

November 2012

TEMPORARY USE OF ALLOTMENT LAND

Introduction

1. An allotment garden is defined as an allotment not exceeding 0.25 of an acre in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family (s.22(1) of the Allotments Act 1922). A local council may have acquired land to let as allotment gardens but then find it cannot let it out due to a fall in demand. The council may not wish to dispose of the unlet land permanently, in case demand for allotment gardens rises again, and it is unable to meet its obligations to provide allotment gardens where there is demand (s.23 of the Small Holdings and Allotments Act 1908 and s. 50 Allotments Act 1950) because the acquisition of more land is difficult or expensive. In these circumstances, the council may wish to find a temporary alternative use, which does not prevent it from resuming possession when the land is again required for allotment purposes. There are two methods whereby the land may be let for agricultural purposes but without giving the tenant or occupant security of tenure under the Agricultural Tenancies Act 1995. These are a grazing or mowing licence and the temporary use of land as an agricultural holding.

Grazing or Mowing

2. The general rule under the Agricultural Tenancies Act 1995 (the Act) is that where agricultural land is let for the purpose of a trade or business, a Farm Business Tenancy is created and the Tenant enjoys security of tenure which can only be terminated in accordance with the Act. Land let for grazing or mowing to a person running an agricultural business would thus create a tenancy protected by the Act. [N.B. In this context the grazing of horses would be deemed an Agricultural Use but the actual keeping, stabling and grooming of horses would not].
3. Pursuant to section 5 of the Act (as amended by the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order SI 2006 No. 2805), a Farm Business Tenancy granted for more than two years may only be terminated in accordance with the

statutory notice provisions. Either party may give at least 12 months written notice before the term date of his intention to terminate the tenancy.

4. It therefore follows that licences or tenancies which are for fixed terms of two years or less and periodic tenancies which run for periods of less than a year are not covered by these provisions but will be subject to the common law rules governing such agreements/ licences and the provisions contained in the agreement itself.
5. The stated period must be two years or less and NALC therefore recommends that 729 days is specified (i.e. one day within the permitted two year period) for the avoidance of doubt. A succession of lettings or licences can be granted provided that there is no contract for renewal.
6. A specimen grazing licence is set out in the Appendix to this note and can be used for a "grass keeping agreement" i.e. a licence to pasture animals and to mow and take the grass as hay.

Consents

7. Under section 8 of the Allotments Act 1925, the prior consent of the Secretary of State for the Department of Communities and Local Government (in England) or the National Assembly for Wales (in Wales) must be obtained for the sale, appropriation, use or disposal of allotment land meaning allotment gardens as defined in paragraph 1 above or any land not exceeding 5 acres in extent cultivated as a garden or a farm or partly as a garden and partly as a farm for some other purpose. The Secretary of State takes the view that consent is only required where allotment land is to be taken permanently out of allotment use; accordingly, no consent is required for the grant of a temporary grazing or mowing licence. NALC is happy to concur with his view.
8. Any lettings under seven years (i) will not require the consent of the Secretary of State/National Assembly for Wales pursuant to section 127(2) of the Local Government Act 1972 and (ii) will not need to attract the best consideration that can reasonably be obtained (see also LTN 45).
9. Under section 32 of the Small Holdings and Allotments Act 1908 where any land acquired for field garden allotments is no longer needed, or some more suitable land is available, the council may sell or let the land or exchange it for more suitable land,

and pay or receive money for equality of exchange. The proceeds of such a sale and any money received by the council by way of equality of exchange must be used for:

- discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the allotment land;
- acquiring, adapting, and improving other land for allotments; and
- any surplus remaining may be used for any purpose for which capital money may be used.

The interest on the money and any money received from letting the land must be used for acquiring other land for allotments; or in the same way as allotments rents may be used.

10. Where land had been acquired on a leasehold basis the above provisions do not apply to the loss of the land at the end of the lease.

11. The temporary letting of allotment land for non-agricultural purposes is not covered by the Agricultural Tenancies Act 1995. Lettings for business purposes may be subject to the Landlord and Tenant Act 1954 (see Legal Topic Note 49). Councils should ensure that any lettings are specifically excluded from the protection of the 1954 by serving a notice in the appropriate form as set out in LTN 49. In all cases, however, a council should seek appropriate advice from its County Association before agreeing to let land, whether on a short-term or long-term basis and whether or not for agricultural purposes.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
45	Disposal and Appropriation of Land by Local Councils	Sets out considerations where councils seek to dispose of or appropriate land.
49	Business Tenancies	Sets out the provisions of the Landlord and Tenant Act 1954 in further detail.

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APPENDIX

Draft/Agreement for granting right of grazing (or grazing and mowing) for part of a year without creating a Farm Business Tenancy pursuant to the Agricultural Tenancies Act 1995.

THIS AGREEMENT is made the day of 20 BETWEEN [council]
of [address] of the one part and [] of [address] [called 'the grazier']
of the other part.

WHEREBY IT IS AGREED as follows:

1. The grazier shall be entitled during the season or period beginning on [date] to (graze and mow) all that/those field(s) specified in the Schedule hereto [and shown edged red on the plan annexed hereto] [hereinafter called 'the land'].
2. The grazier shall pay to the council for the said right the sum of £ (in advance) on the day of (or half to be paid on () and the other half on).
3. The grazier shall keep all fences, gates, ditches and watercourses in no worse condition than their condition at the date of this agreement and shall at his risk maintain them in a condition to prevent his stock straying or being injured (and shall preserve all fruit trees or bushes (and growing crops of fruit) upon the land from injury by animals or otherwise).
4. The grazier shall properly cut, pull up or spray, as necessary thistles and any other noxious weeds on the land and shall keep the land clear of moles.
5. The grazier shall be responsible in all respects for animals grazing the land and shall inspect them daily. The grazier shall use only horses and goats for the purpose of grazing the said land. The grazier shall not keep a bull on the land nor allow the land to be entered or in any way used by donkeys, asses, pigs, poultry or any vicious, unruly, destructive or infected or diseased animal. In the event of the grazier admitting any animal on the land in contravention of this clause the council shall be at liberty to treat the animal as a trespasser and impound the same at the expense of the grazier and the grazier shall be liable for all loss or damage occasioned by any such animal either straying or in any other way.
6. The grazier shall not fell or lop any trees without the prior written consent of the council.
7. The grazier shall not plough or cultivate the land nor attempt to grow any crop.
8. The council shall have a lien upon all the graziers animals for the time being pastured on the land for any sum owing or expense incurred for which under this agreement the grazier is liable and this lien may be enforced by the sale of any animals belonging to the grazier for the time being pastured on the land.
9. This agreement shall at all times be construed as a personal agreement with the grazier for the (grazing of animals owned by the grazier) (grazing and mowing by the grazier) and shall not be assignable by the grazier. Any use of the land or any part

thereof by the grazier otherwise than for grazing animals owned by him shall be a breach of this agreement.

10. The council reserves (all fruit produced by trees growing on the land) all game (including ground game) and sporting rights on the land, all rights of way hitherto used or enjoyed over the land and the right for itself and its visitors to enter upon the land at any time for any purpose other than for grazing beasts there.
11. If the council shall require the whole or any part of the land for any purpose whatsoever they shall have the right to determine this agreement and resume possession any time of either the whole or any part thereof upon giving one months notice in writing to the grazier and repaying (or allowing) to the grazier a proportionate amount of the sum mentioned in Clause 2 hereof but without paying any compensation whatsoever to the grazier.
12. If the grazier shall neglect or refuse to comply with any part of this agreement the council may re-sell the grasskeep by public auction or private treaty and any deficiency that may arise from the re-sale and all expenses in connection therewith shall be a debt due from the grazier.
13. Without prejudice to any right of action or remedy which the council may have in respect of any arrears of consideration or any breach of any of the covenants by the grazier herein contained this Agreement may be terminated forthwith by notice given by the council if the consideration or any part thereof shall at any time be in arrears or unpaid for 21 days after the same shall have become due (whether formally demanded or not) or if any of the covenants conditions or agreements herein contained and on the grazier's part shall not be performed and/or observed or upon the death of the grazier.
14. The grazier shall pay to the council the cost of any damage to the land caused by the act, neglect or default of the grazier, its servants, agents or employees and indemnify and keep indemnified the council from and against all legal liability in respect of loss, damage, actions proceedings, suits, claims, demands, costs, damages, liability and expenses in respect of any injury to or death of any person, damage to any property moveable or immovable or otherwise by reason of or arising in any way directly or indirectly out of the user of the premises or by reason of anything done thereon by the grazier and by those authorised as aforesaid in exercise or in purported exercise of the rights hereby granted (including but without prejudice to the generality of the foregoing words) failure to comply with the grazier's obligations under the terms of this agreement.
15. It is hereby expressly agreed and understood that this agreement constitutes a licence and confers no tenancy upon the grazier nor gives the grazier any right to exclusive possession of the land and that possession of the land is retained by the council subject however to the rights hereby granted and further that upon the determination of this agreement by effluxion of time or otherwise there shall be no obligation upon the council to repeat or renew this agreement for another period or to find alternative land for the grazier.

SCHEDULE

[DESCRIPTION OF THE LAND]

Signed by [the grazier]:)

in the presence of: -)

Signed on behalf of the council)
by [their clerk] and authorised agent:)

in the presence of: -)