DIFFERENT TYPES OF LAND AGREEMENTS

SW LAND MATCH

Landworkers Alliance

As a land entrepreneur, whenever you are looking to take on land, you will need to consider which structure is most suitable. This document aims to set out a summary of the main types of models available for occupying land. It will outline the traits, advantages, disadvantages and suitable situations of each agreement type. Understanding these options will assist entrepreneurs in making informed decisions when seeking land.

Please note, this is a guidance note and is intended to help entrepreneurs be aware of some of the options available to them and should not be a substitute for proper professional advice.

LICENCE AGREEMENT

A licence agreement grants a Licensee permission to use the Licensor's land for a specified purpose or purposes. This consent can be varied in its nature and duration, however, land-based licences typically grant consent such as to grow a specific crop, graze or mow a field or harvest apples from an orchard. The Licensee usually has a limited right or responsibility to undertake any maintenance, apply any inputs or make management decisions on the land. A licence, whilst it gives consent to undertake a certain process, can typically be terminated with short notice periods by either party for any reason.

Statutory Considerations:

Falling under contract law, the parties are free to agree what they wish. However, this typically gives management control to the landowner with limited rights to the entrepreneur. The entrepreneur will not have sole occupation rights but rather will share the occupation with whoever else the landowner gives consent to.

Duration:

Short-term, ranging from days or months to a few years. For example, for a grazing season or during the apple picking season.

Flexibility:

Allows landowners to retain control by virtue of the short term and, often, being able to terminate the agreement at short notice. This can be used as a tool to vary the agreement (i.e. terminate and renegotiate if they are not happy). This gives the entrepreneur limited protection as there is no right outside of the contractual terms of the licence, however, it can also give the entrepreneur limited liabilities which can be attractive.

Advantages:

- Less obligations on the parties and usually easier to negotiate due to limited tenure and ability to terminate.
- Provides an opportunity to test land suitability before entering a long-term commitment. For example, a landowner could grant a licence for the first year and if the relationship goes well can grant a more substantial agreement such as a tenancy.
- Can be used by landowners to incorporate several entrepreneurs without granting longer-term agreements. For example, a landowner with an agroforestry system could grant a licence for someone to pick the apples in the field whilst they, or another entrepreneur, grows crops in between the tree lines and another party runs sheep between the trees over the winter.
- Means the landowner is "in control" from a tax perspective meaning they are still trading and in occupation of the land. This normally means they will remain eligible for grants on the land.

- Can provide opportunities for an entrepreneur to extend their farmed area on a seasonal and temporary basis. For example, to extend their grazing area.

Disadvantages:

- Limited security, as the landowner can terminate the agreement with short notice and generally without any reason. There is no protection from the court outside of the contract terms.
- Restrictions on investments and long-term planning by the entrepreneur due to limited rights and tenure. Building a business based on occupation of land under licence would be riskier than under other structures which give more protection to entrepreneurs.
- There is limited protection for the parties should there be a dispute especially in the absence of a well-written legal agreement. It is recommended that a written agreement is put in place to protect both parties.

Suitable situations:

- Temporary use of land for specific seasons or short-duration projects such as grazing, growing a single crop, picking fruit or using a space for an event.
- Where the landowner wants to continue to claim grants such as under the Basic Payment Scheme or Countryside Stewardship.
- Where an entrepreneur wants temporary access to the asset, such as extending their grazing area for one season, without making a long-term commitment.
- Not recommended for:
  - Agreements lasting longer than a year or season.
  - When the landowner does not want management control
  - Where the entrepreneur is taking maintenance responsibilities over and above basic repairs, such as for fencing.
  - Where an entrepreneur wants a secure base from which to build their business.

TENANCY AGREEMENT

A tenancy agreement establishes a legally binding relationship between the landowner (landlord) and the entrepreneur (tenant). This can fall under several lease types depending on whether the use is agricultural, commercial or residential but for the purposes of this guidance the focus will be on agricultural leases.

What makes a tenancy?

A tenancy must be for a defined area of land, be for a period of time and give the tenant exclusive possession. This is to say that once the tenancy has been granted, and as long as the tenancy exists, the tenant(s) will have the sole legal right to possession of the property (subject to any rights reserved by the landowner). In the case of a licence, the entrepreneur does not hold a right to exclusive possession and accordingly rights to possession can be shared by the landowner, the entrepreneur and any other parties which the owner decides.

Types of Agricultural Tenancies

In the case of agricultural land, most tenancies are regulated by the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995. We will explore both below.

AGRICULTURAL HOLDINGS ACT TENANCY (AHA):

AHA tenancies are tenancies which came into effect on or prior to 1st September 1995 but, in limited circumstances, can be created after 31st August 1995. Such tenancies run year-to-year and are subject to considerable legislation generally giving greater protection to tenants.

As these tenancies are not likely to be an option for entrepreneurs looking for new opportunities, this guidance on AHAs is brief:

Duration:

Year-to-year but with very limited circumstances on which the landlord can terminated the agreement, so tenancies often last a lifetime.

Succession:

For agreements starting prior to 1st July 1984, succession rights exist which grants eligible successors the right to take on another tenancy for the duration of their lifetime. The legislation allows up to two successions per eligible tenancy. Parties looking to "succeed" should take professional advice at the earliest opportunity as this process requires careful planning.

Flexibility:

Limited for the landowner as the tenant has strong rights and security of tenure. Agreements are governed by legislation to include provisions on rent, repairing and insuring, compensation and regaining possession.

Rent:

Under the legislation, rent is calculated by a statutory formula based on the land, the terms of the tenancy and the productive and earning capacity of the holding. As a result, these rents are generally below those paid under Farm Business Tenancies.

Assignability:

In rare cases, AHA tenancies can be assigned by the tenant either by way of a condition in the tenancy agreement or by virtue of the tenancy being to a limited company and the shares of that company being sold. This poses a unique and desirable opportunity for entrepreneurs to purchase what is often considered a "never ending" tenancy.

Advantages:

- Offers the highest level of security and stability for long-term farming operations.
- Can provide a framework for succession or assignment.

Disadvantages:

- Limited opportunities for entrepreneurs
- Complex legal framework.

Suitable situations:

- Where an entrepreneur is an eligible successor for an existing AHA tenant.
- Should an opportunity to buy an AHA tenancy (or company holding an AHA) arise.

FARM BUSINESS TENANCIES

Farm Business Tenancies (FBTs), governed by the Agricultural Tenancies Act 1995, are the most commonly used model for leasing agricultural land. The legal framework, whilst not as protective as AHAs, offers a limited framework and broadly operates on the principles of "freedom of contract".

Creating an FBT:

- An FBT must be for a term, on a defined area, where exclusive possession is granted and where consideration (otherwise known as rent) is paid.
- To create an FBT, the following conditions must be met.
    - The tenancy must meet the "business condition" meaning the land is farmed for the purpose of a trade or business and that at least part of the land has been farmed since the beginning of the tenancy.
    - Either the "agriculture condition" or the "notice condition" must be met. The agriculture condition requires that the character of the tenancy is primarily or wholly agricultural. However, rather than to let the courts decide in the case of a dispute, the notice condition can be used. This requires notices to be exchanged between the parties which confirms the intention to create a FBT. The notice condition is the most common approach.

Duration:

- Anything from a month to 100 years has been done. The longer the duration the more consideration is needed as to the mechanics of the agreement.
- Agreements of less than two years in length will automatically terminate at the end of the term (i.e. without notice from either party) and agreements of 2 years or more require 12-24 months' notice from either party for them to terminate or they will continue to roll from year-to-year.
- If a lease (of any kind) has a fixed term of 7 years or more then it must be registered on HM Land Registry. This carries a cost and time implication and is the responsibility of the tenant.

Flexibility:

- Provides freedom of contract for the parties with very little statutory intervention.
- Once an agreement is signed, it can only be varied by mutual agreement of the parties.

Rent & Rent Reviews:

- Whilst anything can be agreed, FBTs allow rent to be reviewed to "market rent" which is based on rent payable on comparable holdings. However, in increasingly more situations, bespoke formulas are used to reflect the farm's situation and its earning capacity.
- The standard provision is for rents to be reviewed not more than once every three years.
- Parties can contract into the AHA rent review process. However, this is unlikely to be desired by the landowner due to being restricted and typically significantly lower than market rent.

Advantages:

- Offers better security and stability compared to licence agreements.

- Allows for longer-term planning and investment.
- Freedom of contract offers the ability to create bespoke terms.
- Whilst the business must be partly agricultural, there is scope to have a diversified use of the land (subject to consent in the FBT).
- Maintenance responsibilities can be shared between the parties.

Disadvantages:

- Can be complex and involve legal obligations for both parties.
- Termination requires adherence to statutory procedures.
- Rent can often be reviewed to market rent after the first three years which, if the starting rent was low, can be a shock to entrepreneurs.
- Whilst freedom of contract exists, standard FBTs can be very restrictive on the tenant's ability to diversify, make alterations or share possession of the land.

Suitable situations:

- FBTs are used for all types of farming occupation where the landowner is granting exclusive possession.
- Establishing the base for a farming operation with greater security and stability (where all terms are documented in the agreement).
- FBTs are suitable for lettings which include land, buildings and houses as they provide a framework for all components to be let as one.
- For diversified farm businesses. Provided an agricultural trade or business exists, the business can diversify.

SHARE FARMING AGREEMENT

A share farming agreement, in its simplest form, is where two farmers with separate businesses agree to work together to share the farming of the land. Usually the landowner provides the land, buildings and fixed equipment and with the other party providing the working machinery and labour. The parties then share the profits and costs in agreed proportions. Both parties are exposed to the risks.

In the case of livestock, the stock may be shared with both parties owning an agreed proportion of each animal or with one party owning them all. Input costs are paid in agreed proportions and each party owns are pre-determined share of the produce.

Duration:

- Can vary depending on the agreement, ranging from a single season to longer-term arrangements.

Flexibility:

- Allows for a shared responsibility in managing the farm.
- Agreements can be written to suite each relationship. Parties need to be aware of termination provisions and what the process for dispute resolution is.

Advantages:

- Enables entrepreneurs access to land and resources without significant upfront costs.
- Allows for pooling of expertise and resources.
- Gives the landowner the ability to stay involved in the management whilst handing over day-to-day operations.
- Supports a landowner's case for inheritance tax relief.
- Both parties run their own businesses.

Disadvantages:

- Requires a high level of cooperation and communication between parties.
- Profit-sharing can be complex and potentially lead to disputes.
- Risks are shared, which can put strain on a relationship.

Suitable situations:

- Where collaboration between landowner and farmer is sought to maximize resources and expertise but where the contractor does not seek a fixed basic return as provided in a contract farming agreement.
- Especially helpful where the landowner wants to continue trading as a farmer for tax purposes but share the financial risk.
- A reasonably flexible pre-cursor to a more substantial collaboration such as a partnership or co-operative structure.

CONTRACT FARMING

Contract farming involves a formal contract between a landowner and entrepreneur. Typically, the entrepreneur (contractor) will undertake the day-to-day farming operations and the farmer (landowner) will give instructions, run the business and make the key decisions. The farmer cannot seek a guaranteed income, for tax purposes, and must be seen to be taking a financial risk. However, the contractor may take out a charge against the agreement in return for their input. Thereafter, provision is normally made for profits to be split as to motivate the contractor. Typically, the agreement will include the following structure for calculating revenues:

Output
Farm Gross Margin
Farm Subsidies
Total Output

Less
Contractor's Charge
Farmer's Prior Charge

Less
Book-keeping
Agreed insurance
Other Costs
= Divisible Surplus

Split of Divisible Surplus (typically as a %)
Landowner
Tenant

Therefore Farmer's (Landowner's) Share
Prior Charge
Divisible Surplus

Entrepreneur's (Contractor's) Share
Contractor's Charge
Divisible Surplus

Duration:

Typically medium to long-term agreements, covering multiple seasons.

Flexibility:

The agreement operates under contract law and therefore is as agreed between the parties. Parties should be aware of the duration, termination clauses and provisions should a dispute arise.

Advantages:

- Allows access to land and resources for entrepreneurs without significant upfront investment.
- Creates an opportunity for an entrepreneur to learn from the landowner, typically when the owner wants to step back from practical farming whilst retaining their trading status.
- Supports landowners seeking a trading status for tax purposes.
- The contractor is able to get a guaranteed minimum return for undertaking the duties specified in the agreement.
- Whilst the landowner carries financial risk, the contractor is motivated by a share of the profits.
- Both parties run their own businesses.

Disadvantages:

- The entrepreneur is not able to take management responsibility of the land but rather is required to follow the landowner's instruction in line with their farming policies.
- Disputes may arise, especially in the absence of a considered and well-written agreement.

Suitable situations:

- Where a landowner wishes to remain an active farmer but wants to step back from day-to-day operations.
- Where a landowner wants to minimise investment in machinery.
- Where an entrepreneur would like to increase their farmed acreage without carrying all the financial risk associated with a share farming agreement.
- As a precursor to a partnership or cooperative model.

CO-OPERATIVES

Co-operatives are member-owned organizations where farmers collectively pool their resources to achieve scale and efficiency either for supplying services (such as buying, marketing or getting advice) or to farm collaboratively. The aim is generally to maximise benefits for members rather than specifically for the business. Whilst this is a less conventional approach, some good examples exist and suggest this can be a very effective structure for partnering to manage land.
Joining or forming a co-operative requires careful consideration of the co-operative's objectives, rules, and membership requirements. Always ensure you assess the potential benefits, responsibilities, and commitments involved before becoming a member.

Structure:

Co-operatives are formed by a group of farmers who become members and jointly own and manage the organization. A landowning member can make their land available for the benefit of the organization.

In order to form a co-operative, you will need to choose a legal structure, register the organisation and develop a set of bylaws or rules that will govern the operations and decision-making process.

Decision-making:

Members have voting rights and participate in democratic decision-making processes. It is possible to have different categories of members who may have distinct voting rights or powers within the cooperative's decision-making process.

Advantages:

- The collective ownership creates a sense of community and collective responsibility.
- By pooling resources, members can overcome individual barriers to accessing land.
- Co-operatives can improve their access to markets both for buying and selling due to working collectively.
- Members can share resources and reduce their individual costs.
- It can be a great way to build community and share knowledge.

Disadvantages:

- Initial capital requirements to establish a cooperative may be high.
- Decision-making processes can be time-consuming due to the involvement of multiple members.
- Disagreements among members may arise, requiring effective conflict resolution mechanisms.
- Co-operatives require collective management which can be difficult depending on the size and nature of the organisation.
- Members can share financial risks, legal obligations and environmental responsibilities.
- Members may have limited autonomy which can restrict their freedom and flexibility.

Suitable situations:

- Farmers looking to get shared access to land, pool resources, access markets collectively, and enhance their bargaining power.
- Producers seeking collaboration, knowledge sharing, and joint decision-making.

FARMING PARTNERSHIPS

Farming partnerships involve a legal agreement between two or more parties, such as entrepreneurs, landowners, or other agricultural businesses, to jointly operate a farming venture. A partnership, defined by the Partnership Act 1890, is an association of "persons carrying on a business in common with a view of profit". Often, this structure is used by a landowner to enable them to run a farming operation with others where they are all business partners.

Structure:

Partnerships can take various forms, such as general partnerships, limited partnerships, or limited liability partnerships (LLPs), each with different levels of liability and decision-making authority. Depending on the kind of partnership will depend on what inputs are needed in order to form the structure.

When considering a partnership, it is recommended to establish a clear partnership agreement that outlines the responsibilities, profit-sharing arrangements, decision-making processes, dispute resolution mechanisms, and exit strategies. Legal advice is highly advised to ensure the partnership agreement adequately protects the interests of all partners involved.

Shared Responsibilities:

Partners contribute resources, expertise, and labour to the partnership and share profits, losses, and liabilities.

Advantages:

- Shared workload and division of responsibilities among partners.
- Partners can leverage complementary skills and resources.
- Flexibility in structuring the partnership agreement based on the specific needs and goals.

Disadvantages:

- Decision-making and coordination may require effective communication governing policies among partners.
- Liability may be shared, potentially exposing partners to financial risks.

Suitable situations:

- Where parties want to trade as one legal entity.
- Where a landowning family wants to trade together but where one individual owns the land, or, several parcels are land are owned separately but farmed as one.
- Farmers seeking to collaborate with other farmers or agricultural businesses to diversify operations, combine resources, or access new markets.

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