

Agricultural Landlord and Tenant Code of Practice for Wales



Foreword

This Code of Practice is designed to foster and encourage clarity, communication and mutual respect in the tenanted sector. It recognises parties may have differing interests, while encouraging collaboration on shared objectives.

The development of the Code was led by an Expert Panel, convened and facilitated by Welsh Government. This Panel brought together representatives from National Farmers Union Cymru (NFU Cymru), Farmers Union of Wales (FUW), Royal Institution of Chartered Surveyors (RICS), Central Association of Agricultural Valuers (CAAV), YFC Wales, Agricultural Law Association (ALA), Country Land and Business Association (CLA) and the Tenant Farmers Association Cymru (TFA Cymru) ensuring a broad and balanced range of perspectives from across the tenanted sector.

It provides guidance on the standards of behaviour expected from all landlords and tenants as well as those providing professional advice in connection with agricultural tenancy matters. Drawing on existing codes and best practice guides, the Code reflects the specific needs and context of Wales, and aims to foster transparency, fairness and mutual responsibility between tenants, landlords, their representatives and professional advisers in Wales.

Executive summary

The Agricultural Landlord and Tenant Code of Practice for Wales is founded on three principles of: clarity, communication and mutual respect.

Specific sections cover the initial grant of a tenancy, routine engagement during its term, the payment of rent, rent reviews, improvements, access to government support schemes and other business opportunities, termination and renewal, disputes and the role of professional advisers and agents.

Each section is characterised by commitments to clear communication, realistic timetables and expectations, mutual respect, the long view, and clear and documented agreed outcomes to negotiations conducted positively and flexibly. The spirit of these sentiments should continue where disputes arise, with a view to their fair, practical and cost-effective resolution. It is hoped that tenants and landlords, and their professional advisers and agents will promote the adoption and application of the Code.



Introduction

The tenanted sector plays a vital role in Welsh agriculture, with approximately one third of all farmed land in Wales being rented through formal and informal arrangements.

It provides essential opportunities for new entrants, particularly those without family ties to land ownership or the capital to purchase land, offering a pathway into farming and contributing to the sector's dynamism and innovation. It also enables established farmers to grow in a flexible way by adding parcels of rented land to their business.

For landowners who may not want to farm all or part of their land themselves, tenancies offer a practical way to retain income while supporting active land use. This flexibility is a part of the agricultural industry's ability to respond to changing circumstances, and in turn supports the rural economy, Welsh culture and language and contributes to the Wellbeing of Future Generation Act goals.

The Code equally aims to foster positive landlord-tenant relationships, achieved through dialogue and a sense of fairness and proportionality. The Code should also be helpful when problems arise, including serious differences of opinion between parties.

The Code recognises the great variation in the individual circumstances of landlords and tenants and so should be used and applied in a way which is appropriate and proportionate to the circumstances. However, the common theme throughout is the Code's general principles of clarity, communication and mutual respect. Proportionate application of the Code to all tenancies is important to secure the future success of the agricultural tenanted sector.

The language of the Code

This is a voluntary Code. Landlords and tenants remain bound by the terms of their agricultural tenancy agreements and must work within an existing framework of law and regulation. The Code does not replace or replicate these minimum legal obligations. It does not extend the law or create new legal obligations. It does seek to foster improved working practices in the interests of a thriving agricultural tenanted sector. Professional advisers will be bound by their professional duties to their clients. The Code seeks to move the industry beyond these minimum requirements.

The Code uses the word 'should' to specify acceptable standards which are regarded as the minimum under the Code, applicable unless there are good reasons for departures from the Code. Other expressions like 'may consider' are used for actions which are also desirable but may not be appropriate or necessary in all circumstances.

The word 'party' is used to refer both to landlords and tenants. Professional and other advisers are urged to assist their clients in understanding and applying this Code subject to their agreed terms of reference, professional standard frameworks and other instructions.



Three key principles

The Code has three key principles, which are:

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Clarity – as to the definition of intentions, expectations and the definition of problems if they do arise.

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Communication – which should be clear and timely, considered, and tailored to the needs and situation of the recipient.

3

Mutual Respect – the Code encourages a spirit of mutual respect. This is based on the belief that landlords, tenants and their professional advisers can achieve much more when they listen to each other and respect each other's point of view and seek to work together in a positive spirit of common endeavour.

Collaboration is integral to these three principles as all parties are expected to work together to support each other in their respective roles.

The Code and key events during a tenancy

Grant of Tenancy, Selection of Tenant and Agreement of Tenancy Terms

Where a tenancy is offered, the landlord should provide sufficient information to present a fair representation of the farm or land, including recognition of its limitations and any special or unusual features of the proposed tenancy agreement. This should include the key terms on which a tenancy is being offered, including term length, ongoing payments if known, repairing and insuring obligations, obligations under environmental or other schemes and permitted use clauses. It is also helpful to highlight where relevant any statutory or local designations, third party rights (for example, sporting rights), and wayleaves and easements for installed utilities.

The landlord and outgoing tenant should give prospective tenants and their advisers a full opportunity to view the farm, to review proposed tenancy agreements and to ask questions, potentially accompanied by the landlord and other advisers.

Owners or letting agents should provide comprehensive and reliable answers to all reasonable questions from prospective tenants or make it clear that they do not know the answer.



The Code and key events during a tenancy (continued)

Applicants for a tenancy may be expected to outline their farming proposals, their experience and qualifications to take on the tenancy, the rent they are offering and to raise any concerns or proposals that concern them regarding the state and condition of the farm or land, buildings and fixed equipment. They can also expect to be asked for references, appropriate business plans and proof of their financial standing. It is reasonable for prospective landlords and their advisers to view an applicant's existing farming operations. If asked for any of these points, the applicant should co-operate. Both parties and their professional advisers should be open to negotiations around the terms on which a tenancy is being offered.

It is advisable to agree an appropriate schedule of condition of the land, buildings, dwellings, fixed equipment and fixtures at the start of the tenancy.

Both parties should ensure they understand their obligations and limitations under the tenancy agreement.

Agents and advisers, whether acting for landlord or tenant, should do all they reasonably can to support the parties to arrive at a fair agreement which should be recorded in writing.



Engagement during the tenancy

Both parties and their representatives should agree suitable, reasonable and proportionate arrangements for liaison and engagement during the term of the tenancy.

For example, visits from the landlord or their representatives should be arranged with appropriate notice and within a reasonable timescale. It can be helpful if written records are kept of these arrangements, the topics discussed, the outcomes agreed and further actions required.

Paying Rent

Landlords should make clear to tenants when and how rent is to be paid.

Tenants who encounter difficulties in paying their rent in full or on time should notify their landlords and describe their difficulty as soon as possible.

Landlords should consider a tenant's representations as to late or incomplete payment of rent. Landlords and tenants may wish to negotiate revised payment terms. The parties should document the agreed outcomes of these negotiations carefully and fully.



Engagement during the tenancy (continued)

Rent Reviews

Both parties should inform themselves of the procedure and terms on which rents can be reviewed, including requirements as set out in the legislation that applies to the tenancy.

Discussions and negotiations about rent reviews should start in good time. The party initiating the rent review should suggest a broad timeframe for further discussions. The parties should respond to one another in a timely fashion and generally work to avoid unnecessary delay in the review process.

It may be helpful to discuss other points of common interest such as the need for future investment, the economic outlook, diversification, the standard for and expectation of repairs and improvements so that any points arising may also inform the terms on which a new rent may be agreed.

This can be more important where routine engagement between the parties between reviews has been minimal or non-existent.

Agreed outcomes should be recorded in writing, both parties having a copy of this record. The written record should also note anything else which has been agreed as part of the rent review. It may be helpful if the record is signed and dated by both parties, or their agents (if authorised).

Where disputes or differences arise, negotiations should continue to be conducted in a constructive and timely manner. If agreement is not possible, both parties should seek to reduce and refine the issues which they ultimately need to refer to dispute resolution.

Engagement during the tenancy (continued)

Repairs and Improvements

Landlords and tenants should understand their respective repairing obligations.

The need for repairs should, where relevant, be reviewed regularly to ensure that repairs are made promptly and to an appropriate standard of materials and workmanship.

Equipped farms may need remedial and improvement work from time to time, and therefore landlords and tenants should co-operate in identifying what may be needed and planning appropriately where work is agreed.

Maintenance and improvement should be a regular topic for discussion in routine engagement meetings, and may also arise at rent reviews.

Both parties should review any future need for investment in the holding from time to time.

Agreements about improvements should be documented carefully to cover the physical nature of the improvement, a clear allocation of responsibilities for undertaking the improvement and related matters like planning approval, any agreed financial provisions for the work and, if to be made by the tenant, its treatment on the end of the tenancy.



Engagement during the tenancy (continued)

New Opportunities, Schemes and Agreements

Tenants and landlords should be able to discuss economic, environmental and other development opportunities concerning the holding openly and constructively with each other.

Consent for new schemes should not be withheld unreasonably. Reasonable grounds for withholding consent in an appropriate context may include effects on taxation status, rental income, capital value, terms and conditions of any outstanding mortgages, interaction with other property and long-term estate plans, and should be explained to the extent that is reasonable between the parties.

For new tenancy agreements the use of blanket bans on participation in environmental and other opportunities in user and other clauses is discouraged. They can be an unhelpful restriction on flexibility unless there are good reasons for them and may limit rental value.

Tenants should consider the owner's interest in the holding when applying for schemes or other initiatives even where the formal consent of the owner may not be required. Where the landlord's consent is required, this should be sought in good time.

The tenant should inform the owner of an application within a reasonable timeframe before submission where the landlord's consent is not required but the commitments envisaged would affect the landlord's interest.

Engagement during the tenancy (continued)

Landlords should respect the tenant's interest in the holding when considering proposals from tenants.

Regular engagement between landlord and tenant provides a valuable opportunity to keep opportunities under review.

Applications, approvals, conditions, and other records of scheme participation that are relevant to the holding and the contractual obligations of the parties should be filed safely and made available to the other party as appropriate, on request where reasonable.

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Engagement during the tenancy (continued)

Termination and Renewal (Including succession)

The parties should be as open as is commercially possible with one another about their intentions for the future management and letting of the holding. Sometimes one or both parties will need the greater flexibility of a short-term tenancy, and sometimes a succession of such tenancies will be sensible. The Code encourages negotiations for longer-term tenancies where this is commercially appropriate for the parties.

Landlords and tenants should also make their intentions on renewal or quitting clear in good time and must follow any legal requirements that apply under the legislation governing their agreement. Early dialogue regarding succession for agricultural tenancies with possible succession rights can save substantial expense for both parties.

Where it is proposed to renew a tenancy, discussions on terms should proceed in a timely and constructive manner, guided by the Code's expectations. Renewal is an opportunity to correct problems and to adapt to new circumstances.

Where a tenancy is being terminated either by mutual agreement or by the action of one party or the other, the parties should set out a clear timetable for ending the tenancy which will allow for a thorough inspection of the holding, comparison with schedules of condition made at commencement (and since) and the collation and consideration of records of improvements, environmental and other schemes, cropping and stocking history and the condition of soils, fixed equipment and fixtures, buildings, dwellings, field boundaries and all services.

Engagement during the tenancy (continued)

The parties should seek early agreement on any payments which are due between them at the end of the tenancy, for example for rent, fixtures, improvements or dilapidations, recognising that some (such as growing crops or silage) can only be assessed at the end of the tenancy.

Where matters cannot be settled between the parties, timely reference to dispute resolution should be initiated and the parties should continue to define and refine the issues in dispute in a constructive manner.

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Differences and Disputes

Differences and disputes will arise from time to time in some tenancies.

- Parties should be guided by the Code's principles of clarity, communication and mutual respect in working through their disagreements.
- Where external dispute resolution is to be used, the parties should support the dispute resolver or mediator fully in arriving at a fair and balanced conclusion.
- Both parties should always seek to minimise the cost of formal dispute resolution and ensure that their approach is proportionate to the dispute at stake. Parties are encouraged to consider alternative forms of dispute resolution where appropriate, including seeking a non-binding independent opinion (such as early neutral evaluation) on one or more contentious points to help avoid unnecessary argument or loss of perspective.
- Dispute resolvers who have the opportunity to make costs awards may wish to take into account whether the parties and their advisers have acted in accordance with this Code when making awards as to costs where they have the legal discretion to do so.



The Role of Professional Advisers and Agents

Parties should seek professional advice on matters which are outside their own competence and experience. It is desirable to ensure that chosen advisers are aware of and understand this Code before confirming their appointment.

Professional advisers should make their clients aware of this Code. They should encourage their clients to abide by this Code and to make this clear in their agreed terms of reference and in their communications with other parties. Professional advisers may also wish to consider the desirability or otherwise of accepting instructions from clients who unreasonably refuse to abide by this Code.

Where there are negotiations with an outgoing tenant over fixtures, improvements, dilapidations or other matters, the parties (landlord and ingoing tenant) should not share professional representation unless they both provide informed consent, the ingoing tenant elects who is to be used, and the relevant professional adviser is satisfied that proceeding is in the interests of all of those who are or may be affected and will not prevent the professional adviser from providing competent and diligent advice to them. Informed consent would exclude the use of shared advisers being prescribed in any letting particulars or as a condition of any agreement to let.

Professional advisers and agents should work constructively with their clients and other parties, within their agreed terms of reference and professional obligations.

The Role of Professional Advisers and Agents (continued)

Professional advisers should make available on request any complaints procedure which the party making the request is able to use. This should include details of access to further redress or regulatory complaint if the initial response to a complaint is not regarded as satisfactory by the complainant.

This Code applies to professional advisers and agents involved in agricultural landlord and tenant matters, regardless of professional background or membership of any particular organisation.

By way of illustration only, the CAAV and RICS, were both represented within the working group developing this Code. Each has many professional advisers in membership and provides professional guidance relevant to this area. Links to their websites are provided below for general information

Reference to these organisations is not intended to be exclusive, nor to imply that the Code applies only to members of those bodies. Other professional organisations and advisers, including solicitors and farm business consultants, may also be relevant and are equally expected to have regard to the principles set out in this Code.

www.caav.org.uk
www.rics.org

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