

# Who owns our land?

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## Mike Taylor reports on the background and developments in land ownership in Europe

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The UK farming area is approximately 17.2 million hectares, made up of roughly 212,000 farming units, or holdings, each with an average size of 77ha and receiving an average of ?13,500 in EU support.

In England, there are just over 9 million hectares of farmland, 30% of which is occupied on tenancies or leases of 1 year or more and some 60% on secure tenancies under the [Agricultural Holdings Act](#) 1986. However in Scotland, where farmland area extends to around 5.8 million hectares, tenanted land makes up only 24%.

Around 70% of the UK land area is actively farmed either as arable or pasture land. This is one of the highest proportions in Europe, with Norway at the bottom end with a mere 3% and most of the larger nations at around 50%, largely due to a relatively low level of afforestation (10%) and limited mountainous terrain.

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The strong pound and weak global commodity prices have been causing considerable downward pressure on UK farm incomes. The plight of the dairy farmers has been well publicised due mainly to China's withdrawal from the European milk market. A bumper harvest is further depressing the cereal market which was already moving backwards.

Farming has long been recognised as being in counter cycle to the rest of the economy and this is now taking its toll on the industry as the country begins to emerge from recession. There are no nationally collated figures available for foreign investment in UK agricultural land and in England and Wales there is no firm government policy either for or against it, although the situation is somewhat different in Scotland.

## Foreign buyers

Anecdotal evidence from real estate agents and others suggests that the stable nature of the English and Welsh land market, combined with fiscal incentives, have encouraged both foreign buyers and UK-based investors.

Within the UK, investors may have moved out of other assets perceived as 'risky' to seek a 'safe haven' for their money, a trend that appears to have been accelerated by the 2008 recession and then continued. Investor Sir James Dyson's purchase of 25,000 acres (10,000ha) of English farmland over the past 10 years is a good example of a non-agricultural buyer.

It is important to note that all land in England and Wales is required to be registered at Her Majesty's [Land Registry](#) following any significant change in title. However, this does not affect land that has not changed hands since registration was made compulsory and the Land Registry estimates that 20% of the land mass in England and Wales remains unregistered, most of it rural land. Accurate statistics on the identity of landowners and the nature of land holding in the UK are therefore very difficult to produce.

Research by Kevin Cahill in 2002 found that two thirds of UK land was owned by 189,000 families, but he could not account for 10% of the country's land ownership. Amid fears that proceeds of foreign crime are being 'laundered' through the UK property market, Prime Minister David Cameron has called for more transparency and 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 ?122bn of property in England and Wales is owned by offshore companies and while most of this investment will be in commercial and residential property in London and the South East, some will be in agricultural property across the UK.

## **Attractive investment**

A number of fiscal attractions exist to land ownership as an investment within the UK. Agricultural land and buildings are largely free from inheritance tax and farmland and buildings used as part of a business can obtain significant relief from capital gains tax.

Average farm land values in England and Wales have risen from around ?4,000 per acre (?9,885/ha) in 2005 to ?10,000 per acre (?25,000/ha) by the second quarter of 2014. Real estate agents report no let-up in prices yet, with the best arable land selling close to ?15,000 per acre (?37,000/ha).

The [RICS](#) and [RAU](#) combined [Survey and farmland directory of land prices](#) provides a detailed national database of comparable farm land sales to assist rural members involved in valuation.

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These relatively high value levels are making it increasingly difficult for ordinary farmers to purchase additional land. However, many outside 'investment' buyers are not interested in farming and the land is often rented out on contract farming arrangements and share cropping agreements to allow the new owner to enjoy the fiscal benefits of being an 'active farmer' while leaving the responsibilities to those better skilled and equipped.

Unlike much of continental Europe, there is no regulation of foreign investment in UK real estate. Interestingly, there are restrictions on foreign acquisitions of companies operating

in sensitive areas such as banking, financial services and utilities, although these are unlikely to directly affect agricultural real estate.

## Scotland

In Scotland, radical changes are proposed within the [Land Reform Bill](#) published on 22 June 2015. This has just completed its consultation period and recommended: "Limiting legal entities that can, in the future, take ownership of land in Scotland."

More specifically, the [Land Reform Review Group](#) suggests limitation on non EU land ownership and furthermore the Bill proposes that 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 when land came up for sale and a crofters community right to buy, which applies specifically to croft tenants.

Cahill suggests that just over 400 individuals own over half the land in private ownership in Scotland and the Bill has been met with outrage by landowners. It was reported by some farm agents that the initial effect had been to cause uncertainty in the Scottish land market, deterring foreign investors. However, the most radical reforms are now being moderated and it would seem that confidence has returned.

## Europe

In most of the rest of Europe, spatial planning (town and country planning) appears to be far less sophisticated and authorities rely much more heavily on restrictions on land ownership to influence the use of land and to protect rural communities.

This would seem to fly in the face of the [Treaty of Rome](#) , which requires free movement of capital and labour. However, national and regional governments justify the controls by relying on Article 39 (1b), which sets out, among other objectives, to "ensure a fair standard of living for the agricultural community" and the social constraints identified in Article 39(2).

It seems that only Holland has an open land market similar to the UK, with all other EU countries controlling farmland ownership to a greater or lesser degree. This is understandable for new member states (NMS) in Eastern Europe, where land values remain low and there is concern about potential land grabs by individuals or companies from wealthier nations.

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The NMS have enjoyed a derogation on land ownership controls to allow for transition but this has, or is about to expire. Complaints about double standards have been raised as old member states retain historical land controls. In Germany, for example,

the Law on the Sale of Agricultural Land requires prior approval of all transfers, which can be rejected if the price is too high, the size of the transfer is not appropriate, or there is considered to be "unhealthy distribution". Furthermore, neighbouring farmers are often entitled to a right of pre-emption.

Many states use their land registry as a management tool for taxation and land control and are consequently mystified by the UK approach. In Spain, for example, the introduction of a multi-layered online database includes not only land ownership details but also environmental factors, spatial planning matters and neighbouring land uses. This gives potential land buyers a wealth of freely available information before they make a decision. This could usefully be extended to the rest of Europe although data protection issues remain a concern.

In the closing session of the CEDR European agricultural law conference at Potsdam, Germany, Professor Rolan Norer of Lucerne University commented that a "common legal basis for Agricultural Law (in the EU) remains a dream" and went on to ask: "do we have only a common administrative and financial system, and actually are all member states doing their own thing and are not at all common". Food for thought indeed.

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## **Further information**

- The author presented a paper on UK Land Ownership at the 2015 [CEDR European Council for Rural Law Conference](#) in Potsdam, Germany, on behalf of the [UK Agricultural Law Association](#) .
- *Who owns Britain* by Kevin Cahill is published by Canongate Books.
- Related competencies: [Investment management \(including fund and portfolio management\)](#)

This feature is taken from the RICS *Land journal* (December2015/January 2016)