

Development of FBTs

22 March 2016

Edward Peters looks into how the RICS Farm Business Tenancy Agreements have developed and the recent changes made to create the 2016 suite

Creation of the RICS suite

Twenty years ago the market in the grant of agricultural tenancies was significantly liberalised and deregulated by the [Agricultural Tenancies Act 1995](#), which introduced the concept of the farm business tenancy (FBT).

Under the previously prevailing regime of statutory regulation of agricultural tenancies governed by the [Agricultural Holdings Act 1986](#) and its statutory predecessors the grant of a new tenancy of agricultural land had become a very unattractive prospect for most agricultural landowners. As developed by various post-war governments, the Agricultural Holdings legislation had given farm tenants the benefit of extensive statutory security of tenure, succession rights and restrictions on rent increases. However, as with the Rent Acts in the residential sphere, the impact on new lettings market had been predictably dire. The percentage of farmland which was let, as opposed to being farmed freehold, had fallen very substantially; and arrangements such as contracting agreements, partnerships, share farming agreements, grazing licences and *Gladstone v Bower* agreements were used with increasing frequency to avoid creating new tenancies protected by the 1986 Act.

As a result of the introduction of the farm business tenancy in 1995, the grant of new agricultural tenancies once again became an economically viable move for the owners of farmland, and the number of landlords willing to grant new agricultural tenancies began to grow again. A survey conducted by RICS in 1994 predicted that about a million acres of new lettings could be anticipated following the Act coming into force.

New precedents for farm tenancy agreements were needed, to take account of the new statutory requirements introduced by the 1995 Act, and to meet the revived demand to grant farm tenancies.

As a result, RICS created for the benefit of its members a suite of new precedents for various different types of farm business tenancies, together with precedents for cropping and grazing licences.

The aim of the suite was to provide a range of Agreements that:

- complied with all the statutory requirements of the 1995 Act;
- struck a fair balance between the interests of the landlord and tenant; and
- accommodated the ever-changing rules and regulations concerning farm subsidies and environmental requirements.

Format of the Agreements

Following the latest revisions to the Agreements, the 2016 suite now consists of:

- [Fixed Term Agreement](#) ;
- [Year to Year Agreement](#) ;
- [Short Form Agreement \(2 years or less\) for bare land](#) ;
- [Short Form Agreement \(2 years or less\) land with buildings but no dwellings](#) ;
- [Cropping Licence](#) ; and
- [Grazing Licence](#) .

The range of different forms of FBT permitted by the 1995 Act, with their different consequences for modes of termination etc., is reflected by the choice the suite offers.

The suite also includes 2 licences, for cropping and for grazing, which are intended to create Agreements outside the scope of the [1995 Act](#) .

The accompanying [user notes](#) draw members' attention to some of the more pertinent issues to consider when entering into one of the agreements being contemplated.

Members can either use the precedents as they stand (with appropriate deletions where the Agreements contain ?either/or? options for certain clauses), or can vary them as appropriate to suit the particular circumstances in which they are to be used. (In their published form, they are envisaged as suitable for use in England and Wales only.)

Recent changes

Milk quota abolition

Milk quota was abolished in 2015. As a result, the various specific provisions dealing with milk quota have been removed from the suite of Agreements.

Previously, there were 2 different variants of the 'short form' Agreement for letting bare land (i.e. a fixed term FBT for 2 years or less): one for use on dairy holdings, which contained extensive provisions concerning milk quota, and one for use on non-dairy holdings, which did not. Those 2 variants have now been combined into a single precedent for a letting of bare land for a term of 2 years or less. There is a separate precedent for a letting of land with buildings for a term of 2 years.

The suite of Agreements still contains some very general references to 'quotas', in order to encompass remaining quota schemes (beet quota will subsist until 2017) and any future 'quotas' which may be introduced.

Basic Payment Scheme

The rules and regulations concerning farm subsidies and environmental requirements are ever-changing. The provisions in the suite of Agreements that apply to subsidies and environmental regulations are therefore drafted in a relatively open and all-inclusive manner, with the aim of applying to all such schemes, even if they are altered during the term of the Agreement.

However, the replacement of the Single Payment Scheme (SPS) with the Basic Payment Scheme (BPS), and associated changes to environmental legislation, has led to the suite being updated in various respects. References to SPS have been replaced with references to BPS. References to specific environmental schemes have been updated, including references to the devolved Welsh Glastir and the relaunched Countryside Stewardship scheme.

The [Rural Payments Agency](#) has issued guidance regarding when land will be considered to be 'at the disposal of the applicant' for the purposes of the BPS, and to take account of that and the associated changes to the relevant environmental conditions, various amendments have been made to the Agreements, in particular, alterations have been made to the former covenants to keep in good agricultural and environmental condition, and further limitations have been made to the licensee's positive obligations in the grazing and cropping licences.

Dispute resolution clauses

Dispute resolution clauses in tenancy agreements are topical: the [Deregulation Act 2015](#) has widened the means by which disputes concerning tenancies governed by the [1986 Act](#) can be resolved, and the court system is placing ever increasing emphasis on alternative dispute resolution. The suite of Agreements has therefore been revised to include additional and revised forms of dispute resolution clauses.

Repairs and insurance

The [Agriculture \(Model Clauses for Fixed Equipment\) \(England\) Regulations 2015](#) introduced new Model Clauses concerning repairs and insurance under tenancies governed by the [1986 Act](#), following a process of extensive consultation. The RICS suite of Agreements has therefore been revised to include the option of incorporating the new Model Clauses in place of the existing expressly drafted provisions concerning repairs and/or insurance.

User notes

The [supplemental user notes](#) have also been updated to take account of the above changes.

RICS Agricultural Tenancies Monitoring Group

The suite of RICS FBT Agreements and Licences is kept subject to regular review and updating by the Agricultural Tenancies Monitoring Group ? comprised of specialist members of RICS and a barrister member ? in order to take account of relevant changes in the law of landlord and tenant, and changes in the legislation governing agricultural subsidies and entitlements and environmental regulations.

The current members of the RICS Agricultural Tenancies Monitoring Group are:

- **Chair:**Mark Sanders, MRICS, ACI Arb, (Acorn Rural Property Consultants);
- Eifion Bibby, MRICS, (David Meade Property Consultants);
- Martin Herbert, FRICS FAAV, (Brown & Co.);
- Josie Palmer, MRICS, (Fisher German);
- Robert Paul, MRICS, (Strutt & Parker);
- Kathryn Perkins, MRICS FAAV, (Edward H. Perkins);
- Edward Peters, FCI Arb, (Falcon Chambers);
- David Sayce, MRICS;
-

working with Fiona Mannix (RICS).

Edward Peters is a Barrister at [Falcon Chambers](#)

Further information

- View the [RICS Farm Business Tenancy Agreements 2016](#) on isurv
- Related competencies include: [Agriculture](#) , [Landlord and tenant](#)