

## A farm business tenancy or business lease? Which do I need?

The law around tenanted agricultural land has a long history of reform, of which the latest stage is the Farm Business Tenancy (FBT), established by the Agricultural Tenancies Act 1995, which (with some limited exceptions) applies to all agricultural tenancies created since 1 September 1995. The leasing of agricultural land has always been governed by specific legislation and is quite separate from the law governing general business leases, the Landlord & Tenant Act 1954, which explicitly excludes agricultural and farm business leases. However, as farms increasingly seek to diversify into distinctly commercial areas of operation, such as leasing converted farm buildings as business units, we are increasingly seeing farming businesses operating business leases alongside their agricultural tenancy arrangements.

### Agricultural tenancies

FBTs were preceded by Agricultural Holdings Act tenancies (of which there are still many in existence) which gave tenant farmers security of tenure for life and, for those with tenancies created before July 1984, statutory succession rights for two further generations. Landlords found the terms of AHA tenancies restrictive and increasingly found ways of renting their land without recourse to a formal tenancy arrangement which, in turn, impeded a tenant's ability to make a long-term commitment to the land. The introduction of the FBT was intended to introduce greater scope for landlords and tenants to agree terms more suited to modern farming needs, not least as it was recognised that AHA tenancies were insufficiently flexible to accommodate the increasing drive for diversification.

Although an FBT can only be used for land used primarily for agricultural purposes (which includes horticulture and fruit growing), providing the landlord and tenant exchange notices agreeing in writing that the FBT will apply for the duration of the tenancy, then the tenant farmer can, subject to obtaining consent from their landlord, diversify away from their farming operations to include non-farming businesses on site.

**Rents and rent reviews:** The basis on which the rent is agreed and then reviewed is different under both types of tenancy. AHA tenancy rents are calculated according to certain parameters including the farm's productivity (with reference to other comparable, local farms), and the terms of the tenancy. As such, AHA rents have traditionally been lower than FBT rents which are market-led and can end up going to the highest bidder. AHA rents must be reviewed every three years, whereas landlords and tenants negotiating an FBT can agree whatever rent review cycle they wish. However, there is a statutory requirement that rents must be able to be negotiated down, as well as up. In the absence of an agreement, FBT legislation does provide for rent reviews to be undertaken every three years.

**Notice periods:** The core feature of AHA tenancies is the security of tenure it gives tenants. Landlords can only serve notice under very [prescriptive terms](#) which can – and often does - end in lengthy and expensive arbitration proceedings unless the tenant voluntarily agrees to come to an arrangement to surrender the tenancy. By contrast, under an FBT, both parties can agree a maximum notice period, which cannot be less than 12 months and which can be served by either side without constraint.

**Compensation:** Both AHA and FBT tenants are entitled to compensation at the end of their tenure for any improvements that they have made during the course of their tenancy. Both differ slightly in the way compensation is calculated but the major difference is that FBT tenants must have sought permission from their landlord before making any improvements.

## Business leases

The leasing of commercial premises for the conduct of business is governed by the Landlord & Tenant Act 1954 (LTA) which grants commercial tenants statutory rights, giving them the right to renew their lease on substantially the same terms if they remain in occupation at the end of the term unless it is agreed prior to the grant of the lease that those rights are excluded. As mentioned above, the Act specifically excludes agricultural and farming businesses from falling within its scope. It is also worth remembering that tenants need to get consent from their landlords to make material changes to outbuildings or land for the purpose of diversifying.

**Contracting out:** There are many farming businesses with underused farm buildings that have taken the opportunity to convert them into business and light industrial units. These units can be let under the LTA (and not an FBT which is limited to land used for agricultural purposes only). The security of tenure afforded by the LTA gives commercial tenants the stability to build their business from recognised premises with the reputational advantages that brings. However, the automatic right to renew their lease can be problematic for those landlords needing more flexibility in how they manage their buildings and farmers and landowners are likely to fall into that category.

Therefore, farmers can agree with the tenant to exclude the relevant provisions in the LTA relating to security of tenure before entering into a lease. This is achieved by the landlord / farmer serving a notice on the tenant at least 14 days before the start date of the tenancy. The tenancy agreement must record the fact that both parties agree to contract out of the security of tenure provisions of the LTA and that the due notice has been served.

**Planning permission:** It must be remembered that most farm buildings do not have permission to be used for commercial purposes. On the assumption that the tenant has landlord consent, the next stage is to obtain planning permission for change of use from agricultural to commercial. Always seek advice from the local planning authority about any potential changes of use well in advance. Planning law and policy is not straightforward and early advice is likely to save a good deal of time and expense further down the line. You can also refer to the Social Farms & Gardens advice notes on 'Do I need planning permission?' and 'Gaining planning permission' under the resources section of the website. Planning law is not straightforward and early advice is likely to save a good deal of time and expense further down the line. If outbuildings are converted without the requisite permission, the local authority could serve an enforcement notice requiring demolition or restitution.

## Have the right agreements in place

The advantage of creating an FBT, subject to a notice agreement between landlord and tenant, is that a separate business lease agreement can be negotiated alongside it to cover certain aspects of a diversified business that no longer qualify as agricultural. This can extend to wedding venues, business units, farm shops, and equestrian facilities among a range of other uses. When negotiating a tenancy agreement, it is only too easy to overlook certain provisions to the detriment of both parties; seeking legal advice early on in the process will ensure that both landlord and tenant have the right agreement(s) in place to achieve their business objectives and avoid any disputes further down the line.

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