



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

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**Congrès européen de droit rural – 11–14 septembre 2013
Lucerne (Suisse)**

**European Congress on Rural Law – 11–14 September 2013
Lucerne (Switzerland)**

**Europäischer Agrarrechtskongress – 11.-14. September 2013
Luzern (Schweiz)**

organisé sous la direction du C.E.D.R. par la Société Suisse de Droit Agraire et l'Université de Lucerne – organised under the direction of the C.E.D.R. by the Swiss Society for Rural Law and the University of Lucerne – organisiert unter der Leitung des C.E.D.R. durch die Schweizerische Gesellschaft für Agrarrecht und die Universität Luzern

Commission I

Statut juridique des conjoints et de leurs enfants dans l'entreprise agricole –
Legal status of cohabitants and their children in the agricultural enterprise
– Rechtliche Stellung der Partner und deren Kinder im landwirtschaftlichen Unternehmen

Report for the United Kingdom

United Kingdom Agricultural Law Association

by

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Summary

1. From 1965 there has been a series of statutes in the United Kingdom aimed at eliminating discrimination on the grounds of sex, race, sexual orientation, disability and age. These culminated in the Equality Act 2010 which covers all of the above characteristics and makes discrimination in all walks of life, including those covered by this paper unlawful.
2. Consequently the status of countrywomen is regulated by law to avoid any discrimination against them.
3. Children in the United Kingdom are minors until the age of eighteen years and as such cannot enter into a binding contract such as a tenancy of land or a business partnership. However as soon as a child reaches the age of eighteen there are no such restrictions regardless of the gender of the child.
4. A greater problem facing agricultural businesses in the United Kingdom than that of discrimination is the ageing population with the average age of the holder of an agricultural holding now being 59. The Future of Farming Review set up by the Department of the Environment Food and Rural Affairs has now reported with a large number of proposals to assist youngsters wishing to embark on a career or establish a business in agriculture. Nowhere in the report was gender identified as an issue preventing such entry into agriculture.
5. The role of women in diversification on a farm such as tourist facilities (bed and breakfast, farm shops and cafe, holiday cottages) is critical to their success and such diversification provides important income for the farming business especially in less favoured areas such as hill farms.
6. There is no difference in the legal position of men and women with regard to the succession to a tenancy of an agricultural holding on the death of the existing tenant (but not all tenancies carry succession rights as detailed in the paper)

A Overview

1.

Which are the characteristics distinguishing the legal status of partners' specially countrywomen and their children in the agricultural enterprise in general? Is the status of countrywomen regulated by law?

- 1.1 In general terms in the United Kingdom women play an important role in the agricultural industry. There is a small but growing percentage of farms run by women, while the majority support a male relative or partner. There are women who are sole traders, others who are partners in a farming partnership, and others who are shareholders and directors in limited companies. In the latter scenario the male relative or partner will tend to take responsibility for the day to day running of the farm holding, while women tend to take on the role of dealing with the farm administration, marketing, supplies and suchlike.
- 1.2 The status of women (and indeed men) is regulated by the Equality Act 2010, ("the 2010 Act") which provides that a person's sex is a 'protected characteristic' (sections 4 & 11) and thereafter prevents either direct, indirect or combined discrimination based upon, *inter alia*, a person's sex (sections 13, 14 & 19). Another protected characteristic is age and thus discrimination based on age is prevented.
- 1.3 In the United Kingdom a minor (a person under the age of eighteen years) generally cannot enter into a contract and thus cannot own land, become a tenant of an agricultural holding, a sole trader, partner, shareholder or director in an agricultural business.
- 1.4 For health and safety reasons there are rules governing what children can and cannot do on an agricultural holding. It is illegal to allow a child under 13 to ride on or drive agricultural self-propelled machines (such as tractors) and other specified farm machinery while it is being used in the course of agricultural operations or is going to or from the site of such operations. No child under 13 years old can be carried on a tractor, self-propelled agricultural machine, or a machine or implement mounted on, towed or propelled by a tractor or other vehicle, including a machine or agricultural implement drawn by a horse. Children under 13 years old may only legally ride on a trailer, or on a load carried by a trailer, if there are adequate means, such as edge protection, to prevent them falling from it. Children between 13 and 16 can safely use some

machines, but only if they are properly trained, supervised and competent.

- 1.5 In the latest survey of agriculture by the Department for the Environment Food and Rural Affairs there are 476,000 people employed in agriculture. This is less than 1% of the total working population in the United Kingdom (compared to 25% at the end of the nineteenth century). As a result of the 2010 Act the statistics do not show a breakdown between male and female. The last figures which show a breakdown according to gender relate only to employees and not owners or managers. In 2009 (the last year such a breakdown is given) there were 52,000 full time male workers, 11,000 full time female workers, 27,000 part time male workers, 16,000 part time female workers, 42,000 seasonal male workers and 17,000 seasonal female workers. It is also clear from that survey that those who are holders in agriculture are getting older. In 2000 23% of holders were under 45 but by 2010 this had fallen to 14%. In 2000 25% were 65 or older and by 2010 this had risen to 33%. The average age of a holder of an agricultural unit in 2010 was 59. The aging population is therefore more of a challenge than any discrimination based on gender.
- 1.6 The status of women and children is regulated and in our opinion need not be further regulated under UK law.

2. Which are the characteristics distinguishing the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in particular namely

2.2 in the following branches of law and area fields

2.2.1 Subsidy Law

The United Kingdom pays subsidies to farmers as defined by E.C.73/2009. There is no difference between men and women for this definition and if the applicant for payment meets the definition of farmer then the gender of the applicant is not relevant.

2.2.2 Land law and tenancy

Section 126 of the 2010 Act makes it unlawful for a person who has the authority to dispose of premises (for example, by selling, letting or subletting a property) to discriminate against or victimise someone else in a number of ways including by

offering the premises to them on less favourable terms; or by not letting or selling the premises to them, or by treating them less favourably.

2.2.3 Law of Succession

A person in the United Kingdom is free to dispose of his or her estate as he or she chooses without any limitation. However under the provisions of the Inheritance (Provision for Family and Dependents) Act 1975 a dependent (which includes spouse, civil partner, child or someone treated as a child of the family) who considers that the disposition of a deceased's estate does not make proper provision for them can apply to the Court for reasonable provision out of the deceased's estate. The powers of the Court in such circumstances are very wide and include power to transfer property such as the ownership of a holding or a tenancy of agricultural land and/or an agricultural business.

There are specific provisions in the Agricultural Holdings Act 1986 (applying to England and Wales) to enable the spouse or child of a deceased or retiring tenant of an agricultural holding to apply to succeed to the tenancy. This right only applies to tenancies which commenced before 12th July 1984 and there can only be two successions. A landlord has the right to oppose the application to succeed and if the parties cannot agree the matter is referred to the Agricultural Land Tribunal. An applicant has to satisfy the Tribunal that he or she is the spouse or child of the deceased or retiring tenant, is not the occupier of another commercial unit of agriculture, and his or her principal source of livelihood (i.e. more than 50%) is derived from agricultural work on the holding. If these tests are satisfied the applicant to succeed must then satisfy the Tribunal that he or she is a suitable person to succeed to the tenancy.

In respect of tenancies which commenced after 12th July 1984 under the Agricultural Holdings Act and after 1st September under the Agricultural Tenancies Act 1995 there is no right to succeed to a tenancy regardless of the gender of the person who would wish to do so.

2.2.4 Family Law

On the breakdown of a marriage or civil partnership the Court has wide powers to make an Order for the transfer of property.

Included in this power would be the transfer of ownership of land, the transfer of a tenancy from one party to the marriage or civil partnership to the other and the transfer of any business.¹ If the Court proposes to transfer a tenancy then it has to seek the views of the Landlord.

2.2.5 Social Security Law

A current topic in UK law is the question of how Social Security payments (or indeed any State funds, for example Subsidy payments) are paid in order to avoid sex discrimination. For example there may be a practical access issue where State funds to which both a husband and wife are entitled are paid solely into the husband's bank account. In addition, significant changes are being made to the UK Social Security system (and Child Benefit entitlement in particular) which will have a disproportionate impact upon women.²

These issues are, however, not particular to women within the agricultural industry and there is no substantive difference between the position of women and children inside and outside the agricultural industry.

2.2.6 Tax Law

The United Kingdom does not differentiate between a man and a woman in respect of their treatment for taxation and any liabilities in respect thereof.

2.2.7 Corporate Law

Again there is no difference in corporate law treatment of a man and a woman. Gender is irrelevant.

2.2.8 Transfer of a business

An owner of a business is free to dispose of the same to whoever he or she may wish. The United Kingdom law does not intervene in this area to give any protection to either man, woman or child.

¹ Matrimonial Causes Act 1973

² <http://www.guardian.co.uk/society/2013/jan/06/child-tax-credits-women>

2.3 By comparison to partners and their children in the non agricultural enterprise and between female and male partners in the agricultural enterprise

There is no difference in the treatment of women and children as between those involved in an agricultural enterprise and those involved in a non-agricultural enterprise; nor is there a difference in treatment between male and female partners in an agricultural enterprise.

B Legal developments

3. Has the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in the jurisdiction of your country changed with regard to the following branches of law and area fields? If yes, how and to which extent

3.1 Subsidy Law – No

3.2 Land law and tenancy

As previously indicated the 2010 Act now prohibits any discrimination in the selling and letting of land.

3.3 Law of Succession

The law has not been changed since the 1975 Act referred to above.

3.4 Family Law

The law has not been changed since the 1973 Act referred to above.

3.5 Social Security Law

No.

3.6 Tax Law

No.

3.7 Corporate Law

No.

3.8 Transfer of a business

No.

In respect of all of these areas of law, however, the overriding principles laid down in the 2010 Act apply making discrimination on the grounds of gender or age prohibited.

4. Are the legal developments concerning the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, as established in your country, traceable to trends?

4.1 National Law

Yes there are traceable trends. There have been a number of Acts of Parliament and Statutory Instruments which have dealt with discrimination. The Race Relations Act 1965, the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion or Belief Regulations) 2003, the Employment Equality (Age) Regulations 2006, and the Equality Act 2006. This legislation has been consolidated and incorporated in the 2010 Act. It can be seen therefore that over a period of almost fifty years legislation has evolved outlawing all forms of discrimination and in particular discrimination based on gender. This legislation applies to all walks of life in the UK and not specifically to agriculture.

4.2 European Law

Directive 2006/54/EC of the European Council and of the Parliament confirms that there shall be equal opportunities and equal treatment of men and women in the fields of employment and occupation. With regard to rural development and the CAP the United Kingdom has recognised in its 2006 Report to CEDAW the importance of women in rural businesses and the opportunity for rural development aid. It stated:

“Rural development

343. The England Rural Development Programme (ERDP) implements the EU Rural Development Regulation in England aimed at providing new opportunities for farmers and others to protect and improve the countryside, to develop sustainable rural enterprise, and to help rural communities to thrive. By the end of 2006, the Programme, partly financed by the EU, will have provided over £1.6 billion in support. The Programme provides the opportunity for many farm businesses to

explore new sources of farm income and will be available to all eligible applicants, both men and women.

Survey evidence shows that women play an important strategic role on the farm, in terms of both the traditional agricultural enterprises and new enterprises. (72% oversee the farm's accounts; two thirds are partners in the farm business; half are involved in management and planning of the farm business; over a third are responsible for a new enterprise on the farm). In view of women's role in rural areas, some elements of the Programme can be identified as being particularly relevant to women in rural areas.

The Rural Enterprise Scheme, which provides grants for developing sustainable rural businesses. Some elements of this scheme (e.g. marketing of quality agricultural products, diversification of agricultural activities, encouragement for tourist and craft activities) provide opportunities for introducing innovative farm-based business activities where women have a particularly strong role. It also provides scope for collaborative working and support systems out with the farm to enable farm women to seek employment while coping with farm and family duties.

75

CEDAW/C/UK/5

- *Training can allow women in rural areas to obtain and develop the skills and the means to use new qualifications, either on-farm or in the wider rural economy. The Vocational Training Scheme (part of the ERDP) provides grants towards training for farmers and foresters.*
- *Processing and marketing initiatives in rural areas can provide new employment opportunities for women and for men. Under the ERDP, support is available for such initiatives through the Processing and Marketing Grant."*

4.3 International Law

Each report of the United Kingdom to CEDAW contains an article with specific reference to rural women but not exclusively those involved in agricultural enterprises. They recognise the particular issues which rural women face with regard to transport, child care and other associated problems of living in isolated communities. The reports identify these issues and sets out proposals to alleviate the same

C Prospects

5. In your country are there measures identifiable aiming at improving the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in general

There are none which relate specifically to their legal status in the agricultural enterprise. In our opinion the position of women and children is adequately protected under present UK law.

6. In your country, are there measures identifiable aiming at improving the legal status of partners, specifically countrywomen, and children in the agricultural enterprise, particularly with regard to the following problematic issues:

6.1 Demographic ageing and rural depopulation.

In our view this is not a gender issue but an age issue. We have already referred to the ageing population in agriculture with the average age of a holder of an agricultural unit now 59 and a third of holders over 65. In March 2013 the Future of Farming Review asked for views on the issue in the following paper:

“Future of Farming Review – Call for views

Introduction

The Future of Farming Review is an industry led initiative - in partnership with Government - that aims to assess the workforce that will be needed by a sustainable, productive and resilient agriculture sector now and in the future. It is vital that the agriculture industry attracts the right number and calibre of enthusiastic, entrepreneurial and environmentally aware people and that these people can continue to develop their skills.

The review will therefore examine the issues faced by the industry and people selecting and entering into careers in farming and the wider agricultural sector, and how they might be supported in beginning their careers successfully.

Call for views

We are seeking views from all interested organisations on the issues that the industry, young people and new entrants face. We therefore invite you to submit your ideas, with supporting evidence where possible, on the questions posed below.

Q. Broadly, what are the challenges and opportunities that young people and new entrants face when selecting and beginning their careers in the agriculture sector? And how may they overcome those challenges?

Q. What are the key challenges that the farming industry faces in attracting and keeping the right number and calibre of people to work, manage and own agri-businesses in the future?"

The Call for Views identified many issues facing the future of farming such as education, routes into the sector, finance and legislative framework. It did not identify gender as an issue.

Many children can succeed to a holding or farming business through their parents. The gift of agricultural land and business can qualify for 100% relief against inheritance tax either at the time of a lifetime gift or on death. The other relevant tax is capital gains tax and there are provisions for such tax to be held over on a lifetime gift and there is no capital gains tax on death. There are therefore substantial fiscal advantages in proper planning to ensure that the next generation can succeed to a holding and business without a heavy taxation burden.

Any gift to a spouse is exempt from both inheritance tax and capital gains tax either by way of a lifetime gift or on death.

These taxation provisions greatly assist the ability to transfer a holding and business to either a spouse or child to ensure the continuation in the family of the agricultural enterprise.

DEFRA 2011 review of Agriculture referred to earlier shows that the number of commercial agricultural holdings has decreased from 248,000 in 2005 to 223,000 in 2011.

Of these 41,000 are 100 hectares or more. The average area of a holding with more than 20 hectares is 140 hectares in 2011 whereas it was 128 hectares in 2005. The number of holdings under 20 hectares reduced from 120,000 in 2005 to 105,000 in 2011, between 20 and 50 hectares from 49,000 in 2005 to 42,000 in 2011 and between 50 and 100 hectares from 37,000 in 2005 to 33,000 in 2011.

From these figures it can be seen that there is in only 6 years a dramatic fall in the number of smaller holdings with a corresponding rise in the number of larger holdings. The main reason for this is economic and nothing to do with

either gender or age. Savills review of land prices in April 2013 showed that the average price of arable land in the UK was £20,000 per hectare with the best land at £25,000 per hectare. Since 2005 the average price of a commercial arable unit has increased by 180% and a livestock unit by 60%.

Even in Scotland and Wales, with a greater proportion of upland livestock areas, the average price per hectare is £15,000. Rents under farm business tenancies continue to rise and in 2012 in the arable sector rents of £700 per hectare were achieved. It is only the larger agricultural enterprises which can afford to purchase and rent land at these prices, and also have the capital which is required to acquire the necessary equipment and inputs. Agricultural enterprises are therefore getting larger and employing fewer people. This trend has been ongoing for many decades and we cannot see it changing.

6.2 Multifunctionality of agriculture and diversification of production, with due regard to the situation of women in part-time farming operations.

There are no identifiable measures with regard to legal status in this area. Diversification has become more important especially on smaller holdings. It is here that women are able to play a vital role. Such diversification as farm shops, farm cafes, bed and breakfast accommodation and letting of holiday cottages contribute substantially to the income of the farming business, especially in upland areas where the return from livestock is nowhere as large as the return from arable holdings. We have seen holdings where the business would have made a loss year on year but for the income generated by such diversification.

6.3 Training and development and access to information and to information technology, with due regard to the requirements of women with multiple responsibilities.

Here we return to the 2010 Act. Section 91 makes it unlawful for institutions in the higher and further education sectors to discriminate against, harass or victimise a student or someone who wants to become a student in relation to the arrangements it makes in deciding who to admit, the terms on which a person is admitted and the way a person is treated when admitted. Information technology in rural areas continues to be problematic. However the UK Government has a commitment to roll out high speed broadband to rural areas by 2015 and has committed the sum of £530,000,000 to achieve this. It has recognised that poor or no broadband coverage in rural areas is a real disadvantage to rural businesses such as agricultural enterprises with particular reference to their need to diversify. It will also assist those women who wish to run a business from their home and enable them to do so and still perform their other responsibilities.

6.4 Participation in organisations and in politics, with focus on the participation of women.

In our opinion there are measures in place within the UK to address these issues. Women's interests are represented across the UK *inter alia* by the National Farmers Union, the Women's Food and Farming Union (which developed out of the wartime Women's Land Army) and the Women's Institute.³

Section 104 of the 2010 Act allows registered political parties to make arrangements in relation to the selection of election candidates to address the under representation of people with particular protected characteristics in elected bodies. These arrangements can include women only shortlists for election candidates. It has long been felt that women are under-represented on elected bodies and this provision which was first enacted in the Sex Discrimination (Election Candidates) Act 2002 will assist in redressing the imbalance. The provision is time limited to 2030 unless an order is made by a Minister of the Crown to extend it beyond that date.

7. On the basis of experiences made in your country, are there measures identifiable which improved the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in a sustained manner and which may be borrowed by other countries.

It can be seen from this report that starting in the 1960s and continuing up to the 2010 Act there has been a series of statutes which have been aimed at the elimination of discrimination. The ending of discrimination on the grounds of sex and age has been at the forefront of this movement. These steps are not aimed at agriculture or an agricultural enterprise in particular but at all walks of life and business including agriculture. Legislation can only do so much to change the attitude of society. We believe that society in the UK has changed over the past 50 years and what would have been acceptable in 1960 is no longer acceptable. The 2010 Act runs to some 600 pages and a study of the provisions of that Act may be beneficial to other countries.

An Equality and Human Rights Commission has been established in the UK⁴
Parliament gave the Commission the mandate to challenge discrimination, and protect and promote human rights. It is committed to the vision of a modern Britain where everyone is treated with dignity and respect, and all have an equal

³ www.nfuonline.com , www.wfu.org.uk & www.thewi.org.uk

⁴ www.equalityhumanrights.com

chance to succeed. Its mission is as a catalyst for change and improvement on equality and human rights. It has four roles. They are:

- Outcomes-focused strategic regulator
- Promoter of standards and good practice
- Authoritative centre of intelligence and innovation
- Trusted partner

Such a Commission, if none exists, may be of benefit to other states in attempting to achieve the goal of the end of discrimination particularly with regard to the role of women.