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Comité européen de droit rural
European Council for Rural Law
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Agrarrecht und das Recht des
ländlichen Raums



**Congrès européen de droit rural – 9–12 septembre 2015
Potsdam (Allemagne)**

**European Congress on Rural Law – 9–12 September 2015
Potsdam (Germany)**

**Europäischer Agrarrechtskongress – 9.-12. September 2015
Potsdam (Deutschland)**

organisé sous la direction du C.E.D.R.
par la Société Allemande de Droit Agraire
organised under the direction of the C.E.D.R.
by the German Society for Agricultural Law
organisiert unter der Leitung des C.E.D.R.
durch die Deutsche Gesellschaft für Agrarrecht

Commission/Kommission II Part II

**Rapport national pour/National report/Landesbericht
National Report for the United Kingdom**

Rapporteur/Berichterstatter

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SUMMARY

This report is written in respect of the whole of the United Kingdom (UK), however different laws apply in Scotland and to a lesser degree in Wales and Northern Ireland.

Presently there are no restrictions on ownership of land by foreign nationals or companies within the UK in respect of most agricultural real estate. Despite this there are political moves within Scotland to limit ownership by non – EU nationals. The political mood in Scotland is that there are too many non-domiciled or otherwise distant landowners owning large rural estates, and that the sustainable development of the countryside is adversely effected. This is not a universally held view.

Throughout the remainder of the UK there are various restrictions on the use of agricultural land which derive from policies intended to protect the rural economy and landscape. There are also fiscal policies designed to restrict corporate ownership of domestic property in order to limit avoidance of Stamp Duty Land Tax, which is a tax on real estate transfers.

I. Specific topic: cross-border acquisitions and acquisitions by non-agricultural capital of agricultural land

1. Background information, facts and figures: is cross-border acquisition and/or acquisition by non-agricultural capital an issue in your country's agricultural policy (e.g., investors in your country wishing to engage in cross-border acquisitions or your country being a target for cross-border acquisitions; non-agricultural investors in your country intending to buy land in your country)?

The UK farming area is about 17.2 million hectares and there are about 212,000 farming units, or holdings. The average size is 77 hectares and each holding receives an average of £13,500 in EU support¹ which is mainly from direct support payments under the Single Farm Payment Scheme. From 1st January 2015 this is the new Basic Payment Scheme.

The farming area of England is just over 9 million hectares and about 30% is occupied on tenancies or leases of one year or more². 60% of these lettings are secure tenancies under the Agricultural Holdings Act 1986³. By comparison, in Scotland where the farmland area is some 5.8 million hectares, the tenanted land makes up 24%⁴.

There are no nationally collated figures available for foreign investment in UK agricultural land. In England and Wales there is no firm government policy either for or against cross-border acquisitions. However the situation in Scotland is rather different with a history of land reform beginning with the Land Reform Act 2003.

Whilst there may be no wholly reliable statistical evidence for cross-border acquisitions, there is plenty of anecdotal evidence from real estate agents and others. This suggests that the stable nature of the English and Welsh land market and fiscal incentives have encouraged both foreign buyers and other investors within the UK. Internally within the UK it has been suggested that investors may have moved out of other assets which have been perceived as risky and are seeking a "safe haven". This movement appears to have been accelerated by the recession commencing in 2008 and continued to date.

A notable example of purchases from non-agricultural buyers is Sir James Dyson's purchase of 25,000 acres (10,000 hectares) of English farmland over the last 10 years. Dyson is the inventor of the Dyson vacuum cleaner and many similar consumer products and according to the Sunday Times Rich List is worth over £3 billion.

¹ DEFRA Agriculture in the UK 2014

² DEFRA Farming Statistics October 2014

³ DEFRA Farm Rents 2013/2014

⁴ Tenanted Agricultural Land in Scotland 2102

All land in England and Wales now has to be registered at Her Majesty's Land Registry on any significant change in title⁵. The Land Registry is an executive agency of the UK government first created in 1862 and the present system of land registration was established by the Land Registry Act 1875. However registration was not compulsory initially. Compulsory land registration began in London in 1899, but did not extend to all rural areas until 1990. This does not affect land which has not changed hands and the Land Registry estimates that 20% of the land mass in England and Wales remains unregistered and most of this is rural land. This means that it is very difficult to produce accurate statistics on the identity of land owners and the nature of land holding in the UK.

Land ownership in the UK is not allodial or absolute, it is, at least technically, derived from absolute ownership by the Crown and the two common forms of tenure held from the Crown are freehold, or fee simple and leasehold.

The nearest approximation to academic research into UK land ownership was by Kevin Cahill in 2002⁶. He found that two thirds of the UK land was owned by 189,000 families, but he still could not account for 10% of the country's land ownership. Recently in a speech in Singapore Prime Minister David Cameron has called for more transparency in land ownership in an effort to overcome fears that proceeds of foreign crime are being "laundered" through the UK property market. He has announced proposals for the Land Registry to publish details of land held by foreign investment companies. The Financial Times has estimated that at least £122 billion of property in England and Wales is owned by offshore companies. Most of this investment will be in commercial and residential property in London and the south east, but some will be in agricultural property across the UK.

There are a number of fiscal attractions to land ownership as an investment within the UK. Agricultural land and buildings are largely free from Inheritance Tax on death and farm land and buildings used as part of a business can obtain significant relief from Capital Gains Tax which is a tax on increases in the capital value between purchase and sale. This, combined with poor returns elsewhere during the recession, has made farmland an increasingly attractive investment. Average farm land values in England and Wales have risen from around £4,000 per acre (£9,885 per hectare) in 2005 to £10,000 per acre by the second quarter of 2014⁷. Real estate agents report no let-up in prices yet, with the best arable land selling at around £15,000 per acre (£37,000 per hectare). This level of value is making it increasingly difficult for ordinary farmers to purchase land, however conversely, many of the buyers from outside of the industry are not interested in farming themselves and are making the

⁵ The Land Registration Act 2002

⁶ Kevin Cahill: *Who Owns Britain?* ISBN-10: 1841953105. Canongate Books 2002

⁷ RICS/RAU Rural Land Market Survey 2014 H2.

land available to rent to existing farmers. The land is not always made available on traditional tenancies, but often on contract farming arrangements and share cropping agreements in order to allow the new owner to enjoy the fiscal benefits of being an “active farmer” whilst leaving the responsibilities to those better skilled and equipped.

2. Does national legislation in your country address the issue of cross-border acquisition and/or acquisition by non-agricultural capital? If so, please outline the legal framework.

There is currently no regulation of foreign investment in UK real estate. There are certain restrictions on foreign acquisitions of companies operating in certain sensitive areas such as banking, financial services and utilities. However these are unlikely to directly affect agricultural real estate.

Within Scotland there are radical changes proposed within the Land Reform Bill published on 22nd June 2015 which is currently out to consultation. The Consultation recommends:-

“...limiting legal entities that can, in the future, take ownership of land in Scotland”.

More specifically the Land Reform Review Group suggests limitations on non EU land ownership. The Bill also proposes that the Scottish Ministers can:-

“...intervene in situations where the scale or pattern of land ownership in an area, and the conduct of the owner, is acting as a barrier to sustainable development.”

The Scottish Land Reform Act 2003 began this process with a Community Right to Buy land when it came up for sale and a crofters community right to buy land which applies to croft tenants who can have the right to purchase at any time. A croft is a small tenanted agricultural unit in Scotland with a house, arable land and rights of communal grazing.

These proposals will undoubtedly be seen as populist amongst the ruling Scottish National Party in the devolved Scottish Parliament. Cahill (2002) suggests that just over 400 private individuals own over half the land in private ownership in Scotland and there are still deep feelings of resentment going back to the 18th and 19th centuries when absentee landlords cleared peasant tenant farmers in a sometimes cruel manner in favour of sheep farming. The Bill has been met with outrage by landowners and likened to a Robert Mugabe-style land grab by Prime Minister David Cameron in allusion to the Zimbabwean government’s seizure of white-owned farmland. It is reported by real estate agents that the effect has been to cause uncertainty in the Scottish land market and deter foreign investors.

3. What is the intended purpose of any such legal framework (e.g., the maintenance of rural communities)?

Scotland is reputed to have vast tracts of rural land owned by a very small number of individuals/entities. Again there is little empirical evidence for this and the Scottish Government's own figures suggest that the tenanted farming sector is actually smaller than in the rest of the UK. However this may be skewed by a relatively small number of large landowners farming land in hand.

The stated purpose of the proposed legislation in Scotland is to promote a more sustainable rural community. It remains to be seen whether this will have the intended effect.

4. Are there any legal instruments in the national law of your country which address cross-border acquisition and/or acquisition by non-agricultural capital of agricultural land: e.g. special rules which limit rights *in rem* such as liens, mortgages and beneficial interest (*usufructus*); and restrictions on types of contract for agricultural land use (such as leasehold contracts or share-cropping)?

There is no existing legislation on ownership.

5. Are there any special provisions in the national law of your country which concern the status of the individual land owner or land user (e.g., requirements as to citizenship, agricultural qualifications or proof of intention to pursue agricultural activities on the land in question)?

There are none in respect of land ownership, however there are some restrictions on use through the Town and Country Planning Acts, first introduced post-World War Two. Similar, although not identical provisions apply throughout the UK. In England, any change of use other than that permitted by a General Development Order requires prior Planning Consent from the Local Planning Authority, which is usually the local administrative council. Specifically any change of use of agricultural land to some non-agricultural use, such as garden land associated with a dwelling house, another form of business use outside of agriculture or a leisure or recreational use, normally requires prior planning consent. Planning consent or another form of prior approval is also required for any development comprising building work, such as the erection of buildings, whether for agricultural use, or some other purpose.

The decision to grant Planning Consent is made by the Local Council based on both national and local planning policy. Local Councils are required to produce Local Development Framework plans setting out their policy having consulted locally and regionally and these plans are subject to a formal public inquiry and must abide by national policy. National policy is principally the National Planning Policy Framework⁸ and the presumption is in favour of “sustainable development”. This is a change of emphasis following the Localism Act 2011. The provisions can be summarised as follows⁹:

- *new freedoms and flexibilities for local government*
- *new rights and powers for communities and individuals*
- *reform to make the planning system more democratic and more effective*
- *reform to ensure that decisions about housing are taken locally*

The Localism Act recognises the failure of the Planning System to deliver sufficient new development, especially housing.

Planning policy is also used to restrict and protect use of land or buildings to certain essential purposes that might not otherwise be permitted such as agricultural workers’ dwellings in the countryside. Planning policy would not normally permit new development in open rural areas outside of settlements identified for growth. The imposition of conditions restricting use to those employed locally in agriculture or forestry assists the sustainable rural community. Similar conditions are also used in popular tourist areas to restrict use of new houses and apartments to local residents who may otherwise be priced out of the market by holiday home owners.

6. Is there any relevant national legislation for the acquisition of land ownership or use of agricultural land by legal persons (legal entities)? Please focus solely on the conditions which differ from the conditions regulating the acquisitions of natural persons.

There are different rates of Stamp Duty Land Tax (SDLT) payable by the purchasers of real residential property and commercial property. Natural persons and corporate entities pay the following rates for commercial property which would normally include agricultural land and farm houses:-

Purchase price/lease premium or transfer value SDLT rate

Up to £150,000 - if annual rent is under £1,000 Zero

⁸ The National Planning Policy Framework 27 March 2012

⁹ Department of Communities and Local Government Guide to Localism Act 15/11/2011

Purchase price/lease premium or transfer value SDLT rate

Up to £150,000 - if annual rent is £1,000 or more	1%
£150,001 to £250,000	1%
£250,001 to £500,000	3%
Over £500,000	4%

However, much higher rates are payable on residential property unless it is part of a mixed use, such as a farm. The rates payable by a natural person used to be on a much hated stepped slab scale, but since December 2014 they have changed and the new system is expected to be revenue neutral. The new rates are as follows:-

Property or lease premium or transfer value	SDLT rate
Up to £125,000	Zero
The next £125,000 (the portion from £125,001 to £250,000)	2%
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

However most corporate entities pay higher rates starting at 15% over £500,000 and they may also be subject to an annual charge if worth over £1 million. The purpose of these increased charges is to discourage residential ownership through companies that has led to avoidance of SDLT by trading in share capital rather than the underlying property title.

7. How is any national law on cross-border acquisition and/or acquisition by non-agricultural capital enforced in your country (e.g., prior authorisation procedure for the acquisition of agricultural land and control systems)?

This is not applicable

8. How is judicial control of the acquisition of agricultural land ensured in your country? Does national law lay down any special legal procedures (e.g., special courts or special arbitration procedures for the settlement of land-related legal disputes)? How does national law prevent the circumvention (e.g., by sham contracts) and violation of restrictions on agricultural land acquisition?

Whilst there are no controls on land ownership, all land law matters are dealt with by the civil courts and the ultimate arbiter is the Supreme Court, previously the House of Lords.