

Filing your claims

Julie Butler and **Libby James** explain the pros and cons of removing agricultural occupancy conditions in relation to agricultural property relief claims.

In order to provide evidence of occupation for agricultural purposes under IHTA 1984, s 117 there must be proof of agricultural activity and that the property is occupied for that activity in physical terms.

As with all claims for agricultural property relief (APR) they must be supported by evidence. There are arguments that agricultural occupancy conditions (AOCs), or 'agricultural ties' on a property can bolster such claims as well as suppress the property's value. In turn, this can reduce the IHT liability, especially following the announcements made on 30 October 2024.

The specific legislation defining an 'agricultural worker' is the Town and Country Planning Act 1990 (TCPA 1990), s 336 which provides a broad definition of an 'agricultural worker'. Formerly, the Town and Country Planning Act 1971, s 290(1) similarly defined an agricultural worker for older consents. This means applicants for removal of AOCs need to be very careful in demonstrating a breach.

Agricultural ties are permitted by a local planning authority (LPA) when there is a genuine need by an agricultural business. AOCs restrict the occupancy of the property to someone employed in agriculture or forestry (sometimes including those last employed in these sectors) plus other related rural enterprises. They were originally allowed to support businesses that needed an employee to be available on site 24 hours a day.

The valuation of properties subject to an AOC is dependent on context, but generally they reduce the value of the property as it can be difficult to obtain lending. The reduced value caused by the AOC can be useful with the proposed autumn Budget reduction to 50% APR from April 2026. Naturally, the lower the value of an asset, the lower the impact will be on reduced relief.

Key points

- Agricultural occupancy conditions on a property can bolster agricultural property relief claims, suppress the property's value and, in turn, reduce the IHT liability.
- Agricultural occupancy conditions can be removed: the 'CLUED' route; or by demonstrating there is no local demand for the property.
- What type of property will qualify for agricultural property relief?
- Post the Budget, the values of farms will impact on IHT liabilities.



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Two methods for removal of the AOC

It is possible to remove an AOC from a residential dwelling and there are two main methods of going about it. The first centres on proving a ten-year breach and the other requires the owner to prove no local 'demand'. The owner therefore needs to be very clear before they start the process on what their objectives are. Successfully proving a ten-year breach will mean the LPA can grant a certificate of lawful existing use or development (CLUED). This requires that the owner needs to have been in breach for more than ten years, and the breach must have been continuous throughout that period.

An application setting out reasons for a lawful development certificate (CLUED) will need supporting evidence, including the planning condition attached to the property. If the owner doesn't have a copy, this would usually be kept by the LPA. Statutory declarations by the owners and occupiers may also be needed. When the owner goes down the 'clued' route, there is the potential for enforcement action from the LPA as the other will have identified and acknowledged a breach.

'Local demand' for the property

As mentioned, the other common method to remove an agricultural tie is to demonstrate that no local demand exists for the property. This requires the owner to market the property for at least 12 months at a price that reflects the condition restriction. If no eligible buyer is found, the owner can then apply for the condition to be removed through a TCPA 1990, s 73 application. However, by taking this route there is the risk that someone who meets the occupancy conditions may want to purchase the property. As a vendor you would not be obliged to sell it to them, but it would invalidate any claim for removal that there was no demand for a property with an AOC.

Both options, be it CLUED or lack of demand, are fairly straightforward, but seeking expert advice is advisable in order to navigate the potential breach or determine the risk of putting the property on the market for 12 months. Like everything in farming every scenario is different, there is no 'one size fits all' and there are other, more bespoke methods available that depend very much on the nature of the

individual property and whether APR is part of the tax and succession planning.

Agricultural property relief

APR is given on 'agricultural property' which is land or pasture used to grow crops or to rear animals. Buildings which are constructed on the land and used for agricultural purposes will also qualify, such as barns, cowsheds, pig pens, as will farm cottages and farmhouses (more on these later).

To qualify for APR, it is necessary to own agricultural property which is being used for the purpose of agriculture. This means that clients eligible for APR essentially fall into two groups:

- 1) Farmers, ie individuals getting their hands dirty by making profits from their farming activities (either as self-employed sole traders or in partnership).
- 2) Landowners who own farmland but lease that land to farmers.

It is therefore not necessary to have farming clients to be exposed to APR – advisers just need clients who own land used for agricultural purposes. A review of a client's property portfolio might be requested in order to examine whether any of the property investments qualify for APR.

The position on AOC must also be considered. A farmhouse is simultaneously a home for the farmer(s) and their family and an operational hub for the farm. Many of the decisions about the running of the farm will be taken at the kitchen table. For this reason, a farmhouse will qualify for APR (at 100% or 50% of its agricultural value) as long as:

- 1) the farmhouse is a genuine farmhouse and its size and nature is in keeping with the farm itself (so a sprawling, palatial country mansion alongside a small acreage of farmland may not qualify); and
- 2) the occupant(s) of the farmhouse direct day-to-day farming operations from the house.

Farm cottages will also qualify for APR if they are occupied by a farm employee, a retired farm employee or the spouse or civil partner of a deceased farm employee.

It is important that AOC is understood as part of the post-30 October succession planning. It could be that the AOC might be removed to make the property easier to sell, perhaps to pay for IHT liabilities. However, by making a property free of an AOC, it will increase the value which could increase the IHT liability.

There was a trend to automatically remove AOCs for future planning but after the autumn Budget there is a change of emphasis. With all the considerations that face agricultural planning, AOC is another area of concern, requiring further understanding and tax planning.

Post the Budget, the values of farms will impact on IHT liabilities. In simple terms, with only 50% relief available anything that increases the value of farms could result in increased liabilities and could change plans. Pre the Budget, when 100% relief was available, there was a lot of IHT planning work on repairing and improving the farm before death. All impact on value must be considered in APR and BPR terms. ●

Author details

Julie Butler FCA is founding director of Butler & Co Alresford Limited, the author of *Tax Planning for Farm and Land Diversification* (Bloomsbury Professional), *Equine Tax Planning*, *Butler's Equine Tax Planning (third edition)* (Law Brief Publishing) and *Stanley: Taxation of Farmers and Landowners* (LexisNexis), and editor of *Farm Tax Brief*. She can be contacted by email: julie.butler@butler-co.co.uk



Libby James ACA CTA is a tax and accounts associate at Butler & Co, advising on income tax, inheritance tax and capital gains tax for rural clients and other professional firms. She can be contacted by email: Libby@butler-co.co.uk



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