



ABOUT THE CAAV

The CAAV was formed in 1910 by representatives of local valuers' associations to provide a national organisation with professional authority to represent valuers and ensure professional standards.

Today the CAAV is the specialist professional body representing, qualifying and briefing 2,800 agricultural and rural valuers throughout England, Wales, Scotland and Northern Ireland.

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ABOUT NIRVA

Founded in 2012, NIRVA affiliated to the CAAV in 2015. Its members advise farmers, landowners, lenders, charities, government and others on a wide range of rural issues. For more details please see the NIRVA website, www.nirva.org.uk.

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THINKING OF TENANCIES?

There is growing concern that the use of conacre is no longer serving the interests of agriculture, owners or farmers in Northern Ireland:

- offering only short term occupation
- with many owners no longer investing sufficient money and effort on re-seeding, liming, fertilising, spraying, fencing, etc
- too little security for farmers to do these things at their cost
- failing to exploit the full potential of the land and leaving it to go backwards

especially for handling the challenges and changes with Brexit.

Conacre is “leased annually (typically from March till November) with no guarantee of renewal. This practice makes it very difficult for the farmer leasing the land to justify constructing stock proof fencing or following good bio security protocols.”

The TB Strategic Partnership Group Report, 2015

That is leading to a closer look at the option of letting land on tenancies as a positive use of the freedom of contract for farmland in Northern Ireland without removing the choice of conacre.

“Longer-term lease of land must be facilitated to encourage tenant investment in improving the effective use of land, our most valuable resource”

Agri-Food Strategy Board's 2012 Report, Going for Growth, Recommendation 8

A longer term tenancy agreement can be used to unlock the potential of land by giving the farmer the confidence to work to improve the land to the benefit of the farm business, the landowner and the wider rural economy.

Northern Irish landowners have not used tenancies because of

- lack of familiarity without a useful model
- fears over taxation, especially Inheritance Tax
- keeping access to CAP payments

BUT these points can now all be answered.

Offering land on conacre now poses the same issues for taxation and CAP payments. A tenancy can give a mutually positive basis for both the farmer who is to pay the rent and the landlord who lets the land.

CAP PAYMENTS

While the owners of land let out on conacre were allowed to claim the Single Payment on that land, DAERA has been very clear that the position for the Basic Payment is that the taker of conacre land will almost always be the proper claimant.

That is exactly the same as where land is let out on a tenancy.

This approach sits very easily with the approach taken by Inheritance Tax and other taxes as HMRC looks increasingly hard at farming cases and checks who is occupying the land for husbandry.

An owner who wishes to claim BPS must maintain “agricultural activity” on the land which, at the very least, will involve maintaining the land so that it can be grazed or cropped. If doing only that, DAERA is likely to ask for evidence to show that the owner is undertaking that activity and that there is no other agricultural user of the land. Not only may that demand investment of both time and money by the landowner with associated risk but the return may, in many cases, pay less than having someone else farm the land usefully and pay a rent with assistance of the payments.



SUMMARY

As the 2016 Sustainable Land Management report, *Delivering Our Future, Valuing Our Soils*, recognised, the traditional arguments in favour of conacre have lost their attraction: -

- it no longer offers the landowner access to CAP payments
- for most landowners it has no tax advantages over tenancies
- it discourages investment and fails to maintain the fertility of land

In contrast, tenancies, using the freedom available under Northern Irish law, can offer: -

- a flexible structure allowing landowners and occupiers to have a constructive relationship over time
- a basis and the time for investment by the parties in the health and productivity of the land
- the business confidence for a farmer to present a budget and cash flow to a bank for lending
- a long-term structure for environmental and conservation agreements
- for most owners, a relatively benign capital tax environment.

and so offer a valuable additional means to handle change, manage land and improve productivity.





WHAT MIGHT A TENANCY LOOK LIKE?

Unlike the rest of the United Kingdom, Northern Irish law has no specific rules for agricultural lettings, so an agreement can be written to suit what the owner and farmer have agreed, within only the general legislation for all lettings (Deasy's Act).

An agricultural tenancy

- is **not** caught by the rules for business tenancies with their restrictions
- does **not** have to be made by deed but is best recorded in writing
- is **no longer** subject to the Irish Land Acts, now repealed.

The tenancy agreement records the rules for the business deal defining

- who is to be landlord and tenant
- the property being let
- how long it is agreed to be let for
- the rent.

It should say:

- what is expected of the tenant about the use and management of the property
- that the landlord allows the tenant the quiet enjoyment of the leased property
- how the property is to be left when the lease ends and the basis for any claims between the parties.

For a longer lease, it should say if it might be ended early, as perhaps by:

- either party on the tenant's death or insolvency
- the landlord so that he can have possession of all or part of the tenancy for development

As reasonable people can reasonably disagree, all agreements of any sort need a provision for settling issues, usually arbitration or expert determination.

Members of the CAAV and NIRVA are experienced in brokering pragmatic arrangements which recognise the needs and ambitions of the parties and the nature of the individual properties involved.

TAXATION AND LETTING LAND

- **Moral** – With increasing HMRC scrutiny, the tax reliefs for being a farmer turn on actually farming.
- **Caution** - These notes are a very basic summary. Specific advice should be taken before deciding any action.

Inheritance Tax (IHT)

Many landowners have an especial concern about Inheritance Tax. At present, two main reliefs are useful for farm property: Agricultural Property Relief and Business Property Relief.

Business Property Relief (BPR) can give full relief on the market value of all assets employed in a business that is not wholly or mainly one of investments. So far as the owner is not using the farm for his farm work, it will generally **not** qualify for BPR, whether it is let on conacre or a tenancy.

Warning – In the *McCall* case, the Northern Ireland Court of Appeal found that the conacre/agistment was an investment activity and so did not qualify for BPR, as the owner had:

- not cultivated the land
- not sown or grown the grass as a crop
- not fertilised the land
- only done maintenance work to fences and watercourses so the land could be let.

It had been the graziers who had maximised the feeding value of the grass.

Agricultural Property Relief (APR) is for the “agricultural value” (not necessarily the market value) of land, buildings and dwellings **if** they meet the legal tests. Farmhouses may often still have some taxable value.

Agricultural land qualifies for APR if it has been used either by:

- the deceased for the purposes of agriculture for the two years before the death or
- anyone for the purposes of agriculture for seven years before the death

Let Property – Agricultural property let after 1995 on a tenancy, for any length of term, can qualify for full APR. This rule applies throughout the UK, including the 35% of farmland in England that is let. HMRC has confirmed to the CAAV that it does not matter whether it is a tenancy under an agricultural statute or not.

However, conacre land only qualifies if possession is available within a year.

Farmhouses are increasingly challenged by HMRC with a series of cases. For a house to be a farmhouse for Inheritance Tax, it must be the house from which the day-to-day farming is conducted for the necessary period and be of a “character appropriate” to the land. If that is not the case, then it will not be a farmhouse for tax relief, whatever its earlier history. With someone else farming the land and claiming CAP payments in the *Arander (McKenna)* case, the owner’s house was not a farmhouse. In practice, many houses on farms may fail these tests after reviewing the facts of the last two years of life.

However, there is now an alternative relief on a family house that may be attractive to many and allows the farmland to be let out.



The New Relief on the Home – From April 2017 a new Inheritance Tax relief (the Residence Nil Rate Band Amount) is available where a house that the deceased lived in is given to a direct descendant. The value of this relief rises to £175,000 by April 2020. Transferable between husband and wife, there could then be £350,000 of relief, if neither’s net estate is over £2 million.

With forward planning, that is a more secure relief than APR for a farmhouse worth up to £500,000 given to the next generation.

It can also take the house out of the decision about letting the land since it no longer has to be a farmhouse to qualify for relief.

Other Taxes

Capital Gains Tax (CGT)

This is due on the sale or other disposal of assets. Farm property held for many years can see large taxable gains, especially where sold for development.

The standard rate of tax on the gain is now 20% (houses still 28%) but this can be reduced to 10% on the first £10 million of gains by an individual if the facts qualify for Entrepreneurs’ Relief. That requires the sale of all or part of a business. Even where this is the case, land let out on either conacre or a tenancy would not help it to qualify.

In the Northern Irish case, *Evelyn*, prospective development land let out on conacre was found not to be a business asset. That would also affect access to Rollover Relief. Almost no conacre land would meet the tests for farming occupation by the owner set by the Tax Tribunal in its *Allen* decision.

Income Tax

Rental income would be property income and so not liable to National Insurance or relevant to calculating potential pension contributions.

As *Evelyn* shows, the fact that HMRC Inspectors may have accepted conacre income as trading income did not make it “generally prevailing practice”.

VAT

Letting land is usually exempt from VAT, meaning that VAT cannot usually then be recovered on its costs, especially for dwellings. Where conacre is seen as the supply of land, the same treatment would apply.

Stamp Duty Land Tax (SDLT)

If a tenancy is long enough, large enough and at a high enough rent, the tenant may have to pay SDLT at 1% on the excess of the capitalised rent over £150,000. Many small lettings may not reach that figure.