

Guidance note – Land agreements

March 22

Strutt & Parker are assisting University of Gloucester in a test and trial study working to understand the mechanisms for implementation of full landscape recovery, forming part of the wider Government agricultural policy.

Purpose of Note: This note draws together the factors that affect land use and land management decisions with existing types of agreement as well as identifying questions that could be raised as part of the stakeholder engagement.

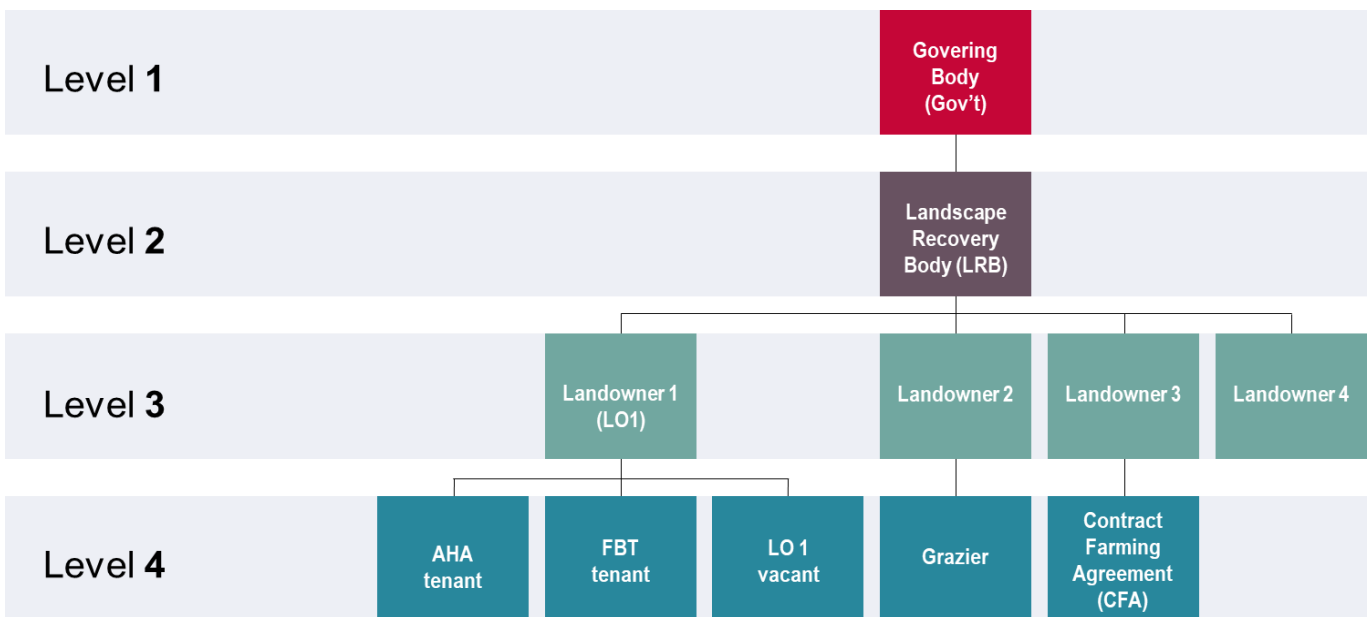
Who can enter into a long-term agreement (LTA)?

Please see the relationship diagram that could be working example of the parties involved in a full landscape recovery scheme (LR). It makes the assumption that a form of Government Body will be required to oversee the LR to ensure the following:

- Consistency of approach
- Control of public funding
- Management tools and KPIs are being adhered to.

The additional finance provider will determine specific management objectives and financial or ESG rewards – either by provision of captured management targets (improving spp numbers or water quality) or by a form of environmental credits akin to the Carbon Credit scheme.

Diagram 1: Possible relationship for Landscape Recovery Scheme(LR)



Factors affecting uptake of long-term agreements (30+ years) (not exclusive)

- **Succession on death or retirement** – obligation to be passed to next generation. No wish to tie up the land for the future.
- **Value of the holding:** Capital Values (CV) of the holding will be directly affected by any LR; particularly where it is registered against the title of the land and imposes obligations to perform. There is much debate as to whether payment for enhancement of the landscape will increase the value of the land: initially income generation from land will provide enhanced investment value; however should the land be determined unproductive for commodity once the payment period ceases the CV could significantly decrease particularly if there is no opportunity to further enhance income.
- **Income generation:** whilst small scale income generation such as eco lodges or fishing could be derived from LR scheme it is possible those Holders which the scheme impacts the most could not be the ones that directly gain the benefit. For example, a farmer changes his fertiliser application so that significantly reduces his yield for which he is paid the difference in income received; the waterway on his neighbours land changes from a eutrophicated stream to a beautiful meandering stream with associated glamping sites. Payments end but obligated to remain with existing farming system without income whilst neighbour benefits. Opens up discussion with LRB as to what a fair payment/compensation should be.
- **Tax:** ensuring the vehicles are designed to meet the objectives of the landowner in respect of reducing the impact of taxation regimes will determine whether individuals are more likely to uptake LTA.
- **Risk:** Business and individual landowners' appetite to tie up land (whether via land charge or agreement only) will determine likelihood of participation in the scheme.
- **Profitability/ Payment:** Experience with older schemes and fixed payment cycles. How will the PFA work in respect of contract performance and payments?
- **Trust**
- **Land area:** whether the whole holding or part of the holding will be obligated to adhere to the scheme. There will be nervousness if the whole CPH land holding will be covered by a CC. Dependent on the specific obligations within a CC will determine the degree of participation – for example a statement confirming total land area to be covered by specific management obligation but not detailing exact location. LR state requirement to create a mosaic of habitats.
- **Planning and development** – options or potential for future use either houses or alternative energy.
- **Conflicting land management schemes** – proposals to change land management; conflict with overarching strategy for food production. Opportunity to raise additional funds? Requirement to meet own environmental targets for the farming business.
- **Enforcement:** prohibitive penalties or perceived restrictive management will put off uptake
- **Collaboration/ Privacy** – shared agreements between various parties will require parties being more open about their individual performance and management operations. Businesses are inherently protective of their private rights and the farming community are perhaps even more private than most. Third party rights to the use of the land or party to the contract will put off parties from considering a LTA.

- **Access:** requirement to allow public access. Monitoring visits to private land etc.
- **Overlap of agreements:** Carbon credit/code schemes Biodiversity Net Gain.
- Application and management: Single entity with jurisdiction over large land mass such as National Trust with proven track record in conservation management (ongoing) perhaps more willing and capable of application as opposed to a fresh purposely designed Umbrella entity (L2). The success of L2 application will be determined by a robust legal framework to impose the management obligation on the individual entities. It will need to be empowered to undertake enforcement action by the individuals against other individuals: this might not assist in the application or ongoing management.

Agricultural Business Vehicles

There are three business vehicles commonly used in agricultural sector:

- **Partnership:** often used in a farming context. Regulated by the Partnership Act 1890 and thereafter by the Limited liability Partnership Act 2000. Requirement for all parties to sign agreement. Partnerships do not often own the land they farm and therefore, terms within the partnership will need to be addressed to ensure adherence to any CC or LR.
- **Companies:** regulated under the Companies Act 2006. Directors and potentially shareholders will all need to agree to the terms of the agreement. Land can be an asset of the company or indeed held separately by individuals.
- **Trusts:** Land can be held in Trust on the behalf of beneficiaries and dependent on the terms of the Trust. Perhaps the most complicated and restrictive arrangements to land tenure, trusts can both act proactively to manage and maintain income or indeed thwart the process to agreements.
- **Shared farming arrangements:** Two parties, typically a landowner and a farmer/operative, will each operate separate businesses and agree to combine farming activities, assets and services on a specified area of land. Each party takes a specified share of the gross return; which, in practice, will be the receipts from sales of crops or animals. A share farming agreement allows the farm owner to remain actively involved in managing the land while being able to offload some of the more arduous aspects onto a contract farmer. In addition, providing they can prove their active involvement, the farm owner can continue to benefit from tax reliefs including capital gains taper relief, business property relief (BPR) and agricultural property relief (APR). Farm subsidies can also be claimed by the owning farmer. These arrangements will suffer should the income derived from the farming arrangement significantly decrease, whilst the obligations to perform to management prescriptions or standards remain in place. The opportunity to ensure that the landowner can meet the obligations of both agreements will need to be established.

Occupation of land

Agricultural tenancies

There are two main types of agricultural tenancy, each governed by a different statutory regime:

- An agricultural holding governed by the Agricultural Holdings Act 1986 (AHA 1986), granted before 1 September 1995.
- A farm business tenancy (FBT) governed by the Agricultural Tenancies Act 1995 (ATA 1995), granted on or after 1 September 1995, unless it falls within one of the statutory exceptions.

Leases granted before 12 July 1984 carry potential succession rights, which may result in the right for up to two further generations of farmers to occupy an agricultural holding.

Under the ATA 1995 parties have significant freedom to negotiate the terms of the tenancy agreement. The tenant has no renewal rights and no security of tenure other than the restrictions on the time periods for termination notices. The tenant has flexibility to diversify away from agriculture to some degree (subject to the terms of their agreement) without endangering the status of their tenancy as an FBT. These tenancies tend to be short term 3-5 years long on average. The ability to negotiate responsibilities on either side will allow for a detailed prescription with either decreased rent payments or direct payments to tenants for contract performance. Each new tenancy will have to adhere to the original or have a clause within the LR to allow for variation as part of the scheme.

Under the AHA 1986 the tenant of an agricultural holding has far greater statutory protection. The parties have little freedom of contract. The tenant has security of tenure through statutory restrictions on the operation of a landlord's notice to quit. It is more difficult for the landlord to obtain possession or impose further management prescriptions for the land. The mechanism to address this is by a side letter or a memorandum of understanding setting out in detail each parties expectations but these can be costly and lengthy discussions. Upon succession the same terms would remain.

Grazing licences and common law tenancies

These are governed by agreement with both parties. Grazing licence confer a personal licence to an individual for the right to use the land for purpose of grazing grass. A common law tenancy is more prescriptive. Both are short term and have the opportunity to negotiate management terms.

Business tenancies under the 54 act

Similar to the ATA 95 act parties have significant freedom to negotiate terms of the tenancy agreement. There are opportunities for security of tenure but can opt out of these parts of the Act. These are less commonly used for agricultural land; however, as horses do not form part of the definition of Agriculture where there is a land being used for the purpose of business such as a livery or stud it is common to find a '54 Act tenancy in place. Negotiated terms as discussed above would derive the required outcome.

Tri-partite agreements

There is the opportunity to tie all levels/parties into a singular agreement. It is a good opportunity to clarify the various responsibilities and expectations between all distinct parties. This will assist where there is a requirement to either sever or terminate the agreement; however, the grey areas can be complicated and easily misunderstood and can lead to costly dispute between parties. A good example is used between

the landlord, leaseholder and a management company; alternatively the bank, the buyer and seller. For LR the agreement holders could adhere to single tripartite agreement with common terms and conditions with individual management prescriptions and responsibilities. Where there an occupier in addition to the freeholder, terms can be agreed within the varying forms of agreement as set out above with the exception of the AHA.

Common Land

Registered Common Land under the Commons Act 2006, are areas of land where certain people hold particular rights. In principle: many people have a stake in common land, all interests are legitimate and therefore require an inclusive decision making process. There are good examples where HLS agreements are in place to the benefit of all stakeholders and the Common itself; there is no reason why these examples cannot be emulated to form part of the wider landscape recovery network. Where there are bodies in place to manage the Common land this will prove easier than engaging all stakeholders in the first instance.

Legal considerations to make when thinking about LTAs

Legal area	Commentary	Area for further information
Tying agreement to land rather than person	Will need to form part of a Conservation covenant or a restrictive covenant. Please see paragraph below setting out the difference.	Covenants are based in the Law of Property Act 1925 Section 84. Case law for removal of RC. Environment Act 2021 (legislation.gov.uk)
Unforeseeable events (force majeure)	Inability of claimant to adhere to the payment conditions due circumstances such as (not exclusive): death, lose part of land (CPO), severe natural disaster (flooding, drought etc), epidemic. Must be a clause within contract to provide for these events with opportunity to inform the Governing body with relevant evidence.	Force majeure Practical Law (thomsonreuters.com)
Disputes	Clause to be included to allow for dispute management: withholding of funds or non-performance of contract. ADR to be considered prior to evoking the law of contract in Court. In previous Gov't based schemes penalties have been an option with provision to dispute the application of penalties. (HLS/CSS). Complaint handling will need to be considered between L2 & L3 bodies together with L3 & L4	Alternative dispute resolution for consumers - GOV.UK (www.gov.uk)
Contract performance (KPIs)	Contract will be bound by law of contract between two or more parties – see diagram below. Obligations to perform will be between all levels. It is envisaged the headline LR agreement will be between GB and LRB and the machinations of who and what the performance measures are will be determined further. Success of scheme determined on the co-operation of all within the scheme – how to handle disputes between levels. Performance monitoring: see below. KPIs are a useful tool to management of contract performance	

Breach (non-performance)	<p>See above. Once a breach has been established the following will need to be determined:</p> <ul style="list-style-type: none"> ▪ GB and/or PFA will have right to withhold, delay, reduce or recover payment ▪ Basis upon which a breach forces non payment: misleading information, poor KPI, inappropriate use of grant money, duplication of schemes etc ▪ Material change to the contract or delay such as capital items not completed to date. 	
Tax	<p>The factors determining land management as set out in the appendix rely on long-term stability of management; recognised in tax legislation by provision of reliefs applicable only to property holdings.</p> <p>Inheritance Tax (IHT): chargeable on the death of a person. You can pass on some agricultural property free of IHT. There is specific determination on what is 'agricultural property' – the current definition does not provide for land within environmental schemes – i.e. taken out of productive agriculture.</p> <p>Income Tax: will the earnings from the scheme form part of IT calculation? If not will exemptions be applied?</p> <p>Capital Gains Tax: Various reliefs are available to property sales – holdover and rollover. Opportunity to offset into Conservation scheme as a capital asset?</p>	<p>Agricultural Relief for Inheritance Tax - GOV.UK (www.gov.uk)</p>
Break of contract	<p>Most contracts will have break clause dates where either party has the opportunity within a given timeframe to terminate the agreement subject to various conditions such as the repayment of costs (agreed scale) and or ongoing management conditions. It is envisaged that despite the ambitious target set by LR these clauses will need to be included to allow for parties to part company. In certain circumstances it could be agreed that other 'factors' will determine the break clause such as overriding government policy e.g. for new homes or renewable energy. The implications or ramifications could impact on numerous parties to the LR scheme.</p> <p>Expiry or termination of the agreement may still have obligations on the former agreement holder to adhere to such as: provision of documents and data, evaluation and data protection.</p>	
Change of tenure/ modification of contract	<p>Clause within contract to obligate parties to notify all Levels of change within timeframe. Parties to acknowledge significant change could have consequences for LR scheme and therefore may require repayment or penalties. The implications or ramifications could impact on numerous parties to the LR scheme.</p> <p>Amendments to MP will need to be addressed – perhaps with a less formal contractual approach. Amendments to formal contract between levels will require more jurisdiction. For example, in HLS schemes there is conditional term that prohibits changes.</p>	
Limits of Liability	<p>Indemnity: more often with private finance contracts but also more common with Gov't there is a requirement for the agreement holder in this case either/and the LRB & Level 3&4 to indemnify the authority against any claims, demands, actions, costs, expenses, losses, damages and other liabilities arising as a result of the scheme. In smaller schemes with low level impact this can generally be adsorbed as part of the normal business practice. There is a chance that with the larger LR schemes there will be higher costs involved with insuring against these claims particularly where the scheme could be opening up water and other higher risk areas.</p>	

<p>Third Party rights</p>	<p>Notwithstanding the arrangements that will be determined as set out in the Relationship diagram. It will be important to convey what if any third party rights will need to be considered. The contractual benefit will be conveyed in the form of contract performance; however, it will important to establish what if any rights will be obligated/determined by the contract.</p>	
<p>Competition Law</p>	<p>Certain agreements between farmers or farmers' associations are excluded from consideration under competition law, for example, those concerning: Production or sale of agricultural products; Use of joint facilities for the storage, treatment and processing of agricultural products. However, the exclusion only applies if an agreement meets certain conditions. LR agreements will need to meet the exclusion conditions.</p>	<p>www.gov.uk/government/organisations/competition-and-markets-authority</p>
<p>Tenants</p>	<p>Opportunity for tenants to enter a LR LTA. Currently most tenancies will prohibit the tenant from signing up to long-term agreements without the LL written consent (generally not to be unreasonably withheld). AHA tenancies, which have long-term succession rights may circumvent this requirement, however, this could cause significant issues should succession on death not be achievable. LL are motivated at present to reserve rights such as carbon and LR as these will have a direct effect on the CV of the holding.</p>	
<p>Party - LRB</p>	<p>The EA 21 imposes the obligation to be party to a Conservation Covenant to a responsible body', being the Secretary of State or a designated body. The Secretary of State may only designate a body that is not a local authority if satisfied that it—</p> <ul style="list-style-type: none"> ▪ (a)meets the condition in subsection (5), and ▪ (b)is suitable to be a responsible body. <p>(5)The condition is that— (a)in the case of a public body or a charity, at least some of its main purposes or functions relate to conservation, or (b)in any other case, at least some of the body's main activities relate to conservation. The SoS can designate a local authority if satisfied that it is suitable to be a responsible body.</p> <p>The above allows for water companies or other statutory bodies that have some conservation function to become a GB or combined GB & LRB. The National Trust, Wildlife Trusts; National Parks or AONB councils may also fulfil these conditions. Private Estates appear to have missed this as an opportunity, however, it may be that a specific vehicle (charity or otherwise) could be created to meet the criteria.</p>	<p>Environment Act 2021 (legislation.gov.uk)</p>
<p>Payment rates</p>	<p>In similar schemes the LRB would have the right to address payment rates in lieu of management prescriptions. The current proposal agrees to negotiate rates rather than prescribe which opens up the debate and perhaps a chance to meet market values and enhance uptake.</p> <p>Annual payment rates: These rates will need to prove economically viable and robust to entice parties to sign a LTA. Schemes such as CSS/HLS provided for:</p> <ul style="list-style-type: none"> ▪ Changes to rates in light of market rates ▪ Changes to option. <p>Additional measures that respond to increases in CPI or other indices should be considered.</p>	

	Capital expenditure: There is the opportunity to address market value for ensuring adequate number of quotes are sourced dependent on the nature of the work. Procedure for signoff and approved conservation contractors could also be identified alongside the acknowledgement of the economies of scale. For example, a single LR could utilise services of single contractor irrespective of the number of individual agreement holders. Thereby driving efficiencies and meeting a KPI for the finance investment.	
Profit gain/ Innovation	Conservation schemes are naturally deemed to be restrictive. Incentives for innovation or profit sharing within the LRB so that the landscape group can collectively benefit for exceeding targets or creating efficiencies should be considered.	
Multiple party LTA	Please see notes on tripartite agreements; breach of agreement and succession. An umbrella agreement between parties to either form the LRB or create an understanding of common goals, management requirements and manage disputes will be necessary.	

Positive vs Restrictive covenants

This area of law is, at times, unavoidably complex and can cause lengthy and costly disputes.

Positive covenants refer to obligations to do something. By agreeing to this type of covenant, you are agreeing to do something with the land you own, such as building or maintaining it, or contributing financially to shared space. A positive covenant is tied to the owner who originally agreed to it rather than the land itself.

Restrictive covenants are binding conditions that are written into a property's deeds or contract by a seller to determine what a homeowner can or cannot do with their house or land under particular circumstances. For registered land, a restrictive covenant created since 13 October 2003 requires registration at the Land Registry as a notice in the charges register of the title of the burdened land (s 32(1) Land Registration Rules 2002; "LRA 2002"). Any covenants created before this date also require registration in the charges register, but are governed under the Land Registration Act 1925, and will continue to hold their protection under the LRA 2002.

In this scenario, the ability to apply for a restrictive covenant to be applied to land will be determined with the Environment Act itself – the generation of Environment Covenants (EC) between parties, registerable against title will inevitably create a nuance in law. That said, it is thought that the EC will emulate a restrictive covenant by imposing limits of management (albeit positive management prescriptions for funds) upon the land. Methods to discharge or amend must be robust; can be complex. A restrictive covenant can be deemed too restrictive in Court will mean potential to be rendered obsolete; therefore care needs to be taken in the drafting.

What is a conservation covenant?

The Environment Act 2021 also introduces a new statutory measure of 'conservation covenants', as part of the Government's 25-year plan to improve the environment. From 30 September 2022, landowners will be able to enter into a conservation covenant with a 'responsible body', being the Secretary of State or a designated body, that requires the landowner to carry out or abide by agreed upon set of conservation measures in respect of their land, either for a period of time or indefinitely. A conservation covenant is a

private, voluntary agreement between a landowner and the responsible body, which will also be bind future owners in a similar way to Section 106 Agreements of the Town and Country Planning Act 1990 (see related articles below) also bind onward owners of land subject to that agreement.

The EA 2021 provides a new legal framework; which enables landowners to commit future owners to conservation objectives. The intention is that conservation covenants are flexible, allowing parties to negotiate the terms, including the duration of a conservation covenant and if there are any upfront or ongoing payments made for such conservation, to suit their circumstances.

What are the requirements for a conservation covenant?

Part 7 of the EA 2021 requires a conservation covenant to be an agreement that:

- **Relates to land.** The landowner will need to have a ‘qualifying interest’, which includes either that they own the property or the let the property on a term of 7 years or more.
 - Provides that the landowner must do or not do something on the land, or allows the ‘responsible body’ to do something on the land; and
 - Must have a conservation purpose and be for the ‘public good’. For example, the covenant could include an obligation to maintain a woodland and allow public access to it.
 - Conservation covenants must be registered as a local land charge by the responsible body to be binding on future owners of the land.

The responsible body will have powers to enforce any breaches of the conservation covenant including obtaining an injunction, requiring specific performance, or payment of damages

There is the potential for a debate as whether the responsible body will be the GB or the LRB or a combination of both.

Relationship of Conservation Covenant and Long term management agreements

Area	Conservation Covenant (CC)	Landscape Recovery Scheme LTA
Who	Landowner (or person who as 7 years + interest in land) Responsible body	Individuals or groups.
What	Any area	500 – 5000 hectares
Duration	Indefinite unless stated	20 years plus
Registered to land	Yes. It is a local land charge under the 1975 Act.	No. but desire to be allocated as part of CC.
Funding	Private or public. Obligated as part of terms of CC	Private or public. Payment agreed as part of contract

Break contract	The responsible body under a CC and a person who holds the qualifying estate in respect of any of the land to which an obligation of the landowner under the covenant relates may, by agreement, discharge from the obligation any of the land in respect of which the person holds that estate	See above break clause commentary. Determined between parties
Penalties (breach)	Dependent on terms of covenant. Determined by Court or Upper Tribunal	Law of contract – penalties can be detailed within the agreement. Agreed individually or collectively with parties.
Acquisition or disposal	Covenant conveyed with land	Law of contract: Obligation can be to pass to successor in title or face penalties for breach
Impact of breach	Between two parties.	Ramifications to wider scheme and other individual parties. Dependent on the nature of the agreement: a tripartite agreement will mean all parties will suffer penalty whereas an Umbrella arrangement with associated agreements as set out in the relationship diagram could allow for single offender to be penalised.
Flexibility	With exception of reference to management plan. Little scope to alter without cost.	Opportunity to create flexibility in response to data evaluation or changing circumstances (policy, climate change) within contract.

Contract Performance/ Performance monitoring (see above table)

LR success will be determined by tangible results in respect of the LR scheme goal. The proposed timelines do not allow for detailed study of the existing state of the landscape and therefore, allowance to develop the knowledge, capture data and propose management prescriptions should be captured within the overall LR agreement. Nature determines success in annual cycles with no two years being the same and therefore, it will be hard to determine both baseline and management prescriptions without an allowance for the annual cycles. See the diagram below which sets out a basic process to allow for adjustment in prescriptions to perform against.

Key Performance Indicators are a useful tool – used with major procurement contracts to allow parties to monitor and measure performance of the contract documentation itself. They are useful as they can identify areas that may need additional support or attention in this example it could be an individual land manager, or specific species that requires extra protection. They provide tangible data to which performance can be measured which can be useful to inform better decision making. KPIs can be used to track efficiency, effectiveness, quality and compliance however, they can be subjective dependent on the nature and prescription of the KPI. The effectiveness of the KPI will be determined on the structure upon which it can be measured.

Inheritance tax (IHT)

IHT is paid on an estate on a person's death. It is also sometimes payable on trusts or gifts made during an individual's lifetime. It is payable on estates valued at over £325,000, at a rate of 40% on the amount over this threshold or 36% if the estate qualifies for a reduced rate due to a charitable donation.

The main IHT reliefs that apply to farmers are:

Agricultural property relief (APR), which relieves the agricultural value of agricultural land, buildings and houses.

Business property relief (BPR), which is available on all business assets (not just property) used in a trade.

Where APR is available it takes priority over BPR but both types of relief can apply to the same asset. For example, a field with development value may secure APR on its agricultural value, with BPR relieving any hope or development value on top. Development value is based on the value a developer would be prepared to pay for the land to develop it.

APR. This can apply to landlords and in-hand farmers. In the case of an owner/occupier, the agricultural property must have been used for the purposes of agriculture for the two years up to the date of death or lifetime transfer, or for seven years in the case of a farm landlord. 100% relief is available in all cases except where the land is subject to a tenancy that pre-dates 1 September 1995.

BPR. To qualify for BPR, the business must be more than 50% trading as opposed to holding investments. In addition: BPR is available to sole trader businesses and interests in a partnership as well as for shares in unquoted trading companies. It is also available on land, buildings and machinery used by a partnership of which the deceased was a partner or by a company of which he/she had control.

Alternative and/or additional schemes (not exclusive)

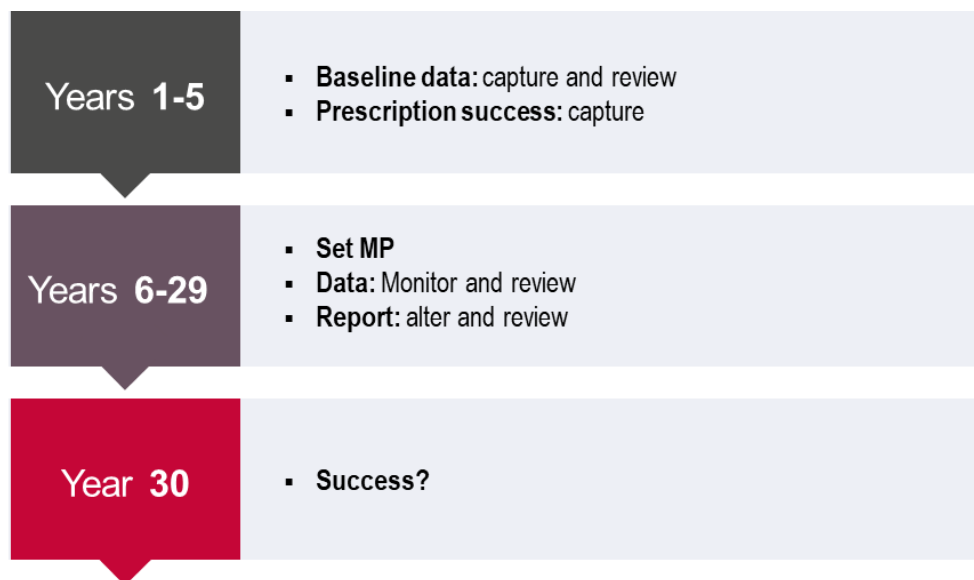
Carbon Sequestration/ Capture – Carbon unit trading: Opportunities for landowners to participate in the trading of carbon credits are opening up. The launch of the Peatland code and Woodland code as two clear examples of the ability to provide a source of carbon sequestration to be offset against a carbon producers' target has created a viable and active market. Aligned with Gov't policy for tree planting and Net Zero, the value in woodland or new woodland creation in particular has soared. There should be an opportunity to tie this development into the wider landscape recovery scheme to ensure compatibility of outcomes (such as water retention, target species recovery). Conversely, we have to be mindful that individual parties will be obligated to meet their own carbon reduction targets: a scheme that provides a mechanism to meet these by offsetting potential penalties could entice participation.

Biodiversity Net Gain: The Environment Act received Royal Assent in November 2021 with one of its cornerstones being the introduction of a mandatory Biodiversity Net Gain (BNG) regime to offset the negative impacts of land being developed. The Act will require developers to deliver at least a 10% increase in biodiversity as a condition of planning permission, which can be delivered either on site through landscaping and green infrastructure, or off site on surrounding land holdings or through habitat banks. This will be an opportunity for those landowners who can identify and offer land parcels suitable for off-site habitat enhancement or creation, as they can negotiate payments for the biodiversity credits they generate. Sites will need to be maintained in line with an agreed management plan for a period of at least 30 years. The requirement will not come into force until November 2023, as the government has decided there needs to be a two-year transition to allow secondary legislation to be drawn up and to give Natural

England and Local Planning Authorities time to prepare. The ability to tie a BNG agreement to form part of funded LR scheme; with funds derived directly from the planning gain opens up a private market for the agreements. Alternatively, a LR scheme could be produced to generate BNG credits akin to the Carbon credit scheme, which will directly affect the surrounding affected landscape.

A section 106 agreement is an agreement between a developer and a local planning authority about measures that the developer must take to reduce their impact on the community. A section 106 agreement is designed to make a development possible that would otherwise not be possible, by obtaining concessions and contributions from the developer. It forms a section of the Town And Country Planning Act 1990. A section 106 agreement must meet the following requirements: must be necessary to make the development acceptable in terms of planning; must be directly related to the development in question and must be fair in terms of scale and type when compared with the development. Beyond these rules, viability and the wider economy play a role in determining the scope and scale a section 106 agreement should have. It is a useful tool for Local Planning Authorities to negotiate with developers – it could be that monies identified within a s106 agreement could be used to provide funding for LR. Alternatively, specific works can be identified and progressed within the s106 as long as relevant to the local community (restrictive); the benefit is that it is tied to the land until the works have been completed and therefore, a good example of a LTA tied to the land.

Diagram 2: Proposed timeline for LR



Abbreviations

CPO = compulsory purchase order – land can be purchased under statute for greater good of the country such as road schemes, HS2 and other utility companies. For the purpose of this document, this includes land purchased under any Acts of Parliament that convey powers to purchase land.

ADR: Alternative Dispute Resolution – opportunity for parties to use proactive dispute management such as mediation and arbitration prior to Court determination.

Contract: to include terms of conditions within contract.

Landscape Recovery Body (LRB): A generic term used for the overarching vehicle, which will provide the oversight and management of the long-term contract.

Gov't: Government or associated body including Secretary of State (SoS)

LR: Landscape recovery scheme

BNG: Biodiversity net gain

L1: level as set out in the relationship diagram

MP: management prescription

Further references:

→ [A Common Purpose \(historicengland.org.uk\)](http://historicengland.org.uk)

→ [A guide to carbon markets for farmers and landowners \(struttandparker.com\)](http://struttandparker.com)



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Appendix 1:

Factors affecting land management

This document will set out the factors that drive rural land management in the context of Landscape Recovery. This will assist in the wider discussion in respect of the issues that individual landowners will face when approached to participate in the various schemes.

Factor	Description	Comment
Tenure	Owned freehold, subject to Trusts and other restrictive covenants. Land is let on long term AHA/FBT or shorter term FBT.	Ensuring parties agree to create a mosaic of habitats to meet the LR targets will be critical. It may be that either agreements need to be tri-partite or clauses between LL & T will need to reflect the management prescriptions and obligations imposed by the wider scheme.
Productivity	Land used to provide food, livestock or energy crops.	Which has economic, policy or personal preference – pressures to provide food/energy and increase productivity are becoming more evident.
Cultural	Change in traditional farming systems	Change can be challenging to landowners and farmers alike.
Biosecurity	Livestock disease	Ability to ensure the biosecurity of the remaining land will be a priority. For example with increasing prevalence of bird flu, TB and tree diseases allowing travel of species across the landscape and protecting other species will be necessary
Physical	Soils, waterways, slopes etc.	Determine the nature of farming and type of LR
Economic	Financial profitability	Decisions that affect the cash flow as well as the capital value of the asset (land) will determine LR success. Lenders may need prior approval before scheme commencement. Payment rates will need to fit to the decrease in profitability attributed to the new land use. Tax: how will income be taxed against the schemes? Changing the land use from agricultural to 'environmental' will this have impact on IHT reliefs?
Business structure	Partnership vs Ltd company, family, contract farmed vs In house farming. Trust ownership/ Freehold	The type of structure will affect the flexibility and ability to agree to longer term arrangements.
Policy	Government policies on occasions can cause conflict	Food production vs environment. Planning policy for regeneration work (such as new/enhanced waterways) could prohibit schemes. Carbon Offset vs BNG vs LR. Another conflict will be Government policy for mineral/waste, house building and solar farms.
Public Access	Third party rights of access over private land	In previous Gov't backed schemes, there have always been an appetite to increase public access to land where public money has been utilised. Better understanding of access requirement for LR will be necessary.

Appendix 2:

Existing agreements or arrangements

Agreement – type/ area	Description	Commentary
Countryside Stewardship agreements or HLS	A detailed agreement with prescriptive management plans already detailed with lessons learnt.	Not registered against title. 10 years (so not so long) Good example. No measurement to date of success. Good choice and control for farmers. Capital works paid for themselves. Debatable whether annual payment were/are worthwhile.
Green Leases	See bbp-glth-2013_0.pdf (betterbuildingspartnership.co.uk). Principally a commercial tenancy but uses a Memorandum of Understanding to agree terms between T and LL.	Lease can be registered against title. Good working model allows input private finance. Principle of commitment from both sides to make it work.
Existing tenancies – FBTs only.	Good behavior clauses, reduction in rent for performance. LL – now opting to hold back carbon credits (similar to milk quota clauses). Examples include Beyond Nature tenancies, National Trust tenancies.	More about overall LL agreeing to LR and then imposing conditions on tenants to perform. Potential to create a market for ‘nature credits’. Good communication with landlord is key. Ability to get tied up in performance management. Leases can be registered against title.
Environmental Covenants	Pls see Environmental Bill. Positive or restrictive covenant agreed between parties and registered against title.	Impact on lending and capital value. Dependent on nature of agreement.
Voluntary agreements	e.g. Thames Water and slug pellets (Smarter catchments); Southern Water and phosphate (Catchment First). RSPB voluntary agreements for enhanced spp. Agreement between farmer and private water company to perform or not to use specific management tool.	Good record of success. Payment reflect market rates. Not registered against land. Time limited.
Environmentally Sensitive Areas	ESAs were introduced under Section 18 of the 1986 Agriculture Act to help safeguard areas where the landscape, wildlife or historic interest is of national importance. Farmers who wished to participate agreed to enter into a 10-year management agreement with MAFF.	Good amount of choice in management and tiers chosen. Time was spent developing management prescriptions. Consistent monitoring was lacking.
S106 agreements under planning legislation	Positive agreement with local planning authority to provide payment (or direct undertaking) for a development for a positive wider local benefit. For example a housing development may pay a LA to create a new wildlife pond with fishing pegs to benefit the affected community.	Direct impact on local economy. Measurable and monitored by local authority. Tied to land in form of planning obligation; however, not easily applicable for LR agreements unless LR forms part of wider scheme.
Bio diversity net gain	An emerging area of work for using land to offset the biodiversity for large developments. A metric	Set in legislation to obligate developers envisaged to work in similar process to

	has been developed to determine the Biodiversity units and how to derive further biodiversity.	s106. Tied to land. Various formats present but no template as yet.
Special Sites of Scientific Importance	Management agreement and prescriptions are imposed under the Wildlife and Countryside Act and landowners are held to account.	Negative impact for landowners to have imposed upon them. Many SSSI are in decline due to no funding to maintain.