

## **FIXED EQUIPMENT**

## **Agricultural Tenancies** 1991 Act Tenancy

### **FIXED EQUIPMENT**

The term “fixed equipment” is defined in the Agricultural Holdings legislation and includes –

- all permanent buildings, including farm houses and farm cottages, necessary for the proper conduct of the farm
- all permanent fences, including hedges, stone dykes, gate posts and gates
- all ditches, open drains and tile drains, conduits and culverts, ponds, sluices, flood banks and main water courses
- stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the farm
- water and sewerage systems
- electrical installations including generating plant, fixed motors, wiring systems, switches and plug sockets
- shelter belts

### **LANDLORD RESPONSIBILITIES**

For leases relating to 1991 Act tenancies which were entered into before 1 November 1948, the landlord’s obligations in respect of the fixed equipment on the farm are regulated by the common law. Whilst similar to the statutory obligations, which regulate the position from and after 1 November 1948 (see below), they are in fact less onerous in some respects and may have been modified by the contractual terms of the lease. If in doubt it would be as well to obtain specialist advice.

For leases relating to 1991 Act tenancies entered into on or after 1 November 1948, the landlord has three principal obligations –

- At the commencement of the lease, or as soon as is practicable thereafter, he must put the fixed equipment on the farm into a thorough state of repair. This is considered to be an exacting standard.

- At the commencement of the lease, or as soon as is practicable thereafter, he must provide such buildings and other fixed equipment as will enable an occupier reasonably skilled in husbandry to maintain efficient production. Efficient production relates to the kind of produce specified in the lease or otherwise commonly produced on the farm and the quality and quantity which might reasonably be expected to be produced. For example, if the farm is let as a stock farm the landlord would need to provide the necessary stock handling equipment, buildings etc. to run an efficient operation but the tenant could not expect specialist dairy equipment to be provided.
- Once the lease has commenced the landlord is obliged to effect such replacement or renewal (NB, not maintenance or repair) of the buildings or other fixed equipment as may be rendered necessary by natural decay or fair wear and tear.

## TENANT RESPONSIBILITIES

In a lease for a 1991 Act tenancy entered into prior to 1st November 1948, the common law requires the tenant to maintain the fixed equipment during the period of the lease and to leave it at the end in the condition in which he took it over from the landlord, but less fair wear and tear. If the fixed equipment was not put into repair at the commencement of the lease by the landlord, then the tenant has no repairing liability unless the repairs are necessitated by the tenant's misuse or neglect.

In a lease for a 1991 Act tenancy entered into on or after 1st November 1948, the tenant is obliged to maintain the fixed equipment on the farm in as good a state of repair (natural decay and fair wear and tear excepted) as it was in immediately after it had been either (i) put into repair by the landlord at the commencement of the tenancy or (ii) provided, improved, replaced or renewed during the course of the tenancy.

### A "FULL REPAIRING LEASE"

A full repairing lease is deemed to exist where the landlord's statutory or common law obligations, in relation to the fixed equipment on the farm, become the responsibility of the tenant. These are in addition to the repair and maintenance obligations which the tenant already has. The scenarios in which a tenant can have a full repairing lease are –

- Where the lease was entered into prior to 1st November 1948 and the terms of the lease specifically provide for this
- Where, prior to 27th November 2003, the landlord and the tenant entered into an agreement after the lease had commenced in which the tenant was obliged to take over some or all of the landlord's fixed equipment responsibilities. Such an agreement is commonly referred to as a "post lease agreement". With effect from 27th November 2003, existing post lease agreements of this type can be nullified if, following a determination of the rent payable in respect of the farm by the Scottish Land Court, (i) the tenant gives notice to the landlord and (ii) at the date given in the notice the buildings and fixed equipment on the farm are in a reasonable state of repair or a state equivalent to that in which the tenant took it over from the landlord (if worse). No new agreements of this type can be entered into.

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