

THE NEW AGRICULTURAL TENANCIES ACT: A NEW ERA?

written by Eva Willems | November 8, 2023



The former 1969 Agricultural Tenancies Act[\[1\]](#) was in need of renewal. So in 2022, a proposal for a new Flemish Act was submitted. This proposal looks to the future and creates a fair balance between the rights and obligations of owners and tenants. On 4 October 2023, the proposal was adopted by the Flemish government and on 1 November 2023 the new act entered into force. In this article, you will read about the three main innovations.

What is agricultural tenancy?

Agricultural tenancy is a special type of lease of immovable property (i.e. land or real estate), usually for agricultural purposes.[\[2\]](#) Until now, it was regulated by the Agricultural Tenancies Act of 4 November 1969. After more than half a century, the Act no longer meets current social needs.

With the 6th state reform of 2014, the competence for rent was transferred from the federal to the regional level. Following the example of the Walloon Region[\[3\]](#), there is now also a modernised Flemish act.[\[4\]](#)

Main innovations

1. Written agreements

The main innovation is undoubtedly that written leases will become the norm. Under the former Act, written contracts were already mandatory, but non-compliance was not sanctioned. Consequently, currently many leases are still oral, creating a lot of uncertainty for both leaseholders and owners.[\[5\]](#)

New leases must be in writing. Current oral lease agreements will remain valid, but must be converted if requested by a party. The Flemish government will provide models of lease agreements.

Unlike the former Act, the new Flemish act does provide for a sanction mechanism. If the tenant refuses the conversion, the owner can turn to the Justice of the Peace to have the lease terminated after a formal notice of default by the tenant. If the owner refuses conversion after a formal notice of default, the tenant

may apply to the Justice of the Peace to have the lease renewed in his favour.[\[6\]](#)

If the parties agree to the conversion to a written agreement, but a dispute arises over the content of the agreement, the parties fall back on the general rules of evidence. The orally agreed conditions and modalities can then be proved by all means of law (read: also presumptions and witnesses).

2. Extension of owner's termination options

Under the former Act, the owner could terminate the lease in various ways in order to use the leased property in accordance with its final destination, subject to compliance with certain conditions. Among other things, the owner could terminate if the leased land was to be considered construction land at the start of the lease and this was included as such in the lease agreement.[\[7\]](#) The Flemish Act confirms these termination options.

Notice after retirement is also retained but slightly modified. Now, the owner can terminate the lease when the tenant retires and does not appoint a successor. Under the former Agricultural Tenancies Act, notice after retirement was merely a theoretical notice. Indeed, the burden of proof that the tenant has retired rested on the owner. Moreover, the designation of a successor could drag on for some time.[\[8\]](#)

The Flemish Act reverses this burden of proof. From the legal retirement age onwards, the tenant must prove, at the owner's request, within 60 days that he is not yet retired to keep the lease. If a successor has been appointed, he must in principle continue the operation within 1 year. The reversal of the burden of proof should give younger farmers more opportunities to acquire agricultural land. However, mitigations were built into the new Act. Thus, depending on the case and in special circumstances (e.g. the tenant suffers from health problems or the successor has not yet completed his professional training), a judge can still declare the termination invalid.[\[9\]](#)

In addition, extra termination options are built in for the owner.

Thus, the owner can terminate the lease after 18 years in order to dispose of the property rent-free via either sale or donation. However, this termination option must be expressly included in the lease agreement.[\[10\]](#) The owner is then obliged to effectively dispose of the property within 1 year.

If the owner does not use this termination option after 18 years, he will be given this option again every 9 years.

A termination option will also be introduced for private owners with a view to afforestation or nature realisation. For local authorities, such termination was already possible as part of a termination for purposes of general interest.[\[11\]](#) However, this new termination option is subject to strict conditions. Among other things, the owner is obliged to realise the afforestation or nature within 3 years and maintain it for at least 24 years. If the owner does not comply, the tenant is entitled to compensation and may return to the property.[\[12\]](#)

3. Restriction of pre-emption right of tenant

The tenant has a right of pre-emption in case the owner wants to sell the leasehold. This pre-emption right was introduced in view of the continuity of use of the leasehold property.[\[13\]](#) Under the former Act, the tenant could either exercise his pre-emption right himself and buy the property or transfer it to a third party without the owner being able to oppose it.

The new Flemish Act provides for more say for the owner in the situation where the tenant wishes to transfer his pre-emption right.

If the owner himself finds a prospective buyer willing to let the current lessee lease for at least another 18 years under the same conditions, this prospective buyer becomes a “safe buyer”.[\[14\]](#) The tenant can then no longer transfer his pre-emption right to a third party.[\[15\]](#)

If the owner’s prospective buyer is not willing to do so, the tenant can still transfer his pre-emption right to a third party.

Moreover, from the idea of creating more opportunities for young farmers, retired leaseholders will no longer enjoy a pre-emption right.[\[16\]](#)

Conclusion

Under the former Act, leaseholders were very well protected, but it was difficult for young farmers to obtain a leasehold and the owner was often powerless.

The new Flemish Act aims to achieve more balance between tenant and owner, provide more land mobility and create more opportunities for young farmers.

The new Flemish Act entered into force on 1 November 2023 and applies to agreements concluded before its entry into force.

For more information on lease, please contact the STUDIO LEGALE team at joost.peeters@studio-legale.be or 03/216.70.70.

[1] Pachtwet 4 november 1969, *BS* 25 november 1969, 11.304.

[2] Voorstel van decreet tot bepaling van de specifieke regels over de pacht, *Parl.St. Vl.Parl.* 2022-23, nr. 1475/1.

[3] Decreet W.Parl. van 2 mei 2019 tot wijziging van verscheidene wetgevingen inzake pacht, *BS* 8 november 2019, 104.322.

[4] V. GODART en F. ÖZSARLAK, “Het voorstel van Vlaams Pachtdecreet: eerste verkenning van het nieuwe Vlaamse landbouwschap”, *Huur* 2023/3, (115) 115.

[5] P. DE ROUCK, “Wat u moet weten over de gemoderniseerde pachtwet”, *De Tijd*, 19 november 2022, 48.

[6] Voorstel van decreet tot bepaling van de specifieke regels over de pacht, *Parl.St. Vl.Parl.* 2022-23, nr. 1475/1, 7-8.

[7] Art. 6, § 1, 1° Pachtwet 4 november 1969, *BS* 25 november 1969, 11.304.

[8] P. DE ROUCK, “Wat u moet weten over de gemoderniseerde pachtwet”, *De Tijd*, 19 november 2022, 48; V. GODART en F. ÖZSARLAK, “Het voorstel van Vlaams Pachtdecreet: eerste verkenning van het nieuwe Vlaamse landbouwschap”, *Huur* 2023/3, (115) 134.

[9] Voorstel van decreet tot bepaling van de specifieke regels over de pacht, *Parl.St. Vl.Parl.* 2022-23, nr. 1475/1, 12.

[10] Voorstel van decreet tot bepaling van de specifieke regels over de pacht, *Parl.St. Vl.Parl.* 2022-23, nr. 1475/1, 11.

[11] Voorstel van decreet tot bepaling van de specifieke regels over de pacht, *Parl.St. Vl.Parl.* 2022-23, nr. 1475/1, 11.

[12] Voorstel van decreet tot bepaling van de specifieke regels over de pacht, *Parl.St. Vl.Parl.* 2022-23, nr. 1475/1, 46.

[13] V. GODART en F. ÖZSARLAK, “Het voorstel van Vlaams Pachtdecreet: eerste verkenning van het nieuwe Vlaamse landbouwschap”, *Huur* 2023/3, (115) 142.

[14] VILT (Vlaams infocentrum land- en tuinbouw), “Dit staat er in de nieuwe

pachtwet”, 16 november 2022,
<https://vilt.be/nl/nieuws/dit-staat-er-in-de-nieuwe-pachtwet>.

[15] Voorstel van decreet tot bepaling van de specifieke regels over de pacht,
Parl.St. Vl.Parl. 2022-23, nr. 1475/1, 25-26.

[16] VILT (Vlaams infocentrum land- en tuinbouw), “Dit staat er in de nieuwe
pachtwet”, 16 november 2022,
<https://vilt.be/nl/nieuws/dit-staat-er-in-de-nieuwe-pachtwet>.