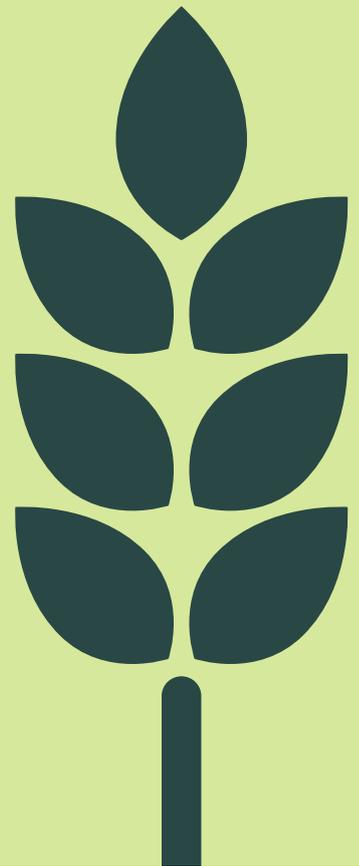


Guidance note on long-term farm business tenancies in England



Foreword

Long-term Farm Business Tenancies (FBTs) offer several benefits for both landlords and tenants, primarily focused on security, stability, and the ability to implement long-term farming plans.

For tenants, long-term FBTs enable them to plan for the future with a higher degree of confidence which allows for more secure businesses and more sustainable farming practices. They can offer greater stability and in some cases, long-term tenancies can help unlock investment by the landlord, tenant or external parties. To guarantee this, the details, or at least the aspiration, should be clear from the outset. This investment can be unlocked through measures to increase productivity on the holding via new farming systems, livestock genetics, machinery, buildings, fixed equipment, diversification opportunities or environmental enhancement. Without prior agreement between the parties, these opportunities for long-term investment could be lost.

Landlords can benefit from a reliable long-term rental income and work collaboratively with the tenant in terms of agreeing a land management strategy for the holding. To assist the parties to long-term agreements this Guidance Note includes a template 'Management Plan' which allows for flexibility within the overarching contractual framework of a long-term FBT.

Perhaps most importantly, long-term FBTs allow strong relationships to be fostered between landlords and tenants which are mutually beneficial.

Industry organisations who have endorsed this guidance note:

Agricultural Law Association
Association of Chief Estates Surveyors
Central Association of Agricultural Valuers
Country Land and Business Association
Institutional Landowners Group
National Farmers Union
National Federation of Young Farmers Clubs
Royal Institution of Chartered Surveyors
Tenant Farmers Association



Introduction



This Guidance Note has been prepared to assist the Landlord and Tenant who are considering entering into a long-term FBT in England. It assumes that the principle of a long-term tenancy is one which the parties have agreed to consider.

The Guidance Note focusses on matters that need to be considered carefully during negotiations and in the preparation of the tenancy agreement where they are of particular relevance to long-term agreements.

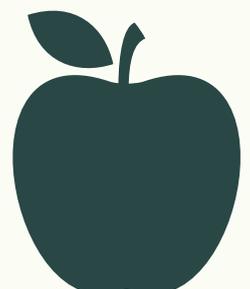
It is not intended as a detailed Guidance Note on FBTs generally. It does not cover every standard provision in the relevant legislation, nor does it repeat other industry guidance and Codes of Practice that apply to agricultural tenancies.

This Guidance Note is divided between those key considerations of a long-term agreement that should be addressed in the principal tenancy agreement and those that may be agreed under a detailed management prescriptions schedule as an annex to the principal tenancy agreement.

It is recommended that detailed Heads of Agreement are negotiated by the parties to record the principal terms of the proposed tenancy before preparing the tenancy agreement so that the agreed intentions of the parties are clear from the outset.

The Heads of Agreement should include the key commercial terms (for example, the tenancy term, any break notice provisions, the rent payable and the treatment of any capital to be invested by the parties, maintenance of buildings and insurance), the terms for the use and management of the holding and any rights to be granted to the Tenant or reserved to the Landlord.

Parties are encouraged to consider the precedent FBT template agreements that are widely available but to ensure that they are amended to suit their particular needs and objectives and not simply used as provided.



Legislation

Farm Business Tenancies in England are governed by the [Agricultural Tenancies Act 1995](#) ('the 1995 Act') and the parties should be aware of the provisions of the Act before entering into a long-term agreement.

Existing industry codes of practice and guidance

The parties and their advisors should refer to the following existing codes of practice and guidance, where relevant to agricultural tenancies in England under the 1995 Act, that will assist in the negotiation and preparation of the agreement.

- [Tenancy Reform Industry Group \(TRIG\) Code of Good Practice for projects, schemes or works requiring landlord's consent in agricultural tenancies – 1st Edition – July 2021](#)
- [Tenancy Reform Industry Group \(TRIG\) Guidance – Tree Planting & Woodland Creation on Agricultural Tenancies – 1st Edition – December 2022](#)
- [The Agricultural Landlord and Tenant Code of Practice for England – 1st Edition - April 2024](#)

Professional advice

The parties should obtain independent rural surveyor, legal and taxation advice before entering into a long-term agreement. The parties should also refer to guidance available via member organisations of the Farm Tenancy Forum.



Key considerations for the principal tenancy agreement (at commencement)

Registration of the Lease and Prescribed Clauses

- A lease for a term of more than 7 years must be registered at the Land Registry (whether the freehold title out of which it is granted is registered at the Land Registry or not) and must also include the Prescribed Clauses as required by the Land Registry.
- The parties should check at an early stage of negotiations, if all the land and property, that is proposed to be included in the tenancy, is registered at the Land Registry.
- Registration of the lease will have the effect of placing a notice on the Landlord's freehold title (where the freehold title is registered) to protect the Tenant's interests in the lease.
- The parties should include in the agreement provisions for registration of the lease and for the registration to be removed from the Landlord's title when the tenancy has expired or terminated.

The Business, Agriculture and Notice Conditions

- In order for the tenancy to be an FBT, it must meet the business condition together with either the agriculture condition or notice condition.
- The business condition requires that all or part of the land comprised in the tenancy is farmed for the purpose of a trade or business.
- The agriculture condition relies on the character of the tenancy being primarily or wholly agricultural.
- The notice condition requires the parties to exchange a written notice prior to the commencement of the tenancy identifying the land to be comprised in the tenancy and a statement to the effect that the person giving the notice intends the tenancy to be and remain a farm business tenancy.





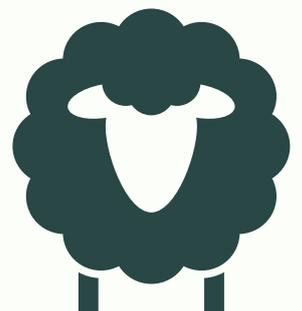
- The reliance of the parties on either the agriculture condition or notice condition is particularly important if the permitted use under the tenancy includes the right to sub-let any part of the holding for non-agricultural purposes or the Tenant is permitted to diversify the use of part of the holding.
- It is often the case for the grant of a new tenancy, that the parties will rely on the business condition together with the notice condition to satisfy this requirement; especially where there are or likely to be non-agricultural activities on the holding.
- Careful consideration should be given to the nature of occupation of any dwellings on the holding (such as tenant, employees, holiday lets, residential lets) and other legislation that may apply to those types of occupation.

Landlord Mortgage Consent

- If all or part of the Landlord's holding is subject to a mortgage, the Landlord may need to obtain the consent of the mortgagee before entering into a long-term tenancy.
- The Landlord should check the terms of their mortgage and any conditions on the use of the holding that is subject to the mortgage before granting the lease.

Stamp Duty Land Tax ('SDLT')

- A SDLT return will need to be submitted to HM Revenue & Customs ('HMRC') if the term of the tenancy is 7 years or more or if the rent total for the term of the tenancy is more than the SDLT thresholds so that SDLT is due. The Tenant is responsible for submitting the SDLT return.
- The [HMRC online SDLT calculator](#) will provide an initial assessment of whether SDLT is due and if so, what the SDLT liability is. The Tenant should obtain specific advice to ensure that they comply with these requirements.





The Parties

- The agreement should accurately record the names of the parties.
- In the case of a partnership, the partners should be named individually with their correct addresses. The partnership itself is not a separate legal entity and cannot be the Tenant.
- In the case of limited companies, this should include the company number and correct address as registered at [Companies House](#).
- Consideration should also be given in specific instances e.g. where the tenant is a limited company, as to whether a guarantor is required.

The Holding

- The agreement should accurately record the description of the Holding, a schedule and an up-to-date OS plan and schedule with the boundaries of the holding clearly marked together with any routes of access to and from the holding that fall outside of the holding.
- In the case of agreements with a term of 7 years or more, the plan of the holding must be a Land Registry compliant plan, but that is advisable even for shorter terms.

Permitted Use

- The Permitted Use provision should be clear and unambiguous.
- A permitted use clause of ‘for agricultural purposes only’ may be suitable for say, a single field parcel of arable land where the Tenant has no intention to use the field for any non-agricultural use, but it would not necessarily be sufficient for a more complex holding comprising agricultural land and property with residential dwellings and/or buildings or land that are to be used for diversified activities.
- The parties must be clear that the permitted use will cover all permitted activities on the holding to ensure that the Tenant is not inadvertently held to be in breach of the agreement and also to ensure that the Landlord has knowingly given consent to all the





activities that the Tenant intends to carry out on the holding. The defined uses will be relevant to rent payable and should therefore be carefully considered.

- If the parties wish to provide a mechanism for the Tenant to apply to the Landlord for consent to vary the use during the term, the agreement should clearly set out a process for the Tenant to apply to the Landlord to vary the use of the holding and a dispute resolution procedure to follow if the parties cannot agree.
- If there is no specific mechanism for the Tenant to request Landlord's consent for varying the permitted use during the term, unless the parties agree a variation by agreement during the term, the permitted use on commencement of the term will remain the only permitted use during the term of the tenancy as there is no statutory provision in the 1995 Act (in England) for the Tenant to request a change.
- The agreement should also specify whether any part of the holding can be used for environmental purposes not falling within the definition of agriculture.
- Parties should be mindful whilst considering permitted use clauses. They should do so with reference to their impact on taxation including rating, their impact on planning consent and necessary licensing schemes, their impact on private and public financial assistance schemes and also the extent to which the varied uses are permitted.

Fixed Equipment

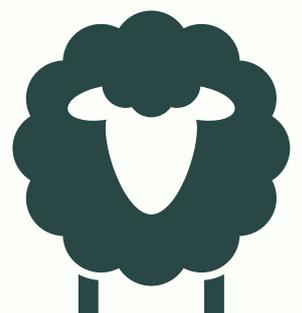
- The agreement should specify a detailed schedule of fixed equipment on commencement of the term. This should include:
 - i. Landlord's Fixed Equipment forming part of the holding being let
 - ii. Any Tenant's Fixed Equipment (including whether from a previous tenancy of the holding and if so, if it is a fixture or an improvement. Please note difference between the two outlined below)
 - iii. Redundant buildings/features (their potential uses and whether these can be brought back into use by the landlord for their purposes)





Improvements

- The agreement should specify a detailed schedule of Tenant's Improvements to be completed during the term that are permitted and consented to by the Landlord at the commencement of the tenancy and the basis of compensation for those improvements at the end of the term. This should include any planning permissions that the Tenant has obtained for that improvement.
- This should also include any Landlord's consent, provided at the commencement of the tenancy, for any alterations that are agreed to be carried out by the Tenant during the term.
- It may also be necessary to consider at the outset how provision will be made for any further improvements during the term that are not anticipated at the outset.
- It is important that the Tenant seeks Landlord's consent, in advance, for any improvements they carry out on the holding (or in the absence of Landlord's consent, consent by an arbitrator) otherwise they will not be entitled to compensation at the end of the term. Improvements made by a tenant but without the Landlord's consent will be treated as fixtures which the Tenant will be able to remove in accordance with the provisions of the 1995 Act. The difference between the two should be appreciated and understood by both parties.
- The parties should also consider if any provisions under the rent payable are required to reflect the improvements.
- Routine Improvements are defined by the 1995 Act, for example, applying fertiliser and lime, and it is considered best practice to include within the tenancy agreement a general consent for tenants to undertake such Routine Improvements.





Repairs and Maintenance

- The 1995 Act does not impose repairs and maintenance obligations on the parties to the agreement.
- It is therefore important for the parties to agree express provisions for repairs and maintenance obligations in the tenancy agreement including if any parts of the Holding are to be regarded as redundant. A lack of clarity at the outset may cause difficulties during the term and at the end of the tenancy in respect of dilapidations.
- Alternatively, the parties can agree to incorporate the ‘Model Clauses’ for the fixed equipment of the Holding under [The Agriculture \(Model Clauses for Fixed Equipment\) \(England\) Regulations 2015](#).

Insurance

- The tenancy agreement should clearly identify which party is responsible for insurance of the Holding to include farmhouses, cottages, buildings, fixed equipment and crop produce, livestock, deadstock, loss of rent as a consequence of an insured loss, and public liability. This should include a provision for the parties to confirm to the other the insurance policy in place and the insured values. Parties should also ensure that they have the necessary obligations within the agreement requiring each other to adhere to any terms of the other’s insurance policies and to guard against the negligence or omission of either party. It is likely that there will be a need for separate tenant and landlord insurance policies unless the tenancy is on full repairing and insuring terms.
- It is prudent to ensure that the Tenant has the necessary insurances for the effective risk management of their business which includes public indemnity, and employer’s liability.
- The parties should consider mechanisms to review any changes to the Holding during the term to ensure these are properly insured at the appropriate time and at the correct value.





Rent Payment and Reviews

- The parties should consider the most appropriate rent payment and review provisions that reflect the commercial agreement between them.
- Rent payment:
 - Commonly tenancy agreements provide for quarterly or half yearly rent payment dates during each year of the tenancy, whether that be in advance or in arrears. However, the parties are free to agree whatever rent payment intervals they wish.
- Rent reviews:
 - The parties can either default to the statutory provisions of the 1995 Act or can agree their own contractual basis for rent reviews. In either case, upwards-only rent reviews are prohibited.
 - If the parties decide not to default to the statutory provisions of the 1995 Act, they may agree that the rent is varied at specified intervals by a specified amount or in accordance with a specified formula. Any such formula needs to be clear and unambiguous.

Professional, Legal and Taxation Advice Costs

- The parties should clearly identify who is responsible for the costs of any professional, legal and taxation advice at the commencement of the agreement, and during the term.



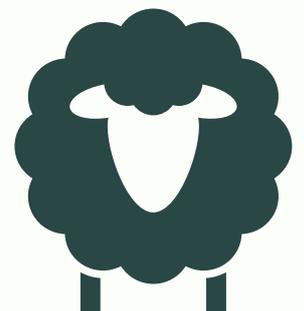


Alienation

- Unless the agreement addresses the question of alienation, the Tenant will be able to assign or sublet their interest in the whole or any part of the Holding, without reference to the Landlord. Some agreements may choose to prevent alienation as a whole; however, careful consideration should be taken in long-term FBTs to consider whether permission should be available to a tenant to sub-let parts for specified periods or in specified circumstances and how the alienation clause interacts with the Permitted Use clauses.

Termination

- Parties should consider at the outset how the tenancy will be brought to an end including arrangements for end-of-tenancy claims and process to be agreed in relation to this. This may include provision for the incoming tenant to take over a previous tenant's fixtures as well as any crops in store, growing crops and potentially transfer of ELMs.
- In long-term agreements neither party will have the right to terminate the agreement before the end of the full term and therefore parties will wish to consider whether the tenancy agreement should include break clauses. A break clause can be framed so as to be exercised by one party to the exclusion of the other, or by either, and to be exercisable on the happening of one event or one of a group of related or unrelated events, or at specified intervals or points during the term.
- There would normally be a partial resumption clause for small areas of land needed for non-agricultural purposes (say 10%).
- In the case of breaches during the term, if a Landlord wishes to have access to forfeiture it must be included as an express term of the agreement.





Dispute Resolution

- Provision should be made within the agreement for any dispute to be resolved by a person other than the Landlord or the Tenant including arbitration or expert determination. Parties should consider agreeing a reference to a mediator or other dispute resolution or avoidance procedure in the first instance to allow for independent facilitation of discussions to resolve the dispute without need to make a formal reference to a third party.

Rights and Reservations

- The tenancy agreement should be clear about any rights included with or reserved from the tenancy including, but not limited to, sporting rights, commons rights, rights in respect of mines and minerals, natural capital and access.

Other Considerations

- Force majeure clauses in contracts excuse a party's performance when an unforeseeable, extraordinary event beyond their control prevents them from fulfilling their obligations. If parties wish to make provision for such it must be explicitly included in the agreement.
- Clarity should be provided on occupation of any farmhouses and cottages and any stipulations there may be about who can occupy and in which circumstances, together with consideration of how this interplays in particular with residential tenancy legislation where relevant.



Key considerations for the use and management of the holding schedule – ‘The Management Plan’

This Guidance Note advocates the use of a detailed schedule setting out the provisions agreed between the parties for the use and management of the holding – the Management Plan.

The advantage of a Management Plan is that it can capture the desire of the parties to achieve mutual objectives – recognising that the parties wish the Tenant to be able to farm commercially and profitably. The management plan does not and cannot change the terms of the tenancy agreement. It is a flexible and evolving document which deals specifically with management of the holding within the context of and terms of the tenancy. It is useful to have a date agreed for review of the Management Plan and it may be beneficial to do this at the same time as the three -yearly rent review cycle so that they can be considered at the same time. In addition, if it cannot be agreed, the ability to refer it to expert determination may be useful.

This Guidance Note highlights considerations for drafting a Management Plan. However, parties should be alive to the fact that its contents will be influenced by external factors such as markets, policy and regulation changes etc. One of the main benefits of a Management Plan is that these can be captured and discussed as they arise.

The following key headings are those that the parties may wish to consider in the preparation of a detailed management schedule.

Purpose and Objectives

- The parties should agree the purpose of the Management Plan, recording their objectives clearly and succinctly.

Design and Masterplan

- The Management Plan may include an overall masterplan to reflect the vision of the parties. This could for example include cropping rotations, environmental management options, creation of new habitats and a record of existing habitats.
- The parties may wish to ask themselves what they want the holding to look like in 5, 10 or 15 years’ time but may also benefit from





considering the historic character and use of the land when designing a plan for the future.

- A broad overall visual interpretation of the holding could assist the parties with decision making at the outset and the monitoring of progress during the term.

Implementation

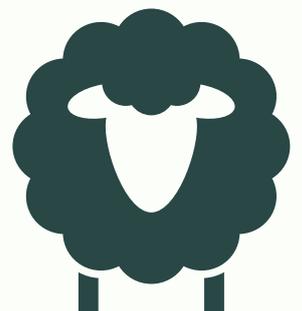
- The management plan should set out how the parties' objectives and the plan are to be implemented and by whom.
- Whilst it is anticipated that the Tenant will be the party responsible for the management of the holding, there may be parts of the management plan where the Landlord and Tenant agree to work jointly to implement parts of the management plan.

Good Husbandry Standards

- Precedent tenancy agreements will regularly contain general good husbandry standards that the Tenant is expected to meet.
- These should remain part of the tenancy agreement particularly to ensure the Tenant meets their statutory obligations.
- However, these standard husbandry provisions should be reviewed by the parties to ensure they are relevant and where appropriate developed to reflect the overall management plan and use of the holding.

Maintenance and Management Actions

- The parties should include specific maintenance and management actions for the holding. These need to endure throughout the length tenancy.
- These could include arable and grassland management approaches to specific field parcels (in addition to the general good husbandry standards) and the management and conservation of existing habitats (for example, watercourses, ponds, hedgerows, field edges and trees).





- If there are any restrictions which need to be part of the tenancy agreement (for example, not ploughing up permanent pasture, treatment of trees).
- In addition, progress towards net zero agendas and targets need to be prescribed here are well.

Enhancement/Improvement Actions

- Where the parties have identified the opportunity to enhance or improve the holding or specific parts, they should record the actions required to achieve it.
- The parties should consider who is responsible, what timeline is appropriate for implementing any specific actions and the cost of implementation.

Soil Management Practices

- The management of soil in all agricultural systems is a critical consideration for the parties and it is recommended that the parties agree a soil management approach that seeks to protect soils and promote good soil health; including land management practices that improve soil quality.

Fertiliser and Agrochemical Policy

- The parties may wish to include provisions setting out an agreed policy for the use of fertilisers and agrochemicals on the holding.

Waste Management and Disposal Policy

- The parties may wish to include more detailed provisions setting out an agreed policy for waste management and disposal to compliment and assist the Tenant in meeting their statutory obligations.





- This may include improvements to the holding and how the cost of any improvements should be accounted for in the tenancy agreement terms and who is responsible for carrying out improvements and maintaining them during the term.

Creation of New Habitats and Public Rights of Way

- If the agreement between the parties includes the creation of new habitats, the management plan should include provisions for the design/layout and implementation of the works to create the new habitat, the maintenance of the habitat and on what basis and the costs of works/maintenance including funding.
- The agreement should also cover public rights of way either to take action to prevent new routes or allow creation of permissive access or route creation or diversion.

Management Plan Reviews and Reporting

- The parties should include a provision for reviewing the management plan and objectives at an appropriate interval during the term.
- This should also include any agreement on reporting on agreed management prescriptions to monitor progress in accordance with the agreed objectives of the management plan.

Collaboration

- Where the parties consider it appropriate to include relevant collaboration with third parties (for example, other tenants of the same landlord or other adjoining farmers), the parties should include provisions for Landlord's consent, sharing of information and for agreeing responsibilities between those collaborating – respecting the nature of the legal relationship between the Landlord and Tenant.





Farm Tenancy Forum

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business tenancies in England

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