

Shaking up farm business tenancies



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PAUL SEDGWICK

A revolutionary type of farm business tenancy is aiming to help The Crown Estate supports its tenants to farm sustainably, manage the environment, and diversify businesses. CPM finds out more.

By Mike Abram

Some tenant farmers, and perhaps even landowners, might say that a reimagining of farm business tenancy (FBT) agreements is well overdue.

While traditional FBTs brought flexibility and helped reinvigorate the land rental market after their introduction as part of the Agricultural Tenancies Act in 1995, over time, they've unintentionally fostered short-termism, instability and rent inflation – which are all potential barriers to sustainable farming and rural resilience.

Furthermore, Defra's independent review of tenant farming in England – led by Baroness Kate Rock and published in 2022 – found FBTs were too short, insecure and commercially extractive, while impeding tenant farmers from participating in agri-environment schemes.

Known as 'The Rock Review', this recommended through a tweak in tax policy, that tenancy agreements should be

pushed to an average eight-year term, plus, improve access to environmental schemes, and for landlords and tenants to formally collaborate on whole-farm plans that are incorporated into tenancy agreements.

Those principles are firmly embedded in a new environmental Farm Business Tenancy (eFBT) that's been developed by the Crown Estate with the backing of the Tenant Farmers Association, with input from Burges Salmon and other advisers.

Developed over 18 months with 17 draft revisions, the new eFBT is predicated around shared ambition, explains Paul Sedgwick, managing director of the Crown Estate's rural portfolio. "It's trying to move away from the old adversarial landlord-tenant relationship to one that's more partnership-based."

Several factors have coalesced during the past few years to convince the Crown Estate to develop eFBTs, not least a

recognition of the unprecedented level of change farmers are facing, adds Paul.

Another factor was the 'deeply polarising' discussion around land use. "We had to look at how our land could tackle some of these national issues and make brave decisions regarding how to do that."

There were two red lines: first, the long-term success of the Crown Estate's farming families had to be ensured, and



One vision

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secondly, that food production was still at the core of the farming businesses. “We’ll never be better business managers than our on-site farmers, but we have access to a considerable amount of capital funding and the ability to take a long-term view,” says Paul.

He believes that’s been helped by a new act in parliament, which has reversed a previous restriction on the Crown Estate being able to borrow money. “From a long-term perspective, that gives us far more firepower to support our farmers.”

Four aims have been targeted by the Crown Estate for its new strategy: to optimise the performance of the rural portfolio, which is important because profits are returned to the Treasury for the benefit of the nation; to lead in the delivery of the green agricultural transition; to lead in the delivery of nature recovery, and to replenish some of the land sold during the past 20 years, when the restriction on borrowing led to the sale of rural land to finance other developments.

Practically, it’s led to aspirations to pivot from ‘ditch-to-ditch’ arable and veg farming plus a few dairy farms, to move the more marginal land, where appropriate, into nature recovery, forestry, renewable energy and diversifications.

“We want to shift our portfolio back to a more family-feel with real relationships. There was a realisation that we’re dealing with not only people’s businesses, but also their homes and livelihoods. From an institutional

Key principles of the Crown Estate’s eFBT

- 15-year term
- Covenant-lite – reduced protections for landlords other than baseline obligations including not leaving the land in a worse situation than started with
- Limited break clauses
- Open market rent review on three-year cycle
- Farm Green Book – sets out landlord and tenant’s aspirations for environmental enhancement of the land, covering soil health plans, cropping, use of inputs, energy and water, livestock integration, and environmental certifications
- Farm Partnership Book – deals with landlord and tenant’s wider aspirations for farm, including diversification and broader societal benefits

perspective, that ‘human relationship’ point has been missing,” explains Paul.

Creating resilient farm businesses is key for the Crown Estate, he points out. “The old tenancy agreements were very much ‘do’ and ‘don’t’ between landlord and tenant.

“We wanted to create the concept of income stacking to de-risk our farmers away from primary crop production, and the fact they were moving into a new no-subsidy world. Ultimately, we couldn’t see a vehicle for delivering this through a standard farm business tenancy,” comments Paul.

The rationale behind the eFBT is to recognise that achieving both environmental and commercial benefits aren’t likely to be met by a series of top-down instructions or prohibitions, and

that environmental ambitions are just that, and require co-operation to be realised.

That’s resulted in a model where the eFBT focuses on the core legal matters for a tenancy, while the aspirations of both parties on environmental and diversification are set out in the Farm Green Book and the Farm Partnership Book, explains Kevin Kennedy, of Burges Salmon.

The ‘Books’ aren’t legally binding and don’t amount to a series of covenants between landlord and tenant, but are crucial to setting out what both jointly want to achieve, and how they might get there.

“It’s anticipated the ‘Books’ will be agreed before the eFBT is granted and reviewed through the life of the tenancy, at least on three-yearly intervals,” explains Kevin.

A key change within the new eFBT

Tenant Farmers Association view

Supporting a contractual revolution with the environment at the heart

The fact the 25 members of the Tenant Farmers Association executive committee agreed unanimously to the inclusion of the TFA logo on the eFBT documentation tells everything about the value the organisation believes it has, says chief executive, George Dunn.

“It’s a contractual revolution which fully incorporates the landlord and tenant code of practice and embeds issues around environmental benefits,” he continues.

Currently, entry into environmental schemes is sometimes prohibited, or where allowed, requires landlord permission. “If you’re lucky, it might say that consent can’t be reasonably withheld or delayed. It’s rare that tenants can look at

private markets for environmental benefits or natural capital.”

In contrast, the eFBT from the outset expects tenants to come forward with ideas for how the farm can be managed in an environmentally sensitive way. “The Green Book sets out the joint aspirations about the parties will deal with those environmental issues. It’s not a set-in-stone document – it’ll be discussed, changed, reviewed and developed over time.”

Similarly with diversification, tenants are fully expected to present ideas. “There’s a mechanism for how that is to be discussed, with the Partnership Book the basis for how those aspirations is thought through.”



In support

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Alternative delivery model

The eFBT focuses on core legal matters for a tenancy, while aspirations on environmental and diversification are set out in two 'Books', explains Kevin Kennedy, of Burges Salmon.

► is it has a 15-year term. "Most current FBTs, on average, are three years long," notes Paul. "That doesn't encourage tenant farmer investment and reserves all the 'goodies' back to the landlord.

"Our agreement is predicated around sharing, for example, in future natural capital and biodiversity markets, and for those farmers who want to, diversification. We have a lot of latent opportunity to optimise diversification opportunities on some, but not all, of our estates."

Some of the Crown Estate's tenant farmers want to solely focus on farming, which is within their rights, suggests Paul. "Others are keen to look at future markets around carbon, renewable energy and biodiversity, and it's how we can unlock those opportunities through our funding to support them. It's about setting guardrails in which our farmers can develop their businesses."

The 15-year term, which could even be extended to 20-years or more in the future, should also help to deliver a green agricultural transition, he adds. "One of our aspirations is to shift 15% of our marginal land into nature recovery."

That's prepared the way for one of the most eye-catching consequences of the eFBT introduction: lower rents. "We're lowering rents of land transitioning into nature recovery to help achieve better outcomes for the environment," highlights Paul.

"To provide context, on Grade 3 arable land, we've reduced farm rents from around £175/acre to £100/acre on land transitioning to nature recovery. This is to create a position where our farmers can make more profit from an acre of nature than an acre

of wheat, where they choose to do so."

Lower rents on land transitioning to nature recovery could cost the Crown Estate around £2M/year across all land let on FBTs, admits Paul, but that's dwarfed by the latent diversification income, both traditional diversification and future natural capital markets on the Crown Estate, by a factor of 20.

"If we can unlock that latent diversification income with our farmers, then everybody will come out of this well."

The government's pausing of the Sustainable Farming Incentive earlier this year caused some challenges, as that funding was helping to underpin the transition, adds Paul. As a result, it's put more emphasis on the Crown Estate's Rural Environment Fund to plug that gap to support nature recovery. "We originally put in place a £10M fund in 2022, but we've doubled it to £20M."

In two years, the scheme has helped fund 300km of new hedgerows, 260ha of new woodland and other environmental enhancements, such as wetlands, pond creation and margins along dykes.

"It sounds like a large sum of money but for more than 200,000ac (81,000ha) it's only £20/acre/year – I'd argue any landlord of a rural estate can afford that, if they have serious ambitions to improve the natural environment," suggests Paul.

Further support is being made in the form of access to ecologists at the Crown

Estate's expense. "We're asking them to help us pull together the estate and farm environmental plans in the Farm Green Book to ensure they go as far as they dare from an ecology perspective, and then in conversation with our farmers we pare it back to a workable pragmatic solution for each farm."

The Crown Estate is also working with Soil Association Exchange on a pilot project with six farms to capture baseline data. "We believe from a supply chain perspective, farmers are going to have to demonstrate what they are doing and have that data available in a consistent format.

"If the pilot is successful, we'll roll that out across all our let farms at our expense, so we have a consistency of data for everyone's benefit," says Paul.

While the eFBT has been designed for use by the Crown Estate, it considers the new model to be scalable. "We believe the old landlord tenant model in the rural sector isn't fit for purpose, which is one reason why we haven't protected the intellectual property, and made it available to the wider industry.

"We've sent out copies to every major institutional landowner and private estates that have requested it, and it's been listed by Westlaw as a precedent agreement. The model is scalable beyond our boundaries of ownership, and we hope it'll lead to real system change across the land sector," he concludes. ●

Zero rent potential

Depending on what happens with the relaunch of SFI, The Crown Estate might have to offer zero rents for land to be used for nature recovery

On the average traditional let estate, the percentage of total income from farm rents is diminishing as assured shorthold tenancy residential lettings, commercial lettings, leisure opportunities and natural capital markets increase, explains Paul Sedgwick, managing director of the Crown Estate's rural portfolio,

"So the impact of reducing agricultural rents to get better nature outcomes is relatively minor, although there are clearly estates that are predominantly agricultural rent-based where this would be more of an issue.

"We were one of them – 95% of our revenue came from agricultural rents and we were uncomfortable about the lack of diversification and our exposure to purely farm rents, hence why we're pushing diversification hard in the broadest sense."

Paul adds that they aren't wedded to any particular rent level on the nature recovery land. "We were flying with land transitioning back into nature recovery until SFI was paused, but if we have to base rents at zero for the next three years to continue the green transition, we'll do that with support from our Rural Environment Fund.

"Something has to change the dial in the tenanted sector, and I think it's not inconceivable that a future government could legislate to ensure that the right nature interventions are being made if landowners and farmers don't make that transition."