

## Our Tenant Farmers' Most Frequently Asked Questions

This article answers two of the questions most frequently asked by those farming under an Agricultural Holdings Act (AHA) tenancy.

### **"I didn't reach an agreement with my landlord on the rent before the review date – what do I do now?"**

Whilst I suspect most farmers farming under an AHA tenancy have already had experience of dealing with rent reviews (or have instructed a Land Agent to deal with the matter upon their behalf) this is still a frequently asked question. It is a commonly asked question at this time of year since many rent review dates fall on the 25th March (Lady Day) or around the beginning of April.

There is no requirement to have reached an agreement on the new rent by the rent review date. This date only poses a deadline for the application for the appointment of an arbitrator. If neither party makes this application by the rent review date, the rent review cannot be enforced in this year. However, if an application has been made, it does not mean that the review must go to arbitration, it simply keeps the option open should negotiations break down.

If you have passed the rent review date and your landlord has made the application for arbitration, I would advise you that you continue to discuss the rent review with your landlord and provide any additional evidence you have to support what you believe to be a reasonable rent, to help reach an agreement. If you do hear from an arbitrator whilst the negotiations are continuing, you can let them know that you are still in discussions with your landlord and hope to reach an agreement.

## “My landlord has asked for a surrender and re-grant. What is this and should I agree?”

In essence, a surrender and re-grant is surrendering an existing tenancy in order to re-grant a new one. The surrender and re-grant of an AHA tenancy can occur for several reasons. On some occasions, the landlord will want to benefit from increased tax reliefs. Agricultural Property Relief (the relief from Inheritance Tax) is available on let agricultural property at a rate of 50% when let prior to the 1st September 1995 or 100% when let on or after this date.

Although this date coincides with the introduction of Farm Business Tenancies (FBT), the tenancy granted on or after 1st September 1995 does not have to be an FBT in order for the full tax relief to be claimed. Instead, it could be a re-granted AHA tenancy or a succession tenancy.

Whilst the process has the potential to have substantial benefits for the landlord, there is no positive impact for the tenant. Provided it is executed properly, a surrender and re-grant of an AHA tenancy should have no negative impact on a tenant either. The tenant is not obliged to go through the surrender and re-grant process. There is no way for the landlord to force the tenant to agree, so there may be potential for the tenant to negotiate some incentive. This may be in relation to the rent, adding a family member to the tenancy or some investment from the landlord on the holding.

Note that as a tenant if you are in breach of any of the current covenants under the AHA lease, you will have placed yourself at a disadvantage in respect of your bargaining position.

If the process is seen as entirely for the benefit of the landlord, it would be realistic for the tenant to seek that the landlord covers the cost of legal and professional advice to ensure that the tenant is fully protected.

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