

AGRICULTURAL LANDLORD-TENANT CODE OF PRACTICE FOR ENGLAND

EXECUTIVE SUMMARY

The Agricultural Landlord and Tenant Code of Practice for England, has been prepared following Defra's response (May 2023) to the *Rock Review: Working together for a thriving agricultural tenanted sector* (2022)

The code is founded on three principles of: **clarity, communication and collaboration.**

The code uses the word **should** to describe minimum standards expected of landlords and tenants, and their professional advisers, unless strong reasons suggest otherwise.

10 Specific sections cover the initial grant of a tenancy, routine engagement during its term, the payment of rent, rent reviews, improvements, access to environmental 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, professional advisers and agents will promote the adoption and application of the code.

INTRODUCTION

20 *The Rock Review: Working together for a thriving agricultural tenanted sector*, published in October 2022 [<https://www.gov.uk/government/publications/the-rock-review-working-together-for-a-thriving-agricultural-tenanted-sector>], called for a code of good practice to guide the conduct of agricultural landlords, tenants and their professional advisers. The government accepted this recommendation in its response to the review (May 2023) and asked the Farm Tenancy Forum to prepare a code [<https://defrafarming.blog.gov.uk/2023/05/24/supporting-tenant-farmers-our-response-to-the-rock-review/>].

30 This document is the Agricultural Landlord and Tenant Code of Practice for England. It exists to support landlords and tenants, and their professional advisers, to establish and maintain positive, productive and sustainable commercial relationships. It aims to foster positive landlord-tenant relationships, achieved through dialogue and a sense of fairness and proportionality. The code of practice 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 it 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 collaboration. Proportionate application of the code to all tenancies is important to secure the future success of the agricultural tenanted sector in England.

The language of the code:

40 This is a voluntary code. Landlords and tenants remain bound by the terms of their 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 substantial 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.

50 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:

1. **Clarity:** as to the definition of intentions, expectations and the definition of problems if they do arise;
2. **Communication:** which should be clear and timely, considered, and tailored to the needs and situation of the recipient;
3. **Collaboration:** the code of practice encourages a collaborative and cooperative approach. This is based on the belief that landlords and tenants can achieve much more when they work together in a positive spirit of common endeavour.

60 THE CODE AND KEY EVENTS DURING A TENANCY

Grant of tenancy, selection of tenant and agreement of tenancy terms

- Where a tenancy is offered in the open market: 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, ingoing 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: statutory or local designations; third party rights for example sporting rights; option and exclusivity agreements; wayleaves and easements for installed utilities. In the case of off-market lettings, the parties may also find it helpful to share this information.
 - The parties **should** give prospective tenants 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;
 - Prospective tenants 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. Prospective tenants may also expect to be asked for references and proof of their financial standing. It is reasonable for prospective landlords and their advisers to view an applicant's existing farming operations. Both parties **should** be open to negotiations around the terms on which a tenancy is being offered.
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- It is advisable to agree a 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.

90 **Routine engagement during the tenancy**

Both parties **should** agree suitable and proportionate arrangements for regular liaison and engagement during the term of the tenancy. 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 terms. The parties **should** document the agreed outcomes of these negotiations carefully and fully.

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Rent reviews

- Both parties **should** inform themselves of the procedure and terms on which rents can be reviewed;
- Discussions and negotiations about rent reviews **should** start in good time. The party initiating the rent review **should** suggest a timetable;
- It may be helpful to discuss other points of common interest such as the need for future investment, economic outlook, diversification, standard 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;
- Where disputes arise negotiations **should** continue to be conducted in a constructive and timely manner. Both parties **should** seek to reduce and refine the issues which have to be referred to dispute resolution.

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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** collaborate in identifying these needs and planning for them;
- 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.

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- 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, and any agreed financial settlement.

130 **New opportunities, schemes and agreements**

- Tenants and landlords **should** be able to discuss environmental, economic and other development opportunities openly and constructively with each other;
- Consent for new schemes **should not** be withheld unreasonably. Reasonable grounds in an appropriate context may include effects on taxation status, rental income, capital value and long-term estate plans.
- 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 where there is no good reason for them
- 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 and in any case **should** inform the owner of an application within a reasonable time prior to submission;
- Routine engagement provides a valuable opportunity to keep opportunities under review;
- Applications, approvals, conditions and other records of scheme participation **should** be filed safely and made available to the other party as appropriate, on request.

Termination and renewal

- The parties **should** be as open as is commercially possible with one another about their intentions for 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;
- 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;
- 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;
- 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;
- 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.

DISPUTES

Disputes will arise from time to time in some tenancies.

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- Parties **should** be guided by the code's principles of clarity, collaboration and communication 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** at all times seek to minimise the cost of formal dispute resolution and ensure that their approach is proportionate to the dispute at stake;
 - 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.

THE ROLE OF PROFESSIONAL ADVISERS AND AGENTS

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- 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, ingoing tenant and outgoing tenant) **should** not share professional representation;
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- Professional advisers and agents **should** work constructively with their clients and other parties, within their agreed terms of reference and professional obligations;
 - Professional advisers **should** ensure that their complaints procedure is made available to any party that requests it. 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.