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Edward Peters summarises recent updates to the RICS precedents for farm business tenancies and agricultural licences

Setting precedents

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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 previous statutory regulation regime – which had been governed by the Agricultural Holdings Act 1986 and its predecessors – the grant of a new agricultural land tenancy had become a particularly unattractive prospect for most landowners.

As developed by various postwar 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 the new lettings market had been predictably dire. The percentage of farmland that was let, as opposed to being farmed freehold, had fallen very substantially, while 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 FBT 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 after the act came into force.

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

As a result, RICS created – for the benefit of its members – a suite of new precedents for various different types of FBTs, together with precedents for cropping and grazing licences. The aim of the suite was to provide a

range of agreements that did the following:

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

Format of the agreements

After the latest revisions to the agreements, the suite includes the following formats:

- fixed-term agreement
- year-to-year agreement
- short-form agreement (two years or less) for bare land
- short-form agreement (two years or less) land with buildings but no dwellings
- cropping licence
- grazing licence.

RICS Agricultural Tenancies Monitoring Group

The suite of RICS FBT agreements and licences is subject to regular review and updating by the Agricultural Tenancies Monitoring Group – which comprises specialist members of RICS as well as a barrister member – in order to take account of relevant changes in landlord and tenant law, and alterations to 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 (Associate Director of RICS Land Group).

The range of different forms of FBT permitted by the 1995 act, with their different consequences for modes of termination and so on, is reflected by the choice the 2016 suite offers.

The suite also includes two 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 that need to be considered 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 2016 suite of agreements.

Previously, there were two different variants of

the short-form agreement for letting bare land, that is, a fixed-term FBT for up to two years: 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 two variants have now been combined into a single precedent for letting bare land for a term of up to two years. There is a separate precedent for letting land with buildings for a term of two years.

The suite of agreements still contains some very general references to "quotas", however, in order to encompass remaining quota schemes such as beet quota, which will remain in place until next year, and any future "quotas" that 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

changed during the term of the agreement.

However, the replacement of the Single Payment Scheme (SPS) with the Basic Payment Scheme (BPS) and associated revisions to environmental legislation has led to the suite being updated in various respects. References to SPS have been replaced with references to BPS, while references to specific environmental schemes have been updated, including references to the devolved Welsh Glastir – the principality's sustainable land management scheme – 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. To take account of this 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 new suite of agreements has therefore been amended 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 been updated as well to take account of the aforementioned changes. ●

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Subscribers can view the RICS FBT agreements 2016 including supplemental user notes on isurv.com at www.isurv.com/site/scripts/documents.aspx?categoryID=104



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