

THE COUNTY FARMS ESTATE REVIEW AND UPDATE OF STANDARD FORM OF FARM BUSINESS TENANCY AGREEMENTS

Report of the Head of Digital Transformation and Business Support

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation(s):

That the proposed updates to the standard form of Farm Business Tenancy Agreements be adopted with immediate effect save for where heads of terms have already been agreed with existing tenants for tenancy renewals that have not yet commenced.

1.0 Background

- 1.1 The Agricultural Tenancies Act 1995 (ATA '95) introduced the Farm Business Tenancy (FBT). The ATA '95 applies to most tenancies of agricultural land beginning on or after 1 September 1995. The ATA '95 replaces the former Agricultural Holdings Act 1986.
- 1.2 The ATA '95 introduced far more freedom of contract for landlords and tenants to agree bespoke terms to reflect the specific circumstances of a particular letting whereas the AHA '86 was far more prescriptive.
- 1.2 Shortly after the adoption of the ATA '95, the then in house County Land Agents prepared two forms of Standard FBT agreement for use by the County Council for all agricultural lettings to ensure a consistent approach was applied. In simplistic terms the standard forms of agreement comprise a lease for two years or less which requires no notice provision to bring the agreement to an end on the term date, and a lease of more than two years which does require a notice to quit to be served in advance of the term date to bring the lease to an end and avoid the lease running on from year to year until a notice to quit is served.
- 1.3 At the time of writing the standard forms of agreement, specimen templates from the Royal Institution of Chartered Surveyors (RICS) and the Central Association of Agricultural Valuers (CAAV) were reviewed and used to form the basic structure and content of the Councils standard form of agreement.
- 1.4 Over the last 20 years or thereabouts the standard form of agreement has received a number of minor modifications and updates to keep it in line with recommended best practice, guidance and advice to both landlords and tenants by the RICS and CAAV.
- 1.5 At times, more in depth consideration has been given to the suitability or otherwise of the County Councils standard form of FBT such as when the Tenancy Reform Industry Group (TRIG) made recommendations to DEFRA in 2003, some of which were adopted by the Regulatory Reform (Agricultural Tenancies) (England and

Wales) Order 2006, and some of which were developed into the 'Code of Good Practice for Agri-environment Schemes and Diversification Projects within Agricultural Tenancies' published by DEFRA in 2005.

1.6 Other notable changes include:

- (i) The introduction of the fourth schedule dealing with the treatment of Single [Basic] Payment Scheme Entitlements.
- (ii) The introduction of a quinquennial break clause in all new progression farm tenancies as required by the findings of the 2010 Strategic Review. Committee resolution FE/50 of 17 November 2010 refers.
- (iii) The amendment of the Second schedule dealing with the change in landlord and tenant repair and maintenance liabilities as required by the findings of the 2010 Strategic Review. Committee resolution FE/49 of 17 November 2010 refers.

1.7 With the standard form of FBT having existed now for in excess of 20 years, as part of a good estate management regime, NPS Land Agents have undertaken a 'page turn' of the standard document together with the latest template documents available from their professional membership organisations (the RICS and CAAV). Furthermore, the NPS Land Agents have used their experience to improve the agreement and provide greater clarity and contractual certainty around historic estate custom and practice.

1.8 Although it is believed the nature of the shared repair and maintenance liabilities between landlord and tenant have not changed to any material degree, the Second Schedule has also been reviewed and updated to reflect the changes and improvements to The Agriculture (Model Clauses for Fixed Equipment) (England) Regulations 2015, introduced by Statutory Instrument 950.

1.10 Finally, the consequences of the revocation in 2015 of The Agricultural (Calculation of Value for Compensation) Regulations 1978 [SI 1978/809] and subsequent 'amendment' Regulations, and associated interim guidance have been taken into account as part of this review.

1.11 A copy of the proposed changes can be reviewed on the 'track changed' version of the standard form of lease of let agricultural property comprising a farmhouse, buildings and land for a term more than two years, as attached hereto at Appendix 1. The County Solicitors department has been consulted on these proposed changes.

1.12 It is proposed that the respective changes will also be made to the standard form of lease for a term of two years or less and a new standard lease be drafted incorporating the same terms but to be used where only land and buildings (no dwelling) is let for a term of more than two years.

2.0 Options/Alternatives

2.1 Alternative options have been considered and discounted as they are believed to either be contrary to current Estate policy and/or not in the best interests of the Estate.

3.0 Consultations/Representations/Technical Data

3.1 The views and opinions of the Devon Federation of Young Farmers Clubs and the Estate Tenants Association will be presented by the two co-opted members to the committee.

3.2 No other parties have been consulted and no other representations for or against the proposal have been received

3.3 The technical data is believed to be true and accurate.

4.0 Considerations

4.1 The Author is not aware of any financial, sustainability, carbon impact, equality, legal, risk management or public health issues arising from this report

5.0 Summary/Conclusions/Reasons for Recommendations

5.1 The Author has prepared this report in accordance with the findings of the County Farms Estate Strategic Review (April 2010)

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Electoral Divisions:

All

Local Government Act 1972: List of Background Papers

None

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