

CAAV EDUCATION AND EXAMINATION COMMITTEE

**REPORT OF THE WRITTEN BOARD FOLLOWING THE 2000
EXAMINATION**

PAPER 1

QUESTION 1

Rent Review procedures under the 1986 Agricultural Holdings Act and the 1995 Agricultural Tenancies Act

- a. Agricultural Holdings Act 1986 Tenancy
- (i) Service of Section 12 Notice.
 - (ii) Relevant points for review (Schedule 2);
Comparable evidence,
Productive capacity and related earning capacity,
All relevant factors viz.:
Terms of the tenancy,
Character and situation of the holding,
Standard of landlord's buildings,
Marriage value (Childers v Anker),
Scarcity and methods of dealing with same,
Disregard of tenant's improvements,
Repairing obligations.
 - (iii) Procedure viz.:
Appointment of Arbitrator,
35 days Statement of Case,
56 days Arbitrator's Award/ extension of time for making his Award,
Contents of Statement of Case,
Hearing/ written representation,
Method of producing evidence/ procedure/ expert witnesses,
Calderbank offers/ cost of Arbitration.
- b. Agricultural Tenancies Act 1995
- (i) Service of Section 10 Notice/ Section 9 Options.
 - (ii) Relevant points for review:
 - a. Open market lettings evidence
 - b. Reviewed rent of other similar farms let on Farm Business Tenancies.
 - (iii) All relevant factors viz.:
Disregard of tenant's improvements
Terms of tenancy
Repairing obligations, etc.
 - (iv) Procedure
 - a. Appointment of an Arbitrator/ appointment of an expert.
 - b. Relevant procedures to be adopted by an expert

c. Relevant procedures to be adopted by an Arbitrator/ Arbitration Act 1996

c. Guidance

- (i) Comment on rental values in the agricultural recession and the effects on related earning capacity under 1986 Act tenancies and therefore the likelihood that a Section 12 Notice should be served by the tenant with a view to obtaining a rent reduction.
- (ii) The artificially low figure at which the rent for the bare land was set due to the surrender of the cottages and therefore the likelihood that it would be unwise to serve a Section 10 Notice with regard to this area of land.

Agricultural Holdings Act 1986

Generally candidates understood the relevance of the service of a Section 12 Notice and the time limits that run with this. They also had a good grasp of the factors to be taken into account in assessing the rent. Generally candidates were weak on the Arbitration process and time limits and many made no comment on this whatsoever.

Agricultural Tenancies Act 1995

Again, candidates understood the relevance of the serving of a Section 10 Notice and the time limits that went with this. Most also understood the difference between the rent review procedures and the factors that needed to be taken into account. Very few seemed to understand the Arbitration Act 1999 and the possible relevance of an expert.

Guidance

The majority of candidates suggested that a Section 12 Notice should be served seeking a reduction of rent for the main holding and the majority also felt that there was little likelihood of a rent reduction being obtained on the bare land.

Generally

Once again, the ability of candidates to think through the question and to provide a well-ordered and well-argued case to put to their client was extremely disappointing. In many cases candidates provided an extremely comprehensive resume for a small part of the answer and failed to then deal with other aspects of the question. They had clearly not thought through their answer before “putting pen to paper” and therefore certain of the information within their answer came in a disjointed way at the termination of the letter. This would have left a disgruntled client who, although provided with much of the information that he needed, would have found it difficult to understand.

As ever, standards of spelling and grammar were disappointing.

PAPER 1

QUESTION 2

The Integrated Administration and Control System

A correct answer would have included reference to the following:

- a) The Integrated Administration and Control System and the Arable Area Aid Payments System
- b) Suckler Cow Premium
- c) Sheep Annual Premium
- d) Hill Farming Allowance
- e) Beef Special Premium and possibly, also, Slaughter Premium Scheme.

The answers to b) and c) are, of course, factual and highly important.

Practically all of the answers included information on the IACS and Arable Area Aid payments and the crucial date of the 15th May but too many were unsure of the time limits under both b) and c). Many of the answers gave information not required, for example the amounts payable for the various crops under the Arable Area Aid payments, the value of Sheep and Suckler Cow Quota and the value of the payments under the various premia schemes. Many of the answers proved the old adage “read the question very carefully and give only the information asked for”.

The standard of presentation was reasonable although the question did ask that the candidate should write to the client in headed paragraph form and this request was not always adhered to.

This question was one of the compulsory questions and out of the 56 who sat the examination 25 passed.

PAPER 2

QUESTION 1

Estate Management and Diversification

The question focused on asset management. It required candidates to identify the components of a farming unit, comment on them and then explain the rationale behind the recommendations that they were then to put forward to alternative use. The question specifically stated that the answer should be given in briefing note form, a point lost on a surprising large number of people.

Generally speaking, though, candidates did have a good grasp of the subject. 33 candidates passed which equated to a 72% pass rate for the question. The better scripts dealt with the components on a ‘one by one’ basis which gave more structure to their answers. However, as already mentioned, surprisingly few candidates were able to deal with the question by way of a briefing note. Too many lapsed into a meandering dialogue which was hard to follow. A briefing note by its very nature is a series of short, sharp sentences often in bullet point form designed to convey information succinctly to those that it is aimed at. It should be hard hitting and transmit the information on a relatively small amount of paper. However, there seems to be a common view held by many candidates that ‘weight pays’ and that there is a distinct correlation between the number of words written down and the number of

marks given. Nothing could be further from the truth and the sooner this misconception is corrected the better it will be for all concerned.

The main components of the unit were the farmhouse, the farm land the farm buildings. So far as the farmhouse was concerned, candidates should have recognised that substantial refurbishment was necessary – such things as rewiring, re-plumbing, a replacement kitchen and central heating would be required. Potentially the farmhouse could be too large for one dwelling – thus there were opportunities for holiday letting, bed and breakfast etc. Most candidates acknowledged that a good rent could only be secured if the property was brought up to an acceptable modern day living standard. They appreciated that voids were a possible risk and that it was not always possible to get the ‘right’ tenant. The benefits of maintaining Estate property and an opportunity for good return were also noted.

The farmland extended to 140 hectares. Ensuring the viability of an existing tenanted holding was an obvious benefit but not all candidates recognised the fact that the would-be tenant still had to find the additional working capital – this in itself could be a risk particularly if the money had to be borrowed. Agri Environmental Schemes could play a significant part bearing in mind the presence of a SSSI. Most candidates opted for a 5-year FBT and some touched on the benefits of an increased rate of agricultural property relief with a tenancy of this nature.

A plethora of ideas were put forward for the farm buildings including holiday letting, a base camp for fell walking and trekking, an outdoor activity centre as well as suggestions for various storage uses. Risks and benefits were outlined – risks emanating from planning considerations within the National Park and benefits to the local economy featured throughout but not all candidates picked up on the central point of compatibility and suitability between competing activities on the holding.

More enlightened answers referred to increased management costs, the added importance of third party insurance cover, the need for market research before embarking upon such a capital intensive project, the wisdom of retaining flexibility in letting land, the advantages of a broader based portfolio as well as highlighting the dangers of allowing a large number of strangers into the middle of a country Estate.

Question 2 Paper II Notice to Remedy

This question tested a quite specific area of agricultural law which understandably would not have been familiar to all of the candidates. Nevertheless those who tackled it had a fundamental grasp of the procedures if a lack of detail. A comprehensive answer would have included the following information.

Alternative procedures under Agricultural Holdings (Notices to Quit) Act 1977 Sect.2.

Case C – Application to ALT for Certificate of Bad Husbandry

- Rules of Good Husbandry

Case D – Notice to Remedy

- Not less than 6-month period to do work

- 1-month period to serve counter notice
- Time limits for submission of Statements of Case
- Arbitrator's Award

Consequential effects of Notice to Quit

Certificate of Bad Husbandry
Section 2 (4) 1977 Act

Landlord can serve a valid Notice to Quit under Case C six months after application to ALT to certify that tenant was not fulfilling his responsibilities to farm in accordance with the rules of good husbandry.

No counter service can be served by the tenant.

Notice to Quit cannot be given until certificate granted but Notice to Quit cannot be valid if served more than 6 months after application to ALT.

Rules of good husbandry provide that, with regard to the character and situation of the unit and standard of management, the occupier is maintaining a reasonable standard of efficient production both as to kind of produce, quality and quantity and keeping the unit in a reasonable condition – with regard to:-

- a). Permanent pasture in good state of cultivation and condition
- b). Arable land in good and fertile condition
- c). Unit properly stocked with livestock and efficient standard of management
- d). Maintain crops and livestock free from disease and infestation
- e). Protection and preservation of harvested crops
- f). Necessary maintenance and repair (but not to repair others' responsibilities)

Notice to Remedy

Notice to tenant to remedy breach of Tenancy Agreement either

- i). by doing work of repair, maintenance of replacement, or
- ii). other breach not being under i).

Officially prescribed form under Agricultural Holdings (Notices to Quit) Act 1977 Section 2(3) Case D.

Time allowed to remedy breach must be reasonable.

NB. Less than 6 months is not reasonable for a notice to do work.

The breach of any term of condition of the Tenancy Agreement must be consistent with the fulfilment of the tenant's responsibilities to farm in accordance with the rules of good husbandry.

Any further notice served on a tenant within 12 months of original notice shall be disregarded unless otherwise agreed in writing.

If tenant contests liability to do work or as stated in the notice, he may refer matter to Arbitration by serving a counter notice within one month of receipt of notice.

No time limits within which to refer to Arbitration.

If tenant fails to comply with Notice to Remedy landlord can serve an incontestable Notice to Quit under Case D.

If the tenant is served with a Notice to Quit he may serve a counter notice requiring the consent of the ALT to the operation of the Notice to Quit (Section 4 1977 Act). ALT will consent only if they consider that a fair and reasonable landlord would insist on possession.

Is the breach remedial or not?

Very few cases are irremediable, e.g. subletting/ assignment but only if security of tenure is continued.

If there are multiple breaches, the time limit specified in the notice must be reasonable for all breaches to be remedied. Notwithstanding this, both the Notice to Remedy and Notice to Quit are severable in that it remains valid even though part of the reason for service has been remedied.

Tenant can challenge Notice to Remedy by a demand for Arbitration within one month if served under i) above. If so, points at issue cannot be raised at a later date when a Notice to Quit is served.

If a Notice to Remedy is served under ii) tenant can only refer to Arbitration at the stage of the Notice to Quit.

If tenant demands Arbitration the time limit is suspended pending the Award. If only some items are challenged, time may run out on the others and a Notice to Quit could be held to be effective.

An Arbitrator will hold that Notice to Remedy is invalid if time specified is unreasonable, but will only extend time limit if unforeseen circumstances after service of notice.

An Arbitrator may delete items for which the tenant is not liable and recover costs from landlord if so properly due. He may also vary method or material specified in the notice.

A tenant can demand Arbitration within one month of Notice to Quit whether founded on Notice to Remedy under i) or ii) above.

Operation of Notice to Quit is suspended pending Arbitrator's Award.

Tenant may only challenge his liability to do the work at Notice to Remedy stage, not at Notice to Quit.

An Arbitrator may extend the date on which a Notice to Quit takes effect if an extended time scale for remedial action has not been complied with.

In the case of a Notice to Remedy under i) only a tenant may serve a counter notice requiring the consent of the ALT to the operation of a Notice to Quit. Such a counter notice is invalid if tenant has demanded Arbitration. But if Arbitration Award is unfavourable tenant may again serve counter notice requiring consent of ALT (Section 4(2) and 4(3) 1977 Act). Tribunal must consent unless satisfied on grounds of fair and reasonable landlord.

Question 3 Paper II Capital Gains Tax

A straightforwardly phrased question on Capital Gains Tax requiring the preparation of a file note for a meeting with a client considering the sale of a farm, to set out the information needed to give advice on the potential allowances and reliefs available.

The question was generally well answered with candidates proving to have a good working knowledge of the subject. The information needed relates to prospective reliefs available and the principle points of information required from the client are as follows:-

1. Age and health.
2. Date asset acquired – as a whole or in part, at the same or different dates.
3. Is the proposed sale a joint interest?
4. Is the proposed sale of the whole part?
5. What was the cost of acquisition if post 1982?
6. Are there any existing valuations for earlier post 1982 valuations or agreements with the District Valuer in respect of the values of the property generally?
7. Is the property subject to tenancy?
8. Is the farmhouse the principle private residence?
9. Have there been any qualifying acquisitions in the previous 12 months?
10. For how long has the client been in control of the business?
11. A full description of the farms and the house required together with an initial appraisal as to whether the house and any cottages are of character appropriate.
12. The existence of any quotas.

Candidates were expected to have a working knowledge of the following reliefs and improvements:-

- i) Indexation and Taper Relief.
Transition from Indexation to Taper with effect from 1st April 1998 was generally well understood.
- ii) Annual exemption of £7,200; since this figure alters annually from Budget to Budget not all candidates were aware of the current rate of exemption.
- iii) Retirement Relief.
- iv) Principal Private Residence Relief.
- v) Rollover.
- vi) Holdover.

Overall the question was encouragingly answered, and again the best answers were pre-planned and clearly presented. Time spent thinking and planning answers is rarely wasted.

Question 4 Paper II

The question required a checklist of information to be gathered from a preliminary inspection of a mixed arable and pasture farm for the purposes of drafting sale particulars.

There were many clues in the question indicating the need for precise and specific enquiries among them.

IACS – registration of the arable lands for Arable Area payments and the pasture for Forage Area.

Planning – does an agricultural occupancy restriction apply to the 10-year old bungalow?

Tenure and rents of the pair of cottages occupied by retired workers.

Suckler Cow Quota.

Best answers were comprehensive in identifying the following matters; soil types, character and ownership of boundaries, existence of land drains, aspect and location of the land, description of house, cottages and buildings, provision of domestic services, the existence of footpaths and bridleways.

Although the question indicated that there were no planning prospects a general reference to the Planning Authority's Local Plan should be a standard item as well as a comprehensive list of fixtures and fittings, particularly on a stock farm, of water troughs and fencing.

Marketing considerations would include timing and method of sale, possible lotting requirements for holdover, the need for any restrictive covenants, a budget for advertising and marketing, importantly agreement over fees and charges, the name of the Solicitors to represent the vendor and the requirement to prepare a draft of the Special Conditions of Sale.

Question 5 Paper II

- a. Tenancy
Notice to quit the holding and whether this action needs to be taken.
- b. Partnership/ Outgoing Valuation
Purchased Milk Quota/ apportioned Milk Quota.
Valuation of live and dead farming stock.

Tenant's improvements/ tenant's fixtures/ tenant's pastures/ U MVs/R MVs and lime.

Silage/ hay/ straw/ growing crops/ miscellaneous.

HP/ leasing payments.

Overdraft.

Sheep Quota.

Outstanding IACS Arable payments/ Outstanding Sheep Premium payments.

Dilapidations.

Value of the tenancy.

- c. Taxation (seek Accountants' advice)
Outstanding Income Tax/ Income Tax repayments.
Capital Gains Tax (retirement Relief/ Taper Relief).
Election/ re-continuation of business.
Financial winding up of existing partnership at termination date.
- d. Legal (seek Solicitors' advice)
Legal termination of the partnership.
Future liabilities for retiring partner.
Ongoing trading title.
- e. Professional
Your responsibilities as a member of the Central Association of Agricultural Valuers'/ conflicts of interest.

This question was only answered by six candidates and on reflection was perhaps slightly complex.

Those that did answer the question generally picked up the "conflict of interest" issue and successfully listed out some or all of the items to be valued. They singularly failed to mention how important it was to liaise with other professionals and very little thought was given to taxation and the legal position of the two brothers.

Once again, not enough thought was given to the layout of the report that had to be provided before candidates answered the question. We therefore had remarks under various heads being included in their report as an afterthought.

Collectively Examination Board members would strongly urge all those putting candidates forward for this written exam to spend time with candidates, clarifying with them the importance of grammar, punctuation and layout. Even if an answer does not include all points that an Examiner feels should have been included within the model answer, if the report reads well minor oversights can be forgiven.