

Scammell and Densham's Law of Agricultural Holdings

HAC Densham

Sixth edition

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Preface to the sixth edition

The sixth edition of Scammell, as well as having a new title, represents a radical departure from earlier editions in style, layout, content and presentation.

The first edition had its origins in a 'lengthy memorandum' on the Agriculture Act 1947, which was later developed into a textbook on the passing of the Agricultural Holdings Act 1948, commissioned by the Royal Institution of Chartered Surveyors and the Chartered Auctioneers' and Estate Agents' Institute. It was designed for members of those professions familiar with the workings of the Agricultural Holdings Act 1923, and much of the book comprised a commentary by way of comparison with that earlier legislation. The scheme of the book was for each section of the Agriculture Act 1947 and the Agricultural Holdings Act 1948 to be printed and followed by an explanatory commentary upon it. Later, as amending statutes were passed, a new chapter to deal with each was added.

Now that the Agricultural Holdings Act 1948 has been so radically amended, particularly by the Agriculture Act 1958 and the Agriculture (Miscellaneous Provisions) Acts of 1963, 1968 and 1976, and finally culminating with the partial consolidating statute—the Agricultural Holdings (Notices to Quit) Act 1977—I felt that that method of commentary was no longer workable.

I have, therefore, endeavoured to consolidate the 1948 Act and all the amending statutes, together with the statutory instruments and the cases decided under them, and to provide a single commentary on the whole of the legislation in five parts, as follows—

SECTION 1: **Commentary**

- Part I The creation of an 'agricultural holding'
- Part II The contract of tenancy: its terms and conditions
- Part III Security of tenure and succession
- Part IV Compensation on quitting
- Part V Disputes procedure and miscellaneous

In addition to the commentary, there are two further sections of the book, as follows—

SECTION 2: Statutes and statutory instruments

SECTION 3: Forms and precedents

The statutes and statutory instruments are printed without footnotes (except by way of direction to the text of the commentary and definition elsewhere) and the precedents have been preserved as amended and updated, particularly with a new contents list, as section 3 of the book.

Each of the five parts of the commentary starts with a detailed table of contents and an introduction of about five pages, and this contains a general résumé of the law considered in that part of the commentary. Readers are recommended to look first at that introduction to the part in which their problem lies, before looking at the detailed commentary which attempts to explain the minutiae.

I have also, where possible, endeavoured to express an opinion upon those problems frequently met with in practice but upon which there is as yet no authoritative judicial pronouncement.

Inevitably, the sixth edition bears little resemblance to earlier editions and much of the attraction and the style with which Mr. W. S. Scammell was associated, and which made earlier editions of this book so readable, has been lost. I felt that to imitate it would be presumptuous on my part. As there is now such a weight of statute and case law, if this book is to be kept within bounds, style has to give way to brevity. I hope, however, that those who feel a sense of loss as a result will understand.

Throughout the text, each of the statutes is referred to by the year in which it was passed, thus—

The Agricultural Holdings Act 1948 becomes the 1948 Act

The Agriculture (Miscellaneous Provisions) Act 1954 becomes the 1954 Act

The Agriculture Act 1958 becomes the 1958 Act

The Agriculture (Miscellaneous Provisions) Act 1963 becomes the 1963 Act

The Agriculture (Miscellaneous Provisions) Act 1968 becomes the 1968 Act

The Agriculture (Miscellaneous Provisions) Act 1976 becomes the 1976 Act

The Agricultural Holdings (Notices to Quit) Act 1977 becomes the 1977 Act

Throughout the commentary the term 'the agricultural holdings legislation' is used to describe the whole body of legislation, comprising the 1948 Act and all subsequent amending statutes. The Minister of Agriculture, Fisheries and Food is referred to simply as 'the Minister'.

My particular thanks are due to my partner Richard Trevor Johnson who has undertaken the thankless and time-consuming task of reading and criticising earlier drafts; to Mr J. T. Plume, a Bencher of Gray's Inn, for very detailed consideration of selected passages; and also to Mr Christopher Friday of Gray's Inn for much helpful and constructive

criticism. Together they have helped to save me from the embarrassment and humiliation of at least some of the errors which resulted from my unaided efforts. If other errors remain they are all of my making.

My long-suffering secretary and assistant, Pauline Edwards, has laboured mightily and always with good humour and great patience with the drudgery of typing and re-typing, exacerbated by frequent changes of text.

My grateful thanks are especially due to my wife and family whose social life has been reduced to 'grazing or mowing only' and, what is more, not limited to any 'specified period of the year', whilst this book has taken shape in out-of-office hours.

Finally, my thanks are due to 'the onlie begetter of these insuing sonnets', my mentor, guide and guru, the late Mr W. S. Scammell, who most generously encouraged me to undertake this edition of his book. To him I owe a particular and unrepayable debt of gratitude and affection.

Since finalising the text of this book, there have been four developments in the law of agricultural holdings as follows—

1. Johnson v Moreton (1978) Times Newspaper, 2 August

This case, which is possibly the most important case decided under the agricultural holdings legislation, put in issue that most fundamental question, viz. whether a landlord and tenant of an agricultural holding can voluntarily contract out of the security of tenure provisions of the legislation. A commentary on this case and on contracting out generally, on pages 11, 31, 80, 87 and 113, is founded on the decision of the Court of Appeal which reversed the decision of the judge at first instance. The House of Lords has now unanimously upheld the Court of Appeal though on rather different grounds and has decided that a scheme such as that employed in that case was unenforceable as being contrary to public policy. The case is wide-ranging in its implications and would appear also to render ineffective a number of comparable schemes and devices, e.g. a requirement by a landlord that his prospective tenant, simultaneously with the grant of the new tenancy, contracts to surrender in futuro by a collateral document or to assign the tenancy to a third party/nominee of the landlord.

The House of Lords also determined expressly that section 2 of the 1948 Act, whilst containing no express prohibition on contracting out, was, by its terms and context, incapable of being excluded by agreement. Doubts were cast upon the correctness of the decisions of *Mears v Callender* [1901] 2 Ch 388 and *Premier Dairies Ltd v Garlick* [1920] 2 Ch 17 which concerned the ability of a landlord and tenant to contract-out of the equivalent of the compensation provisions and the provisions as to fixtures (contained in section 13 of the 1948 Act). The decision leaves one, therefore, tantalisingly to wonder whether and to what extent contracting-out of other provisions of the 1948 Act in circumstances where the tenancy granted is a tenancy of an agricultural holding properly so called is permissible (e.g. in particular, sections 8, 13 and 17).

2. The Agricultural Holdings Act 1948 (Variation of Fourth Schedule) Order 1978

This statutory instrument has amended the compensation provisions in the Fourth Schedule of the 1948 Act principally by the introduction of a new head of claim available to outgoing tenants. The statutory instrument itself is printed in an appendix and not in its chronological position in Part II of Section 2 of the book in which the statutory instruments generally are printed. I was, however, able to introduce a reference to it and commentary upon it in Section 1 (the Commentary) of this book.

3. The Agriculture (Calculation of Value for Compensation) Regulations 1978

This new statutory instrument, S.I. 1978 No. 809, supersedes the 1969 Regulations (as amended) and applies in all cases of tenants quitting after the new Regulations came into operation on 1 July 1978. This statutory instrument too is printed in the appendix. The 1969 Regulations which are set out in Part II of Section 2 should only be consulted in the case of tenancies terminating before the coming into operation of the new Regulations. Here again, I was fortunate in being able to include references to the new Regulations rather than the old in the commentary.

4. Beevers v Mason (1978) Times Newspaper, 19 July

This decision of the Court of Appeal affects the commentary on pages 102 and 103 on notices to pay rent. In this case, the Court of Appeal held that there had been a course of dealings between landlord and tenant, as a result of which the landlord accepted payment of rent by cheque and had accepted that rent direct rather than through his agent. The tenant who posted a cheque for the rent on the last day of the two month period permitted by the notice to pay had complied with the notice, even though the rent cheque would not in the ordinary course of post have been received until after the expiration of the two months from the date of receipt of the notice to pay. The court held that tendering the rent in that way constituted sufficient compliance with the notice to pay unless the rent cheque was dishonoured on presentation. This case, however, should not be confused with service of notices and other documents where dispatch is insufficient and dispatch, even by recorded delivery post, merely raises a presumption of due service in the ordinary course of post, which is rebuttable by contrary evidence.

The law is otherwise stated as at 2 July 1978.

H. A. C. Densham
July 1978

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