The Law Commission

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AGRICULTURAL HOLDINGS BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO AGRICULTURAL HOLDINGS

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REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO AGRICULTURAL HOLDINGS

To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord High Chancellor of Great Britain

The Agricultural Holdings Bill, which is the subject of this Report, seeks to consolidate the Agricultural Holdings Act 1948, Part II of the Agriculture (Miscellaneous Provisions) Act 1976, the Agricultural Holdings (Notices to Quit) Act 1977, The Agricultural Holdings Act 1984 and certain related enactments. In order to produce a satisfactory consolidation, it is necessary to make the recommendations set out in the Appendix to this Report.

The Ministry of Agriculture, Fisheries and Food and the Welsh Office have been consulted in connection with the recommendations and agree with them. The following bodies have also been consulted and have raised no objection: the Agricultural Law Association, the Association of Landowning Charities, the Central Association of Agricultural Valuers, the Council on Tribunals, the Country Landowners Association, the Country Landowners Association (Wales), the Farmers' Union of Wales, the Incorporated Society of Valuers and Auctioneers, the Law Society, the National Farmers' Union of England and Wales, the Royal Institution of Chartered Surveyors and the Tenant Farmers' Association.

ROY BELDAM
Chairman of the Law Commission

20th November 1985.

APPENDIX

RECOMMENDATIONS

1. Seasonal Grazing and Mowing Agreements

Section 2 of the Agricultural Holdings Act 1948 provides that an agreement under which land is let for use as agricultural land for an interest less than a tenancy from year to year shall take effect as a yearly tenancy. The proviso to section 2 excepts from this general rule "an agreement for the letting of land, or the granting of a licence to occupy land, made . . . in contemplation of the use of the land only for grazing or mowing during some specified period of the year". Such an agreement, therefore, takes effect according to its terms and is not converted into a yearly tenancy.

Many of the agreements which fall within the proviso are grazing agreements, but in some parts of the country land is let seasonally for mowing. In the case of mowing agreements it is not uncommon for the tenant or licencee also to be granted grazing rights. Conversely, under a grazing agreement mowing may also be allowed. There is some doubt amongst practitioners whether an agreement for the use of land for both grazing and mowing falls within the proviso; that is to say there is doubt whether the word "or" in the phrase "grazing or mowing" is intended to be used conjunctively.

The point has not been considered by the courts. In Reid v. Dawson [1955] 1 Q.B. 214 it was assumed by the Court of Appeal that an agreement which granted the exclusive right to mow hay together with the right to depasture sheep and cattle over the same land was capable of falling within the proviso to section 2; but the point was not in dispute.

We consider that in the context of section 2 "or" should be read in its conjunctive sense. The first case contemplated by the proviso is an agreement for grazing. The words "or mowing" make it clear that the ambit of the exception is wide enough to include also an agreement for mowing. It seems improbable that the words were intended to indicate that the exception applies to two alternative and mutually exclusive cases. We can see no reason why an agreement permitting both grazing and mowing should fall to be treated in any different way from an agreement permitting only one or the other. On the contrary, it is likely that all seasonal agreements for the letting or occupation of grassland were intended to be excepted from the operation of section 2.

We recommend that any doubt about the meaning of the proviso should be resolved so as to make it clear that agreements for the letting or occupation of land for use for both grazing and mowing are to be treated in the same way as agreements for the use of land solely for grazing or, as the case may be, mowing.

Effect is given to this recommendation in clause 2(3)(*a*).

2. Grants to be taken into account in assessing compensation for improvements

If the landlord of an agricultural holding carries out certain improvements, he may obtain an increase of rent under section 9 of the Agricultural Holdings Act 1948. If the tenant carries out new improvements (as defined in section 46(2) of the 1948 Act), he is entitled under section 47 to compensation from his landlord on the termination of the tenancy. Any increase of rent under section 9 in respect of improvements falls to be reduced where the landlord has obtained a grant in respect of the improvements out of public money (see proviso to section 9(1)). Similarly, where a tenant has obtained such a grant in respect of new improvements section 53 of the 1948 Act provides that compensation payable to him shall be reduced.

Section 4 of the Agriculture Act 1958 enables the Agricultural Lands Tribunal to direct the landlord of an agricultural holding to provide, alter or repair fixed equipment on the holding to enable the tenant to carry on an agricultural activity on the holding. By section 4(5), a landlord who carries out improvements in compliance with a direction may obtain an increase of rent under section 9 of the 1948 Act. If the landlord fails to comply, the tenant may carry out the work himself and recover from the landlord the reasonable cost of the work, reduced by the amount of any grant in respect of the work received by the tenant out of money provided by Parliament. In a case where the landlord has repaid to the tenant the cost of carrying out the work, he may obtain an increase of rent under section 9 as if he himself had carried out the work and "as if any grant made to the tenant in respect [of the work] out of moneys provided by Parliament had been made to the landlord" (see section 4(5)).

Particular rules apply where, on an application under section 4 by a sub-tenant of an agricultural holding, his immediate landlord is directed to carry out work. If, in such a case, the immediate landlord fails to comply with the direction and his tenant carries out the work, section 4(6)(*b*) provides that section 47 of the 1948 Act shall have effect "for the purposes of a claim for compensation by the immediate landlord against his superior landlord as if the work had been carried out by the immediate landlord". But that subsection contains no provision, corresponding to that in subsection (5), which would require such compensation to be reduced under section 53 of the 1948 Act as if any grant made to the sub-tenant in respect of the work out of money provided by Parliament had been made to the immediate landlord.

This could produce an anomalous result in the case of an immediate landlord who fails to comply with a direction under section 4. He is only liable to repay to the tenant the cost of the work less the amount of any grant received by the tenant out of money provided by Parliament. But, on the other hand, it could be argued that he is then entitled, on the termination of the tenancy, to claim compensation from his superior landlord without taking such a grant into account.

We recommend that where, by virtue of section 4(6)(*b*) of the 1958 Act, an immediate landlord claims compensation from the superior landlord under

section 47 of the 1948 Act in respect of work carried out by the sub-tenant, section 53 of the 1948 Act shall have effect as if any grant made to the tenant in respect of the work out of money provided by Parliament had been made to the immediate landlord.

Effect is given to this recommendation in clause 68(2)(*b*).

3. Recovery of sums due under the enactments being consolidated

Section 71 of the Agricultural Holdings Act 1948 provides that sums agreed or awarded under that Act to be paid for compensation, costs or otherwise by a landlord or tenant of an agricultural holding shall be recoverable upon order made by the county court as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable. Section 73 provides that the landlord of an agricultural holding who is entitled to receive the rents and profits otherwise than for his own benefit shall not be personally liable to pay to his tenant any sum agreed or awarded to be paid under that Act. The tenant is instead entitled to obtain an order charging the holding with payment of the sum. These provisions were applied to additional payments made to tenants under sections 9 and 15 of the Agriculture (Miscellaneous Provisions) Act 1968 by sections 10(5) and 15(4) of that Act.

There is some doubt whether sections 71 and 73 apply to the recovery of sums payable under section 24(4)(*a*)(ii) of the Agriculture (Miscellaneous Provisions) Act 1976 or under that section as extended by paragraph 7 of Schedule 2 to the Agricultural Holdings Act 1984. These are sums payable where a tenancy of a holding is granted under the 1976 Act or 1984 Act on the death or retirement of the former tenant. The landlord is entitled to receive from the new tenant a fair proportion of sums paid or payable to the former tenant on the termination of the former tenancy. Similarly, the new tenant is entitled to receive a fair proportion of sums paid or payable to the landlord by the former tenant in respect of dilapidations on the termination of the former tenancy.

Sections 71 and 73 were not expressly applied by the 1976 Act or the 1984 Act to the recovery of these sums. Where such sums have been ordered to be paid by an arbitrator it may be argued that they are for the purposes of sections 71 and 73 "sums awarded under [the 1948 Act]" (see section 24(9) of the 1976 Act). But sections 71 and 73 probably do not apply where the parties have agreed to the payment of such sums without recourse to arbitration.

It would be anomalous if sums agreed to be paid under these provisions were not recoverable in the manner in which they would be recoverable if they were awarded to be paid. Nor can we see any reason for making a distinction between the method of recovery of sums payable under these provisions and sums payable under the other enactments being consolidated. We therefore recommend that the provision for recovery of sums in the clause re-enacting sections 71 and 73 of the 1948 Act should apply to all sums agreed or awarded to be paid under the Bill.

Effect is given to this recommendation in subsections (1) and (3) of clause 85.

4. Power of limited owners

Section 80 of the Agricultural Holdings Act 1948 provides that the landlord of an agricultural holding who is a limited owner may, for the purposes of that Act, give any consent, make any agreement or do or have done to him any other act which he might give, make, do or have done to him if he were absolutely entitled to the freehold or leasehold reversion. This provision was applied for the purposes of sections 9 and 15 of the Agriculture (Miscellaneous Provisions) Act 1968 by sections 10(5) and 15(4) of that Act.

But section 80 was not applied for the purposes of section 4 of the Agriculture Act 1958 which relates to the provision by the landlord of an agricultural holding of fixed equipment on the holding. Nor does it apply for the purposes of Part II of the Agriculture (Miscellaneous Provisions) Act 1976 or Schedule 2 to the Agricultural Holdings Act 1984 which provide for statutory succession to an agricultural holding on the death or retirement of the tenant.

Thus the landlord of an agricultural holding who is a tenant for life may not be able to settle a claim by his tenant under section 4 of the 1958 Act unless he obtains the consent of the trustees of the settlement in accordance with section 58(1) of the Settled Land Act 1925. A new tenancy could be granted by such a landlord to a claimant under Part II of the 1976 Act or Schedule 2 to the 1984 Act (see section 41 of the Settled Land Act 1925). But the consent of the trustees of the settlement would probably be required to settle any related claim under section 24(4)(*a*)(ii) of the 1976 Act or under that section as extended by paragraph 7 of Schedule 2 to the 1984 Act.

We see no reason to exclude any of the provisions being consolidated from the power contained in the clause re-enacting section 80 of the 1948 Act, and accordingly recommend that the power should apply generally for the purposes of the Bill.

Effect is given to this recommendation in clause 88.

5. Service of notices

Section 92 of the Agricultural Holdings Act 1948 makes provision for the service of notices and other instruments under that Act. By virtue of paragraph 1(7) of Schedule 2 to the Agricultural Holdings Act 1984 that section applies also to notices served under paragraph 1(1)(*b*) of that Schedule.

But section 92 was not applied to notices under section 10(2) of the Agriculture (Miscellaneous Provisions) Act 1949 or under section 24(3) of the Agriculture (Miscellaneous Provisions) Act 1976 (which was extended by paragraph 7 of Schedule 2 to the 1984 Act). Section 10(2) of the 1949 Act empowers the Minister, by notice served on the managers of a smallholdings scheme approved under section 11(4)(*c*) of the Agricultural Holdings Act 1948, to withdraw his approval to the scheme. Section 24(3) of the 1976 Act enables the landlord or tenant of an agricultural holding, by serving notice on the other, to demand certain questions to be referred to arbitration. No express provision was made for the service of notices under those enactments.

The effect of section 92 is to modify in certain respects the law that would otherwise apply to the service of notices under the 1948 Act. For example, by virtue of subsection (1) taken with section 7 of the Interpretation Act 1978 service of a notice is deemed (at least if the contrary is not proved) to have been effected if it can be shown that it was contained in a properly addressed prepaid letter sent by registered post or by the recorded delivery service. Under the general law, a notice to be duly served must have reached the person to be notified. A court could take such evidence as is mentioned above as sufficient to prove that the notice had been duly received, but would not be obliged to do so.

We see no reason why the rules for service applying in general to instruments under the Bill should not also apply to notices under the clauses re-enacting section 10(2) of the 1949 Act or section 24(3) of the 1976 Act; and it would be odd to exclude notices under these provisions from the re-enactment of section 92. We therefore recommend that the provision made by the Bill for the service of notices should apply generally to all instruments served under the Bill.

Effect is given to this recommendation in clause 93.

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