	50
1961	43	23	34
1971	51	29	20
1981	57	32	11
1984	61	28	11
1988	66	25	9
1991	68	23	9
1997-98	69	21	10
1998-99	69	21	10
1999-00	69	21	10
2000-01	70	20	10
2001-02	70	20	10
2002-03	70	20	10
2003-04	71	19	10

Source: ODPM 2004

Not unlike the agricultural sector, the let residential sector has shown significant decline, overall and particularly in the private rented category. The loosening of statutory security of tenure and rent control for new tenancies from 1989 may have been a factor in the one percent increase from 1988 onwards. It might also be argued that the decline in the size of the private rented sector has been arrested, although at only 10% of households it did not have much further to go anyway. This may be as much a function of the maximum sustainable size of the owner-occupied sector as a comment on trends in the let sector.

Meanwhile, homelessness continues to be a national concern. Although difficult to measure, government figures for the third quarter of 2004 show 100,810 'households' being accommodated by local authorities under homelessness legislation. The problem of homelessness was reviewed by the House of Commons, Housing, Planning, Local Government and the Regions Committee (House of Commons 2005). Their report confirms that estimates show "an increasing number of people who are being left without a settled home", and states that an increase in the stock of social housing should be a priority in the next decade. The report also notes that "despite the aims of the Homelessness Act 2002, it

appears that many local authorities still display a lack of strategic thinking when dealing with homeless people”.

Changes in the residential sector would seem to lead to the following observations. Changes in statutory security of tenure and rent control may have helped to halt a downward trend in the percentage share of households accommodated by the private rented sector, but they have not helped to increase significantly the relative size of this sector. Meanwhile, we continue to have a growing problem with homelessness. There does not appear to be a significant role for the private rented sector in addressing this problem, with the emphasis being instead put on the strategic role of local authorities working with the social rented sector (local authorities themselves and Housing Associations and the like).

#### **4. BUSINESS TENANCIES**

Compared with the seismic changes in residential and agricultural tenancy legislation, business tenancies for commercial property have seen very little change since 1954. They are still regulated under the terms of the Landlord and Tenant Act 1954. This broadly allows landlords and tenants to agree whatever terms they wish as regards terms and rent, but it does allow the business tenant in occupation to seek a new lease at the end of the term of the original lease. The courts must grant this lease unless the landlord has established grounds to oppose a new tenancy, for example he intends to redevelop the property or requires it for his own occupation. The legislation also sets out provisions on the interim rent which is payable while the terms of the new lease are settled, and for the rent under the new lease.

Originally it was not possible to contract out of the security of tenure given by the Landlord and Tenant Act 1954, but this was changed in the Law of Property Act 1969. The courts could approve a business lease for a fixed term tenancy to which the 1954 Act would not apply, on a joint application by both landlord and tenant. Reviewing the law in 1992, the Law Commission found that “In practice, provided both parties are in receipt of proper legal advice, it is highly unlikely that a court will withhold its approval” (Law Commission 1992). The same report recommended that the requirement for court approval should be removed, provided that some safeguards were retained for the parties (the tenant in particular). This change was made in June 2004, under a Regulatory Reform Order (under which subordinate legislation is used to amend primary legislation, subject only to some basic Parliamentary safeguards).

There is little useful official data on the size or composition of the commercial let sector, but it is widely accepted that most commercial property is occupied leasehold and that this sector is able to function efficiently in market conditions with the occasional help of the courts to resolve matters of contractual interpretation, for example over the application of commercial rent review clauses in tenancy agreements.

## 5. SOME GENERAL OBSERVATIONS

This paper has reviewed the English and Welsh agricultural let sector in some depth, and considered the residential and commercial sectors.

There are notable similarities between the residential and agricultural sectors. Both sectors declined in percentage and absolute terms, reaching their smallest size during the last 15 or so years of the twentieth century. Trends in both sectors have flattened off at the end of the twentieth century, but show no significant signs of rising again.

Both sectors have been subject to (repeated) government intervention, first in support of the tenanted interest and latterly more in support of landlord interests. The interests of landlords have been served by a considerable reduction in statutory intervention, through the means of reduced security of tenure for new lettings and reduced intervention in rental levels. This seems to have done little to extend access to rented property to the 'landless', in the form of homeless households or would-be tenant farmers. What it does seem to have done is to enable more flexibility in the market for those who are already established, be it as farmers or householders. This also seems to have encouraged and helped long-term estate management.

An underlying social theme which the data may support is the trend towards owner-occupation. While it is common to talk about the 'decline' of the tenanted-sector, what we are more likely to have witnessed is the growth of the 'owner-occupied' sector, reflecting social aspirations amongst home-occupiers and farmers alike (and bearing in mind that many farms include the farmer's home – farms with houses are not distinguished from farms without them as far as agricultural tenancy legislation is concerned). This is first and foremost a reflection of British social mores, fuelled from time to time by large growth in the value of residential property.

An altogether different model for comparison is offered by the commercial sector. Although data are scant, this seems to have prospered with a minimal degree of statutory intervention. This may be a reflection of a different outlook on the application and accumulation of capital in the business sector, retaining cash for use as working capital in the business rather than capitalising it into freehold property assets. In addition to this, it would seem that landlords have been able to earn adequate returns on their investment in real property to avoid the need to reinvest in other classes of asset. The market has generally operated satisfactorily in serving the needs of landlords and tenants.

To return to the other two sectors, the market is never likely to operate satisfactorily in providing for the two 'landless' groups already mentioned. Hence the House of Commons committee's conclusion that social housing must be the keystone in providing for the homeless, and the conclusion of the Tenancy Reform Industry Group for agriculture that the needs of new entrants will be best served by a revitalised role for the county council smallholdings supported by other measures not based on tenancy laws (fiscal reform etc).

While we cannot be sure of causes and effects, we can see that the temptation to reinvigorate a declining tenanted sector by reducing security of tenure in a developed economy is a strong one. However, the evidence to date points to the limited conclusion that such attempts will have only the most marginal effect on overall trends. They will also do little if anything, to help the groups regarded as most in need of help, the 'landless'. What may be more important, is the active consideration of the economic and social environment in which statutory regulation takes place, demonstrated by the apparent relative success of the business let sector as against the agricultural and residential sectors.

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