

Can you have too much Security of Tenure?

FIG Cairo, Session TS28.4
Charles Cowap
Harper Adams University College, UK

Security of Tenure ...

- Protection against eviction
- Freedom to sell
- Freedom to transfer through inheritance
- Mortgages or access to capital

(UN Habitat 2003)

The UK Experience

- Agricultural Land
- Residential Property

A Proposition ...

Excessive security of tenure can limit the effectiveness of land markets, resulting in poorer access to land

Agricultural Tenancies in England and Wales

Three Distinct Periods:

- Tenancies granted before 12 July 1984
- Tenancies granted on or after 12 July 1984 but before 1 September 1995
- Tenancies granted on or after 1 September 1995

First Period: < 1984

- Overriding legislation
- Repair and Insurance Obligations
 - Model Terms for landlord and tenant
 - Free to agree other terms
- Rent Reviews
 - Statutory Rent Review Procedure
- Physical property improvements
- Security of tenure
 - Continuation of tenancies from year to year
- End of tenancy compensation
- Succession Rights
 - Two successions: eligibility and suitability tests

Second Period: 1984 - 1995

- All terms as for first period
EXCEPT
- Succession Provisions Revoked for tenancies first granted on or after 12 July 1984

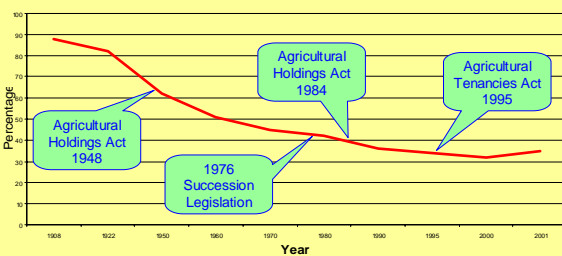
Most tenancies granted before 1995 could be expected to last for the life of the tenant

Third Period: > 1995

- New Concept: Farm Business Tenancy
- Greater freedom to agree private contract terms
- No security of tenure beyond initial term
- Notice to Quit requirements
 - Depend on length of tenancy
- Statutory rent review provisions
- Statutory compensation at end of tenancy

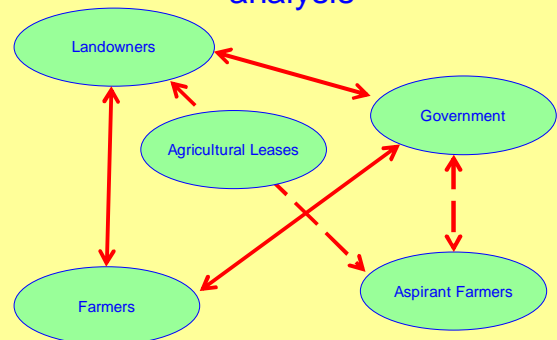
Trends in Agricultural Lettings

Agricultural Land Tenure in Great Britain
Percentage of Land Tenanted 1908 - 2001



Nix *et al* 2003: Land and Estate Management, 3rd edn

Agricultural Leases: Stakeholder analysis



Benefits of relaxing security?

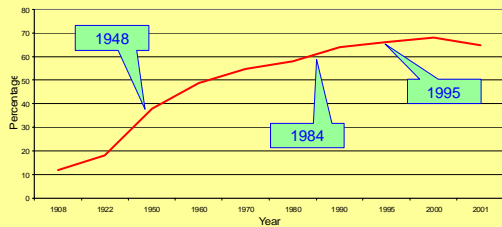
- Net influx of land on lease 1995 – 2000 = 83,000 hectares (Whitehead *et al* 2002)
 - Regarded as successful
 - But < 0.5% of UK agricultural land area/0.79% of agricultural land area in England and Wales over 5 years
- Most land comprised areas < 25 hectares
- < 10% of lettings to new entrants
- A 'convincing reversal' of the trend?
 - Rhetoric or reality?
- Economic flexibility?

The New Entrant Problem

- Tenancy Reform Industry Group:
 - Need for revitalised local authority role in providing small farms for new entrants

The growth of agricultural owner-occupation?

Percentage Land Owner-Occupied, Great Britain 1908-2001



Nix *et al* 2003: Land and Estate Management, 3rd edn

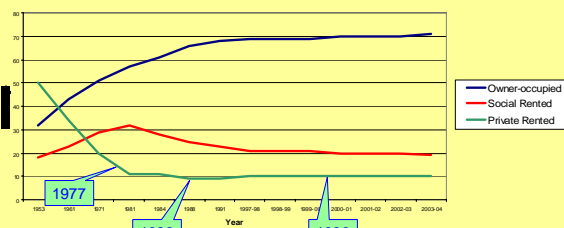
Residential Sector

- Rent Act 1977: The 'Dark Ages'
 - Rent Control → low rents
 - Lifetime security of tenure
 - Tenancy succession
 - Limited grounds for possession

- Housing Act 1988: 'Twilight Zone'
 - Assured and Assured Shorthold Tenancies
 - Some Rent Protection
 - Limited security of tenure: 6 months initial term + 2 months minimum notice to quit

- Housing Act 1996: 'Brave New World'
 - Current position for new tenancies since 28.2.1997
 - Most tenancies = Assured Shorthold Tenancies
 - 6 months initial security
 - 2 months notice to quit
 - Limited rent control
 - No succession
- Protection against physical eviction for all residential lettings: Protection from Eviction Act 1977 + Criminal Law Act 1977

Percentage Households by Tenure, England 1953 to 2003-04



Source: ODPM 2004: Survey of English Housing Provisional Results 2003-2004

UK Homelessness

- "an increasing number of people ... without a settled home"
- Increase in social housing stock should be a priority
- "... many local authorities still display a lack of strategic thinking when dealing with homeless people" (House of Commons 2005)

General Observations

- Declines in both agricultural and residential sectors
- Both sectors subject to repeated government intervention
 - Reduced security
 - Reduced rent control
 - More flexibility in the market for those already in it
 - Helps and encourages long-term estate management?
 - No increase in access for 'landless' – aspirant farmers and the homeless

- The Growth of Owner-Occupation
 - British social mores
 - Stakeholder society → capital accumulation
- The 'landless problem' in a developed society?
 - Market won't work
 - Public sector role