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# National Tutorial 2023

# FARM COTTAGES

# MODEL ANSWER

***This is an Outline Answer, covering the points raised in a very broad problem, covering more content than might be covered in an exam question tackled in 40 minutes.***

**This Outline Answer Sheet is intended to be read alongside the accompanying Detailed Notes provided.**

## 1 WHAT IS THE LEGAL STATUS OF JOLENE'S OCCUPATION?

The occupation of the cottage by Jolene started **after** 15 January 1989 so we are dealing with the *Housing Act 1988.*

Remember - All new lettings entered into after 28 February 1997 take effect as ASTs with limited exceptions. However, Jolene is an agricultural worker.

She might not occupy under an AST if she satisfies the *qualifying agricultural worker"* test under *Schedule 3 of the Housing Act 1988* (which is fundamentally the same as the *"protected occupier test"* under the 1976 Act) UNLESS prior notice of the intention to grant an AST was served AND rent is at least £250 per annum.

We do not know if there is any tenancy documentation, so we cannot assume that the statutory prescribed Form 9 Notice was not served on Jolene before she went into occupation of the cottage.

We also do not know if Jolene is paying more than £250/year rent.

- Is Jolene a qualifying worker?

  **Yes.**

  Jolene has been working for her father on the holding since she was 18. She has fulfilled the 2 year qualifying period.

- Is there qualifying ownership?

  **Yes.**

  It was agreed that between Jolene and her father, being her immediate landlord, that Jolene would occupy the cottage.

- Is there a relevant licence or tenancy?

  **Yes.**

  Jolene has exclusive occupation of the Cottage.

**Answer: Jolene is likely an Assured Agricultural Occupant.**

## 2 WHAT IS THE LEGAL STATUS OF NEIL'S OCCUPATION?

The arrangement is governed by the *Rent (Agriculture) Act 1976* (the "1976 Act").

The reasons for this conclusion are as follows:-

- Neil has been in occupation since 1988 (35 years). Prior to the implementation of the Housing Act 1988 on **15 January 1989**, residential lettings were governed by either the *Rent Act 1977* or the *1976 Act.*

- Although we do not know his role on the farm, it appears that Neil is employed in agriculture. Because of the agricultural element to his occupation, the *1976 Act* is the relevant statute.

You then need to ascertain whether Neil satisfies the statutory requirements of the 1976 Act.

To be deemed a *"protected occupier"* under the 1976 Act he must satisfy the following 3 stage test:-

1. **Qualifying Worker**
2. **Qualifying Ownership**
3. **Relevant licence or tenancy**

Each must be broken down as follows:

**Qualifying Worker:**

(a) Occupier must be **employed** in agriculture – Note they need to be an employee, rather than self-employed. Often the distinction is murky and will require further investigation.

(b) They must have worked full time (at least 35 hrs per week) in agriculture for 91 out of [the last] 104 weeks (or have an injury or disease caused by the agricultural work which prevents him working). So, it is a 2 year qualifying period.

- On the facts, it appears Neil has worked on the farm for 35 years.

Does Neil satisfy this limb of the test? **Likely, yes.**

**Qualifying Ownership:**

Either

(a) the employer owns the house; or
(b) the employer has made arrangements with the owner for it to be occupied by his agricultural employee.

Schedule 3 of the 1976 Act defines "owner" as the *"occupier's immediate landlord"*.

- The employer, Brian, has made arrangements for Neil to occupy the cottage.

Does Neil satisfy this limb of the test? **Yes**

**Relevant licence or tenancy:**

The occupier must have exclusive occupation of a residential property, let as a separate dwelling.

This excludes: lodgers; workers provided with board and lodging; workers sharing accommodation with landlord or many other people (e.g. hostel accommodation) **but** protection bites if worker shares with 2 other workers or less.

Does Neil satisfy this limb of the test? **Yes**

- If Neil does not pay rent, does that matter?

There is no minimum rent requirement or threshold under the 1976 Act.

But remember there is an issue if the occupier is paying rent at more than 2/3 of the rateable value of the property as at 31 March 1990 then it will fall outside the protection of the 1976 Act and under the protection of the Rent Act 1977 [**for further information see the Detailed Notes**].

**Answer: Neil is a 1976 Act protected tenant.**

The protection continues for as long as Neil remains in the cottage – Neil gets lifetime security of tenure.

**Right of Succession:**

Remember there is one right of succession (section 3 of the 1976 Act) if there is a qualifying successor living in the property at the date of death.

If Neil has a spouse living with him immediately before he dies then he/she will be entitled to a succession tenancy.

They will automatically be granted the same tenancy as Neil held.

Neil's spouse would get lifetime security of tenure. However, it will not carry succession rights – there can be no further succession tenancy on the spouse's death.

Note: if there is no spouse living at the date of death, there is scope for succession by a family member instead. This is more complex than succession by a spouse – including a 2 year qualifying period **[see Detailed Notes].**

## 3 WHAT IS THE LEGAL STATUS OF SUSAN'S OCCUPATION?

Remember: All new lettings entered into after 28 February 1997 take effect as ASTs unless prior notice to create an assured tenancy has been served.

Although an entirely informal arrangement, this is an assured shorthold tenancy (AST) under the Housing Act 1988 and 1996. There is no requirement for a written agreement to create an AST. Provided the legal requirements for a valid tenancy are met, an AST will have been created: e.g. exclusive possession for a term certain in return for a rent/consideration.

Here, Susan has been occupying the cottage since 2008 in return for a monthly rent so we can assume a periodic AST has been created on the basis of that monthly rent. We do not know whether the rent satisfies the £250/yr minimum threshold.

**Answer: Susan is likely occupying her cottage under an AST.**

## 4 WHAT CAN THE LANDLORD DO ABOUT THE SUB-LETS?

The Tenant has admitted to subletting the cottages. We now need to look at the steps that a landlord can take in the face of a tenant's breaching their tenancy agreement.

The first question is to establish whether the breach is remediable or irremediable as the answer to that question dictates the action that can be taken.

The test of remediability is whether the harm that has been done to the landlord by the relevant breach is, for practical purposes, capable of being remedied within a reasonable time.

If, within that time, the landlord can be put back into the position he would have been in had no breach been committed, the breach is remediable. If this cannot be done, within a reasonable time or at all, the breach is irremediable. For this purpose, whether a breach is capable of being remedied depends upon the character of the covenant and the obligations under it, rather than the capabilities of the covenanter[1].

Below is a non-exhaustive list of which breaches are remediable and irremediable:

[1] Muir Watt & Moss on Agricultural Holdings 15th edn; paras 15.139 – 15.140

| Remediable breaches | Irremediable breaches |
|---|---|
| A covenant to use as a private residence only | Assigning or subletting holding |
| A covenant to pay water rates or insurance premiums | Cutting down a tree in breach of a covenant to not to do so |
| Failure to keep the property adequately insured | Illegal or immoral use |
| A covenant to reside in the farmhouse | |

Subletting is an irremediable breach.

We must then consider the different avenues available to a landlord to terminate an irremediable breach.

The effect of the AHA is that it confers security of tenure by restricting the operation of notices to quit by the landlord. Generally, this is by way of the tenant being able to serve a counter-notice and the landlord having to apply to the First-tier Tribunal for consent to the operation of the notice to quit. However, Section 26 of the 1986 Act excludes the tenant's ability to serve a counter-notice in a number of 'special cases' contained in Schedule 3 Part 1 of the 1986 Act.

The special cases (A-H) provide for a landlord to serve a notice to quit on a tenant without having to apply to the Tribunal for consent to the operation of the notice to quit. Case E is relevant to irremediable breaches of covenant by the Tenant.

Case E provides:

> *"At the date of the giving of the notice to quit, the interest of the landlord in the agricultural holding had been materially prejudiced by the commission by the tenant of a breach which was not capable of being remedied, of any term or condition of the tenancy that was not inconsistent with the tenant's responsibilities to farm in accordance with the rules of good husbandry, and it is stated in the notice that it is given by reason of the said matter."*

Case E gives the landlord the power to give a notice to quit where the landlord's interest has been materially prejudiced by a breach by a tenant which is not capable of being remedied and is not inconsistent with the tenant's responsibilities to farm in accordance with good husbandry.

It is a critical part of succeeding with a Case E notice that the irremediable breach must have caused material prejudice to the landlord.

There is no case authority deciding when material prejudice might exist and therefore it is likely that it should be assessed at the date that the notice to quit is served. There is also no guidance from the 1986 Act or case authority on what constitutes material prejudice.

So the Landlord could proceed to serve Case E Notices on Brian (one for every breach (i.e.

sublet)). Each Case E notice should particularise the breach complained of.

The tenant, Brian, has the opportunity to challenge a Case E Notice by referring the matter to arbitration within one month of service of the notice to quit.

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**September 2023**