

Can You Have Too Much Security of Tenure?

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SUMMARY

It is generally taken as an axiom of land management and administration that strong security of tenure for occupiers of property is an important pre-requisite for rural and urban property management and development, particularly in developing countries.

This paper reviews developments in land tenure in the English and Welsh regions of the United Kingdom, with reference to agricultural, residential and commercial property. A comprehensive code for the letting of agricultural property was formulated in 1948, in the Agricultural Holdings Act of that year. This code was gradually extended to cover not only security of tenure, but also rent control, maintenance obligations, improvements and tenant's fixtures and tenancy succession. The period since 1948 saw a continuing steady decline in the number and area of let farms in the UK. Some of the blame for this decline was attributed to the legislation conferring security of tenure. Key stakeholders in the agricultural industry agreed to detailed reforms, which were implemented in 1995 under the Agricultural Tenancies Act. This introduced the concept of the Farm Business Tenancy, offering much more flexible terms and greater freedom to agree individual contractual terms between landlord and tenant.

The Rent Act 1977 consolidated a comprehensive framework for the protection of residential tenants. This included strict controls over the level of rents and also provided for tenancy succession. One consequence of this legislation was significant decline in the number of dwellings available for rental and deterioration in the condition of those that remained. The Housing Act 1980 saw the first efforts to dismantle these arrangements for new tenancies, with significant further developments taking place via the Housing Acts of 1988 and 1996. A consequence of these changes has been the development of an active market in let residential property, with greater choice for prospective tenants and attractive returns for the property investor.

The commercial sector has seen far less change, with the Landlord and Tenant Act of 1954 continuing to provide a fairly steady basis for lettings of commercial property. This Act has recently seen small changes to further reduce the role of the courts in regulating agreements between landlords and tenants. Of the three let property markets in the UK, it has been the most stable during the second half of the twentieth century.

This paper reviews some of these developments and their impact on the let sector, and discusses some of the conclusions which may be drawn concerning security of tenure in developed and maturing economies.