

Contributed by Burges Salmon LLP

Significant increases in food prices over the past year have brought farming and food production into sharp public focus. Various reasons for the increase can be given, including demand from China and India, low levels of 'intervention stock' kept in store around the world, poor harvests, rising areas of land used for biofuel production and increased speculation from investors. Some food prices have risen in line with world market prices and other prices have been driven up by supermarkets recognising the need to pay more if they wish to retain UK food production.

Whatever the reasons and the long-term predictions, the rapid increases in commodity prices have led to greater optimism amongst arable farmers. In July 2008 the EU Commission confirmed that compulsory set-aside would not return, removing a significant production control. Even milk prices have improved, and landlords expecting better returns have served rent review notices, sometimes the first to be served in more than ten years.

However, higher grain prices have hit many livestock producers who need grain for animal feed and all producers will suffer from increased production costs due to fuel price rises. Overall, the sector is characterised by greatly increased volatility.

The effects have also been felt in the value of agricultural land – with the RICS survey in July 2008 reporting a 47% increase in 2007 and a further 24% increase in the first half of 2008. Since the value of their security is rising, traditional lenders (in contrast to other lenders new to the agricultural market who have had to close their books) have been able to continue lending in the agricultural market in spite of the credit crunch. Even the new Single Farm Payment scheme, which has created the 'entitlements' to payment (which, unlike milk quotas, do not attach to land and therefore create a separate set of issues for landlords and lenders) has settled down and the disruptive effect of its introduction on the land market has all but disappeared.

For those looking to sell land for development, the fall in house prices has led to a withdrawal from the market of those developers looking to take land under option, meaning not only a loss of option fees but also of the considerable investment now required to secure significant planning permissions.

On the tax front, changes to tax law and in HMRC practice affecting rural landowners are increasing the exposure of taxpayers. Many farmers and landowners have the prospect of significantly more tax to pay on future sales of land following the changes to capital gains tax from 5 April 2008. Although the worst excesses of these changes were softened for some by the introduction of Entrepreneurs' Relief, it is likely that Rollover Relief may become more important again.

Securing inheritance tax relief on farmhouses continues to be a challenge. HMRC is increasingly denying relief on the basis that a house is not a 'farmhouse' or that whilst it is a farmhouse it is not of a 'character appropriate' to the holding. Even where those hurdles are overcome there is still the prospect of the district valuer seeking to disallow some relief to reflect the non-agricultural value.

A further fiscal disadvantage to landowners is that agricultural business allowances started to be phased out from 6 April 2008, a move that adversely affects many landowners. Changes to capital allowances on plant and machinery will favour some small farmers but the majority are likely to be worse off.

Whilst the tax changes in April led to a surge of interest in land transfers (often within the family) to take advantage of the old regime, the land market otherwise started 2008 slowly. Cash-rich farmers were joined by funds interested in the apparent counter-cyclical boom in agriculture to replace the residential life-style buyers who had fuelled the market in previous years. Nevertheless, at least until the summer of 2008, deals remained elusive due to a lack of supply and, possibly, a lack of confidence in the overall economic situation. One constant theme of those sales that did occur was the imposition of development clawback – now almost a standard feature of any rural sale.

Understanding the rights afforded to agricultural tenants under what is now the Agricultural Holdings Act 1986 has long been central to the practices of lawyers specialising in rural land ownership and occupation, and that continues even more than a decade after the farm business tenancy regime was introduced in 1995. Partnership disputes, arguments with lenders over the value and extent of their security, and the difficult area of recovering land for development from agricultural holdings all require an in-depth understanding of the 1986 Act. Those purchasing land need to assess the likelihood of succession rights being claimed by the family of the many tenants with rights to pass the tenancy through the generations. Tax lawyers will want help with creating tenancies that qualify for 100% agricultural property relief, possibly without disturbing the tenant's secure rights.

Lawyers and land agents will find the latest edition of Scammell & Densham published in late 2007 an essential addition to their bookshelves. Written by Peter Williams, it is the first major revision of this textbook since 1978 and covers many topical areas in much greater detail than previous editions.

Those acting for landowners and farmers in the rural landowning and food production sectors have learned to be flexible and commercial. The changes to the countryside and to business mean that they can be advising clients in the same week on a diverse range of matters: a potential wind turbine development, whether to join a judicial review application challenging the decision of the government on the way it has handled compensation claims following on from disease, the consequences of not having planning permission for a polytunnel, the redirection of a public right of way, and the impact of new waste or environmental protection regulations on farming practices. Many clients have successfully grown their food production businesses and need advice on drafting their standard terms of business, competition law and corporate M&A. Food production makes up a major part of the UK economy and a complete understanding of the sector is an essential prerequisite to the provision of complete legal advice.