

## Case study

**There are two statutory codes that apply to agricultural tenancies and leases in England and Wales. The Agricultural Holdings Act 1986 applies in England and Wales to all agricultural tenancies let prior to 1 September 1995 and to most tenancy successions to those tenancies. The Agricultural Tenancies Act 1995 applies to all agricultural tenancies let after the 1 September 1995 (except those to which the 1986 Act still applies as set out in Section 4(1) of the 1995 Act).**

Arbitration features under both codes and whilst many cases are related to rent reviews which can be downward as well as upward, quite a large percentage deal with the other factors set out below.

Following a Regulatory Reform Order in October 2006 the arbitration code applicable to both types of tenancy is the Arbitration Act 1996. Before October 2006, 1986 Act tenancies came under their own code. Different Agricultural Holdings Legislation applies in Scotland and Northern Ireland.

Disputes that can be referred to arbitration under the Agricultural Holdings Act 1986 include the following: Rent reviews, Compensation and dilapidations at the end of tenancy, Milk quota compensation, Notices to Quit, Game damage claims and Notices to Remedy. There are very strict limits and the parties must adhere to these.

A similar system also applies to disputes under the Dairy Produce Quota Regulations when land and milk quota changes hands.

Under the Agricultural Tenancies Act 1995 disputes can also be resolved by arbitration or in other ways such as by a chartered surveyor acting as an independent expert, provided that the procedure allows for a decision that is legally binding on the parties. There is a provision in the Agricultural Tenancies Act 1995 for consent to Tenants improvements to be dealt with by arbitration.

Apart from other matters that have to be referred to arbitration as provided under the statutes, the parties can also refer any other dispute to arbitration by consent. These can cover valuations under option agreements, partnership disputes, matrimonial dispute valuations and livestock valuations.

## Importance of a chartered surveyor

There is a panel of arbitrators appointed by the President of the RICS and drawn from chartered surveyors who have undertaken appropriate training and have been accredited through examination to have sufficient knowledge and expertise. The RICS Dispute Resolution Service holds the list and applications are made to the President of the RICS for appointments.

It is also possible to try to resolve disputes by mediation and chartered surveyors are beginning to use this more frequently. Where statutory arbitrations are necessary then the arbitration procedures must be followed in the first instance so that an arbitration can proceed if the mediation is unsuccessful.

## Specialist skills required by a chartered surveyor

The legislation governing agricultural property tenancies and leases is very specialised and the training of the chartered surveyor is extremely detailed to cover all aspects of the problems that arise in practise.

Chartered surveyors must be familiar with the Civil Procedure Rules 1998 (CPR) and apply them to their practice then undertaking the role of an expert witness before arbitrators, tribunals and in the courts. They must follow the RICS Practice Statement entitled 'Chartered surveyors acting as expert witnesses' which incorporates the requirements of the CPR and imposes a primary duty of the expert witness to the arbitrator, tribunal or court as opposed to the client.

Arbitrators and Chartered Surveyors also need to be aware of other practice statements dealing with direct professional access to the bar and acting as advocates.

When acting for one of the parties the chartered surveyor should ensure that the arbitrator has all the evidence he needs in order to come to a proper award.

The CPR and Arbitration Act 1996 also dictate that the parties conduct the proceedings as far as possible with due consideration that costs should be proportionate to the amounts or matters in dispute.

The chartered surveyor, whether he/she is acting for one of the parties or as an arbitrator/independent expert, must try to resolve the dispute as quickly and as efficiently as possible.

## Summary

The statutory procedure is complicated and depends on a prior correct notice being served in most situations. In all cases the emphasis will be on resolving differences by agreement with arbitration as the last resort.

## Further reference

Acts of the UK parliament –  
[www.hms0.gov.uk](http://www.hms0.gov.uk)