

Research Report
Prepared for DEFRA and NAWAD

An Economic Evaluation of The Agricultural Tenancies Act 1995

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Final Report



April 2002

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Acknowledgements and Disclaimers

A large number of people have helped us in the course of this project. We are very grateful to all of them:

The Project Steering Group

The Panel of Experts (listed in Appendix 3)

The various stakeholders who provided comments on current issues (listed in Appendix 3)

The CAAV, who reanalysed data from their annual survey for this project

All the farmers, land agents and landlords who took part in our surveys

Our own team of telephone interviewers – Tania Weeks, Rebecca Elsworthy, Elizabeth Anning, Laura Wotton, Sally Luscombe, Andrew Hopkins, Hannah Kimber, Kate Chapman, and Tim Hector

Philip Baker who assisted with the interviewing and dealt with the data entry and analysis

The basic information on which this report is based was originally collected on behalf of, and financed by, the Department for Environment, Food and Rural Affairs and the National Assembly for Wales Agriculture Department.

The views expressed in this report are those of the authors and are not necessarily shared by other members of the University or by the University as a whole.

EXECUTIVE SUMMARY

E1. This study provides an evaluation of The Agricultural Tenancies Act (ATA) 1995 and considers its impact after six years of operation. The study follows an initial evaluation, prepared by the same research team in 1997.

E2. The principal objective of the study was to evaluate the extent to which the Act has achieved its three main objectives, namely:

- To encourage more letting of agricultural land,
- To increase the opportunities for new entrants,
- To promote economic efficiency in agricultural land use by making the market for rented land more flexible and responsive to market forces.

E3. The project has also sought to establish how the legislation has interacted with established management practices and has, therefore, gathered evidence to answer four main questions, viz:

- i. What has been the impact of the Act upon the size and structure of the tenanted sector and upon land ownership decisions more generally?
- ii. What has been the effect of the Act in relation to entry into and exit from the farming industry?
- iii. What have been the consequences of Farm Business Tenancies (FBTs) for the economic efficiency of resource use within the industry and how have FBTs affected the flexibility of agricultural businesses to expand, restructure or diversify?
- iv. Has the legislation resulted in any unintended side effects and how significant have these been?

E4. The research was conducted against a very different economic and policy background to that which applied at the introduction of the Act or during the first study in 1996/7. The ATA was launched at a time of relative prosperity across many agricultural sectors and this was reflected in a strong demand for land. In the interim the industry has suffered a succession of challenges, which have radically altered its fortunes. Falling returns have been exacerbated lately by a succession of animal health issues including most recently Foot and Mouth Disease which has had far reaching impacts, both social and financial. Published statistics show that by 2000, Total Income from Farming in the UK had fallen by nearly 70 per cent in real terms from the high point of 1995.

E5. The new context has two important implications for the present study. Firstly, it makes it particularly difficult to distinguish the specific impact and effects of the ATA from a range of constantly shifting influences on farming and the broader rural economy. Secondly, the sector may well be experiencing a step-change in its economic circumstances rather than a temporary setback. It has therefore become particularly important for this evaluation to reflect on the extent to which the Act helps or hinders the restructuring of individual businesses or the sector as a whole.

E6. While our analysis of the main characteristics of FBTs focused mainly on the year prior to the outbreak of Foot and Mouth Disease, the issue was clearly at the forefront of the mind of many respondents to our present study, whether interviewees, members of Focus Groups or other consultees, particularly regarding their projections for the future.

E7. The methodology for the study comprised six main components as follows:

- i. Desk review of material from existing reports and other literature
- ii. Reanalysis of existing data
- iii. Consultation with Stakeholders and Meeting with Panel of Experts
- iv. Postal surveys of Rural Practice Chartered Surveyors in Wales and County Farm Estates
- v. Telephone surveys of landowners, tenants and land agents
- vi. Eight focus groups at four locations in England and Wales, involving participants from each of the above groups

E8. A key objective of the 1995 Act was to encourage the letting of more land. The five annual CAAV surveys since 1995 have shown a net influx of 83,000 hectares into the let sector compared with a net loss of 120,000 hectares in the five years prior to enactment. The CAAV Survey does not cover all lettings but it is the most comprehensive and reliable survey of FBTs. It shows a significant proportion of new land coming into the tenanted sector – in 1999/2000 the survey recorded 23,000 hectares of land being let which was previously farmed in hand. This demonstrates that the Act is meeting its first objective.

E9. This view is echoed by those involved in the industry. Overall 78 per cent of respondents, across all groups, felt the Act had achieved this objective well or very well.

E10. The survey found that the majority of FBTs, 81 per cent, were for bare land with only 10 per cent comprising land and buildings and 9 per cent “complete” holdings i.e. including a dwelling. It is clear that the market is highly segmented with different landlords and tenants using FBTs for very different purposes. Unlike its predecessors, the market for FBTs is not concerned with a single, relatively homogeneous product. Whilst this may appear self evident it is an important consideration for those seeking to improve the use and effectiveness of the legislation.

E11. Two-thirds of FBTs are let by private landlords. Most of the remainder are let by traditional institutions such as the Church, the Crown Estate, the National Trust and Local Authorities. Two new groups of private landlord were identified in our study - farmers wishing to withdraw from farming without selling their property and new rural purchasers, principally pursuing the residential attractions of the farmhouse but now willing to buy larger tracts of land in order to obtain the type of property they seek. Both groups may provide a source of new lettings.

E12. Disappointingly, awareness of FBTs amongst farmers appears to have fallen since 1997. Over one-third of the farmers in our surveys had not heard of FBTs, the proportion being even higher (just over two-thirds) among farmers who were owner occupiers. Thus, while FBTs are offering farmers the opportunity to restructure their businesses it appears that there are important groups of potential landlords and tenants unaware of this fact.

E13. Many of the FBTs let in 1999/2000 were small. In England, 65 per cent and in Wales 66 per cent were less than 25 hectares (60 per cent and 49 per cent respectively in our 1997 study). The term varied according to the type of FBT with median lengths of two years for bare land lettings, three for land and buildings and ten years for complete holdings. There appears to be a marked increase in term on County Farm Estates - 40 per cent in England were of over ten years compared with 22 per cent in 1997. For FBTs as a whole, there is also evidence that the effective term is rather longer than stated medians. Our findings suggest that about half of all expiring FBTs are re-let to the existing tenant and perhaps one-third are allowed to extend beyond their initial term.

E14. However, relatively few FBTs are let to new entrants, 9.4 per cent in 1999/2000 (compared with 8 per cent in our 1997 study) though they did make up one-third of new County

Farm lettings in England and Wales. This is an area where the Act has not been as successful as many would have hoped and indeed respondents to the telephone surveys, particularly farmers and agents, felt the Act had performed poorly in this respect. Whilst the overall increase in land in the let sector should benefit new entrants many felt barred from this wider market because of their inability to compete with established businesses. Some questioned the extent to which the legislation could, in isolation, achieve much improvement in this area and suggested alternative fiscal and financial interventions to improve the position.

E15. Once again the County Farm Estates were seen to be fundamental in providing opportunities for new entrants, not least as over 90 per cent of the County Farm lettings to new entrants were complete holdings.

E16. There was mixed evidence over the extent to which the Act had improved economic efficiency. Respondents were equivocal on the issue, reflecting perhaps the less clear cut nature of the concepts involved. However, FBTs have certainly provided a relatively simple vehicle to enable farm businesses to expand by persuading landlords that letting is an option and enabling farmers to rent additional marginal acres.

E17. There is little evidence at this time of the lack of investment which some commentators felt might arise. Indeed, a higher proportion of farmers on holdings with land held exclusively under FBT Agreements reported investment in buildings or fixed equipment than did those in many other categories. There was, however, less evidence of diversification on such farms with only 13 per cent of farmers becoming involved in diversification, a smaller proportion than most other categories.

E18. The Act allows great flexibility in the terms of rental Agreements. However, we found that the vast majority of FBT agreements are based on published standards with relatively little variation included. Some does exist, particularly with respect to the rent review regime and repair clauses. User clauses, facilitating farm diversification, are varied much less frequently and the prohibition of assignment or sub-letting is relaxed very rarely indeed. The position regarding environmental conditions is less clear. Despite the fact that most landlords said that the introduction of FBTs had enabled them to include environmental clauses in their agreements, less than one in ten of the farmers with FBTs that we interviewed said that their Agreement had any such clauses, though the proportion did rise to 50 per cent on the County Farms.

E19. Respondents raised a wide range of unintended side effects although, interestingly, those mentioned initially by stakeholder groups were less prevalent amongst subsequent respondents than might have been expected. Amongst the most commonly quoted were the impact of high rents, anxieties about short termism, the encouragement of amalgamation and the impact on new entrants.

E20. A wide range of proposals were made to address these and other issues falling, broadly, into two categories:

- Those seeking to increase the use of FBTs; and
- Those aimed at removing anomalies and improving the ease of use.

The latter focused on amendments to the Act itself and there was a common theme that where the Act is prescriptive this impedes its effectiveness. Most of the representations on increasing the use of FBTs were focused on a review of the tax regime, whether generally in the context of let property or more specifically targeted at issues such as lengthening term or encouraging lettings to new entrants.

E21. Our own recommendations are set out in detail in Chapter 7. The research team has not confined itself solely to considering the proposals made by Stakeholder Groups and others. In anticipating the likely changes in agriculture and the rural economy we have made recommendations which we hope will enable the legislation to accommodate very different types of rural enterprise in the future.

E22. Some commentators may feel it is too soon to make any substantive changes to legislation which has only been enacted six years. However, there is scope for improvement through constructive amendment and our recommendations are intended to build on the successes of the Act to date.

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Tests of Statistical Significance: A Note

On a number of occasions in this report comparisons are made between sub-groups of respondents (whether to our postal or telephone surveys). In these cases Chi^2 has been calculated to test the statistical significance of the difference between sub-groups. A 'significant' difference between distributions is taken to be one where there is less than a 5% probability of the difference arising by chance.

CHAPTER 1 PROJECT BACKGROUND, AIMS AND METHODOLOGY

Introduction

1.1 The Agricultural Tenancies Act (ATA) 1995 introduced a significant change of direction in legislation and a new land management tool, the Farm Business Tenancy (FBT), to the agricultural industry. This study, commissioned by the Department of the Environment, Food and Rural Affairs (DEFRA) and the National Assembly for Wales Agriculture Department (NAWAD) in March 2001, follows the initial evaluation of the Agricultural Tenancies Act 1995 prepared by the same research team in 1997. It fulfills a Government commitment to review the operation of the Act.

1.2 The principal objective of the study was to evaluate the extent to which the 1995 Agricultural Tenancies Act (ATA) has achieved its three main objectives, namely:

- To encourage more letting of agricultural land,
- To increase the opportunities for new entrants,
- To promote economic efficiency in agricultural land use by making the market for rented land more flexible and responsive to market forces.

1.3 The project has, therefore, gathered evidence to answer four main questions, viz:

- What has been the impact of the Act upon the size and structure of the tenanted sector and upon land ownership decisions more generally?
- What has been the effect of the Act in relation to entry into and exit from the farming industry?
- What have been the consequences of FBTs for the economic efficiency of resource use within the industry and how have FBTs affected the flexibility of agricultural businesses to expand, restructure or diversify?
- Has the legislation resulted in any unintended side effects and how significant have these been?

1.4 The research was conducted during a year when the rural economy and the agricultural industry in particular were severely affected by Foot and Mouth Disease. The analysis of the main characteristics of Farm Business Tenancies concentrates on those let during the previous year – the most recent period for which data was available - and to that extent the transactions reported and analysed, were not affected by the outbreak. However, it would be surprising if the

issue were not at the forefront of the mind of many respondents to our present study, whether interviewees, members of Focus Groups or other consultees, particularly regarding their projections for the future.

1.5 This chapter examines the background to the legislation, changes in the rural economy since the introduction of the Act and, in the last section, the methodology adopted by the research team.

The Background to the Legislation

1.6 Tenancy reform has been one of the more contentious debates within the agriculture industry. The enactment of the Agricultural Tenancies Act was the culmination of much negotiation, considerable compromise and no little prompting from Government and others, all driven by a common anxiety to stem the loss of land from the tenanted sector.

1.7 By 1990 the continued decline in the tenanted sector¹ and the increased use of a variety of short term arrangements and “unconventional tenancies” (Winter *et al* 1990) had prompted much debate in the industry and a growing consensus around the need for some action. However there was little agreement on the nature of this action. Faced with an industry almost in conflict over the issue the then Government abandoned the previous pre-condition of an industry consensus and the Minister, Baroness Trumpington, arguing for a radical review of tenancy law, stated that action might be required even without agreement in the industry.

1.8 The long process of constructing the reform began in earnest. In 1991 MAFF issued a consultation document and much debate ensued between the main stakeholder organisations, the NFU, CLA, TFA, FUW and NFYFC assisted by the professional bodies, RICS and CAAV. This culminated in an industry agreement in 1993 and the passage of the bill through Parliament in 1994 and 1995.

1.9 The Agricultural Tenancies Act received Royal Assent in May 1995 with Farm Business Tenancies starting from 1st September 1995. The introduction was supported by amendment to Inheritance Tax which provided for 100% Agricultural Property Relief on all tenancies created

¹ From approximately 88 per cent of the agricultural area in 1908 to approximately 37 per cent in 1995.

after that date bringing the Inheritance Tax treatment of land let on these tenancies in line with owner occupied land.

1.10 The introduction of Farm Business Tenancies crystallized two very distinct forms of agricultural tenancy; FBTs, with their extensive freedom of contract and the traditional, more strictly prescribed Agricultural Holdings Act (AHA) tenancies. A summary of the main features of the two legislative codes is set out in Appendix 1, but in summary AHA tenancies offer long term security of tenure, a statutory rent regime with discounts from market value and a strict regulatory code acting as a default for agreements. FBTs, in contrast, can be for a fixed term, have no statutory constraint on open market rents and offer the parties freedom of contract, with one or two notable exceptions.

1.11 This was a major change in the letting of agricultural land. The 1995 Act offered parties the scope to create bespoke tenancy agreements, reflecting both their particular interests and ambitions and the individual nature of the holding. At the same time it brought to a close the creation of new AHA agreements, except by statutory succession or, in those few cases where this was not barred by the agreement, assignment. However the legislation was not retrospective and as a consequence the twin codes will survive together for many years, unless amended by further legislation¹.

Changes in the Agricultural Industry

1.12 The ATA was introduced at a time of relative prosperity across many agricultural sectors. In the dairy and cereal sectors in particular high commodity prices, bolstered in the latter case by IACS payments, were generating strong returns and for some, record levels of profit. This was reflected in the demand for land, and in turn, the levels of FBT rents and before them payments for Gladstone v Bower and other hybrid occupancy agreements.

1.13 Six years later the industry has suffered a succession of challenges, which have radically altered its fortunes. The continued strength of sterling and weakness of the Euro, falling commodity prices and increases in many input costs have all been factors. However for many the succession of animal health issues: BSE, Swine VD and latterly and most disastrously Foot and

¹ This is one of the reasons why it is important to keep the effects of the 1995 Act under periodic review. At June 2001 only 22 per cent of tenanted land in England was let under an FBT, increasing from 14 per cent in 1999. On present trends it may well be another ten years before they account for more than half of let land, and, of course, at least a whole generation before all existing AHA tenancies come to the end of their term.

Mouth have had the greatest impact, both social and financial. Published statistics show that by 2000, Total Income from Farming in the UK had fallen by nearly 70 per cent in real terms from the high point of 1995 and is now at “an historically low level” (DEFRA 2001:15).

1.14 This has had repercussions for the structure of the industry. Whilst many businesses have sought to expand to spread fixed costs, consequently maintaining the demand for those marginal extra acres which the 1997 study showed were the core of the FBT market, others are closing. Since 1989/91 the total UK agricultural workforce has fallen by 15% (to the year 2000), with the reduction particularly marked among those working full-time in the sector, both self employed business owners and more particularly hired farm staff (DEFRA 2001: 23).

1.15 There appears to be a wider acceptance in the industry itself that restructuring is both inevitable and desirable and some of the stigma associated with leaving the industry appears now to be disappearing, particularly among middle-aged and younger farmers. This context is very different from the buoyant economic climate in which the Agricultural Tenancies Act was introduced. The new context has two important implications for the present study. In the first place, it makes it particularly difficult to distinguish the specific impact and effects of the ATA from a range of constantly shifting influences on farming and the broader rural economy. Secondly, it may well be the case that the sector as we know it is experiencing a step-change in its economic circumstances rather than a temporary setback¹. If so, it becomes particularly important for any evaluation of the Act to reflect on the extent to which this piece of legislation helps or hinders the restructuring of individual businesses or the sector as a whole.

1.16 In essence, there are relatively few strategies that agricultural businesses in England and Wales may follow in order to maintain or increase the incomes remitted to the families or shareholders that own them. These are shown in Figure 1.1.

1.17 The strategies outlined in Figure 1.1 involve the restructuring of individual farm businesses. For the sector as a whole, restructuring also includes exit from and entry to farming. In some cases the different elements of restructuring are interdependent. For example, individual businesses cannot expand the area they farm unless some owner-occupying farmers either sell their land or become landlords in their own right, renting their land for profit.

Figure 1.1 Survival Strategies for Farm Businesses

The traditional way: Farming our way out of difficulty

This typically involves strategies either (a) to reduce the unit costs of production, eg by enlarging the farm in order to spread fixed costs over a larger area or by investing in better production methods (including investment in land improvements, buildings and fixed equipment) or (b) to increase the unit value of farm outputs eg by adding value through processing, grading or better marketing.

The new way: Diversifying the business

This typically involves redirecting some or all of the business assets – such as land, buildings and family labour – to alternative uses. It may involve, for example, the establishment of new business ventures on or off the farm, the employment of more family labour in off-farm jobs, or the increased production of so-called CARE¹ goods (provided adequate payment is available either from the Government or charitable institutions).

¹ The Countryside, Amenity and Rural Environment goods for which there is no established market in the private sector.

Methodology

1.18 Our review followed a similar approach to that taken in 1997, using a combination of different techniques. However, the main emphasis in 1997 was on the awareness and uptake of FBTs. The present study is much more concerned with the content and operation of FBTs, and in particular, the extent to which the flexibility of agreements made possible by the Act is actually being used. At a time of change in the economic and policy context of agriculture, the present review also places more emphasis on the extent to which the Act is promoting or inhibiting the restructuring of the agricultural sector.

1.19 Our methodology is described in detail in Appendix 3. As well as outlining the key elements of the methodology used, this provides a commentary on the nature of the information obtained. It is important that these points are borne in mind when reviewing the findings of our study.

1.20 The main stages of the project, some of which ran concurrently, were as follows:

¹ This point is developed more fully in the Curry Report on “Farming and Food” (Anon 2002) which was published

- Clarification of the main issues concerning the Act through a review of the literature, submissions from stakeholders and discussions with a Panel of Experts.
- Reanalysis of existing data, supplemented by postal surveys, to quantify the main trends in FBTs - their uptake, content, and identity of the parties involved.
- Telephone surveys of samples of farmers, landlords and land agents in different parts of England and Wales to gather information on:
 - understanding of, and attitudes to FBTs;
 - experience of establishing FBTs;
 - the level of flexibility included in FBTs;
 - business behaviour since 1995 with respect to (a) investment and (b) diversification.
- Focus groups, also in different parts of England and Wales, to draw out the perceptions and experiences of landlords and tenants on the operation of FBTs in greater depth and to act as an initial sounding board for the possible recommendations emerging from the earlier stages of the project.

1.21 Our approach sought to ensure that all the relevant issues were covered and information of both a qualitative and a quantitative nature assembled. The issues were examined from a variety of different perspectives using a variety of different techniques. Response rates to our surveys were generally good. They provide a useful and reliable base on which to evaluate the 1995 Agricultural Tenancies Act at this point in time.

during the closing stages of this project.

CHAPTER 2 DEVELOPING ISSUES

Introduction

Background

2.1 Any fundamental change in the legislative code is bound to attract both comment and criticism and the Agricultural Tenancies Act 1995 has enjoyed its fair share of both. The calls for amendment, from various quarters, started even before its enactment and have continued since exacerbated, at least in part, by the very rapid downturn in agricultural fortunes from a relatively prosperous position for most sectors in 1995 to a post war low when the research was commissioned.

2.2 This chapter considers some of the key issues in the debate, which has developed over FBTs, and some of the proposals this debate has generated. Whilst the focus of this research was an economic, rather than a legislative, evaluation, the issues raised by those calling for changes to the legislation were of considerable interest, particularly to the extent that the problems or anomalies they highlighted might inhibit achievement of the principal objectives of the ATA. Further a number of these “developing issues” referred directly to side effects of the legislation a topic raised specifically in the specification for the research.

Establishing the Issues

2.3 In the original economic evaluation (Whitehead *et al* 1997) the research team used a Panel of Experts, comprising a mix of stakeholders and independent informed observers, as a sounding board in the detailed development of the research. In this case the Panel of Experts fulfilled a similar role, particularly in the preliminary design of the telephone surveys, but in addition they were important contributors in reviewing the current thinking on the 1995 Act and those areas where change had been proposed.

2.4 This role had been identified during the design of the project and consequently the Panel of Experts, the majority of whom represented various stakeholders, were invited to make detailed written submissions to the research team prior to the meeting of the panel in May 2001. Recognising the value of such consultation the process was extended to include a second group of consultees, who were also invited to make submissions but did not form part of the panel.

2.5 Details of the Panel of Experts and the Consultees are provided in Appendix 3. In all detailed submissions were received from 14 bodies and individuals raising more than 20 separate issues. These were discussed during the panel meeting both as to their merits and, importantly, how best their practical relevance could be tested during the various elements of the fieldwork. The outcome of this debate is reflected both in the design of the telephone surveys and in some of the issues presented to the various Focus Groups and the issues are considered in greater detail later in this chapter.

2.6 These issues were clearly drawn from respondents' overall impressions of the impact and success of the legislation to date. Plainly these matters were addressed more objectively in the fieldwork but the perceptions' of stakeholders can be an important factor in the success of any legislation, both to the extent that it informs their recommendations on and reaction to policy and for the impact their opinions can have on other actors in the sector. These perceptions are summarised below.

Consultees' Perceptions

Background

2.7 The panel and consultees were invited to respond to the four main questions addressed in the report and introduced in Chapter 1.

2.8 Responses reflected, quite naturally, the perspectives of the various stakeholders but a number of consistent themes emerged which the research team were able to test during the remainder of the study. A key question, posed by many respondents, was whether the legislation was a cause of the various outcomes described or merely part of the background against which these changes took place.

The Size and Structure of the Tenanted Sector

2.9 There was general agreement that the Act had been successful, at the very least, in halting the loss of land from the tenanted sector that had taken place up to 1995 and a substantial consensus that the legislation had encouraged the letting of land which would otherwise have been farmed in hand or sold. Here, in contrast to some of the other questions, the feeling was that the legislation had had a direct causal effect on this outcome and had been a success.

2.10 However there was some divergence of opinion on the degree of success of the Act, as a whole. For many there was little doubt; “...*the impact of the legislation has been almost uniformly beneficial...*”; “...*the Act has been a success in introducing fresh land to the market...*”. Others were less enthusiastic “...*the thrust of the 1995 Act appears to have been the letting of agricultural land, rather than the letting of farms...*” and a number of respondents commented that the legislation had not been as successful as might have been hoped. Whether this was the fault of the legislation, or of unrealistic expectations or, as many commented, the overriding impact of other economic factors was unclear.

2.11 Anxiety was particularly acute amongst Welsh consultees who felt that the legislation had done nothing to protect “the family farm” and it was later apparent from the Focus Groups that this concept is more openly discussed, if not more jealously protected, in Wales than in many parts of England.

2.12 There was considerable comment on the nature and use of FBTs, the predominance of bare land lettings, the average length of term and the general propensity for land to be taken by established farmers. For some these characteristics of FBTs simply reflected the structural changes taking place across the agricultural industry, for others the ATA had contributed both to the cause and effect of these changes and these respondents were generally less sanguine about the success of the legislation to date.

Entry into and Exit from the Farming Industry

2.13 The impact on entry into the industry was, for a number of respondents, the most disappointing outcome of the legislation. Whilst recognizing that a greater supply of land on the letting market should be of benefit to all potential tenants consultees referred regularly to the CAAV annual survey in highlighting the number of new entrants able to secure tenancies. However there were widely differing interpretations of these figures. Some felt the numbers involved (9.4 per cent of lettings in the 2000 survey) (CAAV 2001:12) very low, and possibly overstated by respondents treating younger members of established farming families who were effectively extending that business as new entrants. Others took comfort from this proportion arguing that given the number of specialist cropping and seasonal grazing agreements involved only a small proportion of lettings would be available for new entrants anyway.

2.14 A number of respondents drew attention to the importance of the County Council Farms Estates. Here the contrast was drawn, without specific example, between councils making full use of the legislation and the new found flexibility, albeit this often meant further restructuring and a reduction in the absolute number of potential opportunities, and those who were driven by imperatives other than fostering entry into agriculture.

2.15 Once again there was some discussion of the relative role of the ATA. Was it part of the cause or simply part of the background to change? Whatever view respondents held, few were willing or able to convert their concern into concrete policies to address the issue. Those who did make proposals sought either to use the tax regime, rather than the ATA, to advance the case for new entrants or restated the importance of county farms. In taking this issue further than others, one commentator suggested that land could only be made available to young people who want to farm in their own right through some form of social legislation “...*which the Agricultural Tenancies Act is not...*”.

2.16 Turning to the question of exit a number of respondents did perceive an impact, particularly in offering a vehicle to those owner occupier farmers, generally but not exclusively the more elderly, who wished to retire but did not wish to sell their farms or homes. These comments were coupled with comments on the continuing fiscal disincentives to letting land, particularly the potentially adverse impact on the Inheritance Tax treatment of the farmhouse, and this problem is reviewed in greater detail below. Overall this question was seen as particularly difficult given the wide range of other influences on exit decisions in recent years including falling commodity prices, rising property values and Foot and Mouth.

2.17 Elsewhere there were references to some “buy to let” activity, albeit often this was seen as being an indirect consequence of the purchase of farms for residential rather than agricultural purposes. There was less comment on exit specifically from FBTs, and, perhaps surprisingly, no direct comment on the greater commitment that tenants are making in entering into a term with limited or no break clauses and no automatic right to give notice to quit.

The Economic Efficiency of Resource Use

2.18 All saw the survival of the tenanted sector (i.e. the availability of land to rent) as important to the efficiency of UK agriculture and thus drew comfort from the reversal of its previous decline referred to above. For many the opportunity afforded to farm businesses to expand and thus achieve greater economies of scale and more effective use of their own investment in land, labour and machinery was the fundamental benefit and success of the legislation.

2.19 Evidence of a return to letting land and consequently greater separation between the businesses of landowning and farming was welcomed by a number of respondents. Similarly the extent to which retiring farmers and non-farming buyers were entering the market as “new landlords” was seen as contributing to the general efficiency of the industry.

2.20 Some commentators referred to the flexibility introduced by the ATA and the ability of FBTs to accommodate businesses “...*in flux*...” and enable them to make short term arrangements and the attraction for specialist cropping businesses who are actively seeking short term, rotational, lettings. For others the outcome was not so clear, the average length of term and the relatively high rents were seen as disincentives to other investment and restrictive terms as a bar to business diversification.

2.21 In this context a number of respondents drew attention to the restrictions on non-agricultural use included in many agreements, although for others it was the actual behaviour of the parties when faced by a diversification proposal, rather than the constraints of the agreement that was most important, an issue addressed in our study.

Unintended Side Effects

2.22 In the broader economic context some respondents questioned the extent to which the more often quoted headline characteristics of FBTs: fragmentation of lettings and prevalence of lettings to established farm businesses, were effects of the legislation rather than symptoms of changing economic structures.

2.23 Commentators referred to the developing two-tier market in farm rents, although conversely others felt there had been some impact on AHA rents, despite the clear statutory distinction between the two. For others the potential risks of “short termism”, whether lack of

investment or an unwillingness to manage and husband the land as carefully as on a longer term holding, were the clear side effects. A specific, associated, concern was the inability of tenants with short term agreements to take advantage of the agri-environmental schemes now available. Interestingly a number of those respondents more closely associated with environmental and conservation objectives welcomed the flexibility of the ATA in enabling them to include positive, conservation management clauses in their agreements.

2.24 The majority of responses addressed practical difficulties concerned with the drafting of agreements, typically in those, relatively few, areas of the Act where the legislation is intrusive or prescriptive. These include questions of rent review and compensation for tenants' improvements. Elsewhere there were comments on the complex and time-consuming mechanism for obtaining possession on non-payment of rent, surrender and re-grant and the bureaucratic complexities introduced, apparently accidentally, to lifetime successions under the 1986 Act. The majority of these issues are reviewed in greater detail in the following section.

Issues and Initiatives

Scope

2.25 Whilst the written consultation raised a wide range of issues these fell, broadly, into two main categories:

- those where any initiative would require amendment to the 1995 Act in isolation; and
- those where any initiative would require amendment to other legislation, either together with, or in isolation from, amendment to the ATA

This is clearly particularly relevant in the context of policy making, where multi-disciplinary, multi-departmental legislative change can be considerably more challenging. However for the purposes of review the issues have been considered as a number of different themes which will be recognisable to most readers.

2.26 This Section seeks only to introduce the various issues raised by the panel and other consultees and the various proposals offered in their responses. Whilst there was a degree of consistency over the issues there was, understandably, rather less agreement on the need for, or appropriateness of the various solutions proposed. This element of the research was not designed to answer these questions. The fieldwork provided a far more robust and representative test,

particularly of the relevance of these issues, and the outcomes are reported in the following chapters and the consequent recommendations set out in Chapter 7.

Term

2.27 There was a wide variety of views on the effective length of term with arguments being advanced both that quoted averages overstated the length of term, by ignoring breaks, and understated effective term by ignoring those agreements which were renewed or allowed to continue beyond the term.

2.28 None of those who saw merit in seeking to promote longer terms suggested any statutory intervention in the ATA. Rather they sought fiscal incentives with favourable tax treatment for landlords who let on initial terms of more than 10 years, an issue returned to further below.

Investment and Compensation

2.29 There was concern that the provisions for compensation for Tenant's Improvements, one of the few areas where the legislation is both specific and prescriptive, are a disincentive to tenant's investment. The arrangements were seen to be a problem both for tenants, who were unwilling to invest when they could not predict with any certainty the extent of any compensation they might receive, and landlords, who were unwilling to grant permission for an improvement when they could not predict their eventual liability. It was suggested that the problem is not just confined to more traditional investment in fixed equipment but also affects willingness to pursue or allow diversification where the scale of uncertainty over potential value and thus compensation is much greater. One correspondent referred to this being perceived as "*...a major deterrent to achieving business diversification under the ATA...*".

2.30 A number of remedies were proposed, all capable of being achieved through amendment to the ATA in isolation. Whilst there wasn't unanimity on the issue most contributors sought greater flexibility to enable the parties to fix the amount of compensation, whether through a write down approach or some other means.

2.31 On an associated issue there was some anxiety expressed over the treatment of milk quota under the ATA, both the need to obtain prior consent for the quota to be treated as compensatable and the calculation of that compensation. However this was less commonly expressed than some other concerns and no specific proposals were made to address the

perceived problem, albeit the implication was that an approach similar to that available under the Agriculture Act 1986 would be most desirable.

Rent Reviews

2.32 Again there was concern from the Panel of experts and responses from stakeholders that where the Act provides a statutory framework this is too restrictive and either prevents the parties from implementing terms as they would wish or involves them in going to unnecessary lengths to create a facsimile of those terms that fits the framework. In particular, whilst the ATA provides greater freedom than under the AHA legislation one option it prevents the parties adopting is the rent formula under that earlier legislation. This is seen as a particular constraint in restructuring holdings where landlords and tenants may well wish to reflect, in a new agreement, terms which already exist between them in an established letting on another often adjacent holding.

2.33 Whilst one respondent argued for a statutory (but undefined) “ceiling” on rents and fixed, triennial, reviews the majority sought greater flexibility and unsurprisingly, given the context, the specific solution most often proposed was an amendment to the ATA to allow the parties, to incorporate the rent formula from the earlier AHA legislation, by mutual consent, if they so wished.

Restructuring and the relationship between ATA and AHA tenancies

2.34 Restructuring the occupation of land has been a characteristic of let estates for a number of years and this has continued since the enactment of the ATA. Indeed there are considerable pressures for this to continue both as a consequence of the changing economics of farming and the relative ages of the farm tenants on many estates.

2.35 Sometimes this will involve completely new lettings to tenants new to the estate, but often landlords will wish to offer additional land to existing tenants who already rent holdings under AHA agreements. The detailed provisions of the ATA legislation¹ inhibit the parties simply adding land to that existing agreement because they risk inadvertently entering into a surrender and re-grant thus replacing the AHA agreement, over the entire holding both existing and new, with an ATA tenancy. As a result both parties, but most noticeably the tenant, will lose

¹ Section 4(i)(f)

the benefit of those provisions which are unique to AHA legislation and which cannot, without considerable effort and relying on uncertain and untested devices, be incorporated into ATA lettings.

2.36 Understandably therefore in the vast majority of such cases the parties have let the additional land on separate ATA agreements, the only exceptions being additions of very small areas of marginal extra land where the parties concerned have felt confident enough, either in their relationship or in the nature and scale of the letting, that the addition of land would not upset the existing tenancy. However some respondents expressed concern that the inability to add land to existing tenancies caused difficulties with issues such as the treatment of improvements.

2.37 These respondents felt that greater flexibility should be available and proposed either amendments to Section 4 of the ATA to enable the parties to add land to AHA lettings without the risk that this could create an FBT, or, that in these particular circumstances, the parties should have the ability to contract back into AHA legislation by mutual consent.

2.38 On a very specific point Section 4 of the ATA, as well as being perceived as creating difficulties in the addition of land, can cause problems for lifetime succession under the AHA 1986. Such successions, even if agreed, may be construed as surrenders and re-grants and consequently be converted into FBTs unless approved by the Agricultural Land Tribunal, a potentially costly and time consuming exercise. A number of respondents drew attention to this problem.

Diversification, Conservation and Agri-Environment Initiatives

2.39 Some saw restrictive user clauses as the natural anxiety of landowners and their agents to maintain a degree of control over their property, enabling decisions on diversification to be made when specific proposals were brought forward. However those concerned by the constraints on use included in many agreements felt landlords might be concerned both at their potential exposure to compensation for the diversification and also by the possible risk of losing Agricultural Property Relief from Inheritance Tax. Consequently there were no specific proposals to address this issue but rather respondents included them in broader proposals on compensation and fiscal amendments.

2.40 In a similar context there was concern that the relatively short nature of agreements inhibited tenants from joining many of the agri-environment schemes which are, normally, of ten years duration. However, once again, there were no specific proposals to amend the ATA to address this issue. There was a view that relatively simple amendment to the regulations for agri-environment schemes, or even consistent application of best practice across all sponsoring and regulating agencies could accommodate many cases by allowing joint landlord and tenant applications.

Fiscal encouragement for lettings

2.41 Whilst the majority of issues raised concentrated on agricultural holdings legislation a number of respondents identified obstacles for those landlords who wished to let property rather than farm in hand or through a hybrid contracting arrangement. The majority of these involved the taxation regime, which was generally felt to discriminate against letting, whether under ATA or AHA agreements.

2.42 Comments referred to both capital and income tax issues. In particular: the more favourable treatment of income under Schedule D; the relatively disadvantageous treatment of rented land under Capital Gains Tax and the threat to Inheritance Tax relief on farmhouses and other dwellings where land is let separately, rather than occupied with the house.

2.43 A number of respondents drew attention to the fiscal changes made immediately prior to the introduction of the ATA which equalised Inheritance Tax agricultural property relief for all post 1995 tenancies and in-hand farm land. This was seen as a model for potential changes and a number of proposals were made for general amendment to the tax regime to remove both income and capital tax disincentives to letting land.

2.44 Whilst some sought amendments to the fiscal regime to remove one of the apparent obstacles to the general use of the ATA others proposed more targeted amendments. In particular there were proposals for discriminatory Capital Gains Tax and Income Tax regimes to favour lettings of 10 years or longer from the outset, and separate, but complementary, proposals to support “...*benevolent landlords*...” in letting to new entrants. Others sought extension of

Agricultural or Business Property Relief from Inheritance Tax to remove the risk of these reliefs being lost where the tenant has diversified out of agriculture.

2.45 However these calls did not attract universal support. There was concern that they were of little relevance to institutional landlords, who still play a significant role in the tenanted sector. Others felt that fiscal incentives might encourage some FBT lettings being used only to exploit tax avoidance opportunities, leading, in turn, to subsequent less attractive amendments to the tax regime and ultimately to even greater disincentive to let land.

Conclusion

2.46 Given the nature of the consultees and the range of interests represented by the stakeholder groups involved there was considerable consistency over what were seen to be the most important issues but it is hardly surprising that there were few areas of unanimity over the potential solutions.

2.47 For some consultees the success of the legislation to date was ample justification for avoiding any changes. Their anxiety was that any amendment, no matter how well planned or intentioned would have adverse consequences and thus threaten the supply of land to the sector. For others, whilst the impact of the Act might not have been as great as anticipated, it was simply too soon to contemplate any legislative change, not least given the extraordinary events that have occurred in the agricultural industry since 1995.

2.48 Others, whilst recognizing the success of the Act in releasing land to the sector felt that there were areas where amendment was warranted. However these were predominantly focused on the detail rather than the fundamental principles of the legislation. In truth there were very few, isolated, calls for radical amendment.

2.49 Indeed those calls for amendment to the ATA itself dealt almost exclusively with such details, predominantly by allowing parties the freedom to contract back into the provisions of the Agricultural Holdings Act 1986, either as a whole, or in selected sections, by mutual consent. However this view was by no means held unanimously and a number of respondents argued against what was seen as a retrograde step.

2.50 Where respondents sought to address the wider economic and structural questions, particularly encouraging further use of the legislation, their representations focused almost exclusively on removing the perceived constraints of the current tax regime. There was, however, concern that this would only impact on private landlords and had considerable risk of being reversed, to the detriment of the sector, if the opportunity for avoidance were exploited.

2.51 The consultation exercise generated considerable, important, feedback, which helped shape the fieldwork and the remainder of the research. Above all it confirmed the extent to which, six years on, the ATA regime has been accepted by the key participants in the agricultural economy. Whilst there were criticisms of the Act, proposals for change that were made all stemmed from the principle of improving, rather than dispensing with or radically altering the legislation. The work of the panel of experts provided the framework to test how far these perceptions were justified in the field.

CHAPTER 3 THE CHARACTERISTICS OF FBTs

Introduction

3.1 This chapter describes the main characteristics of Farm Business Tenancies in England and Wales, drawing on several different sources of information. The chapter is divided into three main sections. In the first section we describe the general characteristics of FBTs such as their size and length of term. The second section goes on to describe the types of individual and organisation renting or letting land on FBTs while the final section describes the more detailed content of FBT agreements, exploring the extent to which the greater degree of flexibility encouraged by the 1995 Act is currently being used.

The Main Characteristics of Farm Business Tenancies

Number of FBTs

3.2 The CAAV survey shows the net movement of tenanted land before and after the introduction of the Agricultural Tenancies Act in 1995 (CAAV 2001). The five years prior to the Act saw a net movement of 120,000 ha out of the let sector while the five years subsequent to the legislation showed a net addition of 83,000 ha. Despite the fact that the CAAV survey does not cover all lettings within England and Wales (see Appendix 3) this clearly demonstrates that the Act is achieving its aim of encouraging more letting of agricultural land.

3.3 The CAAV survey for 1999/2000 reports just over 2,400 new FBTs (80,000 ha) let during that year. This is less than in the previous years¹ and the CAAV conclude that this “reflects the ending of almost all the short term lettings under the 1986 Act which have been generally let as longer FBTs. The main transitional period is over as almost all the five year MAFF approved tenancies have expired.” Information from our telephone surveys suggest that this reduction in supply of land available for FBTs may not have been matched by a reduction in demand, at least in some parts of the country and for some types of land, though the aggregate picture is rather unclear. Three-quarters (74 per cent) of the land agents we interviewed thought that the number of applications submitted for each FBT is remaining static. 21 per cent felt that it was decreasing, and the remaining 5 per cent that it was increasing.

¹ The CAAV survey for the previous year reported 2,600 new FBTs (90,000 ha).

3.4 Comparison of the average rents for FBTs of one year or more reported in the Annual Survey of Tenanted Land (ASTL) (DEFRA: 2001) shows a small (5 per cent) reduction from 1999 to 2000 (perhaps suggesting some weakening of demand against supply). The trend is less marked among cereal and dairy farms (where the decline was 2 per cent) as compared with cattle and sheep farms (where it was 17 per cent and 9 per cent respectively for LFA and lowland farms). This perhaps suggests that there has been a greater reduction in demand for new FBTs among farmers in these sectors. Considering the declining level of profitability in farming over recent years it is perhaps remarkable that the demand for new FBTs as reflected in rents does not appear to be falling more rapidly. It may be that farmers seeking to farm their way out of the present recession are turning to the let sector to expand their farmed area and spread fixed costs. The results from the 2000/2001 ASTL (due in March 2002) might throw more light on this issue. However, the lack of distinction in the published data between different types of FBT (and in particular whether they relate to bare land or “complete holdings” – see below) undermine their value as an indicator of the balance between supply of and demand for let land.

Size of FBT

3.5 Our own surveys, combined with the results of the reanalysis of the CAAV data, show that a very wide range of units is being let. The median size¹ of new FBTs let in England in 1999/2000 was 16.0 ha. This compares with a median of 16.2 ha for the Welsh FBTs. In both countries, only about one-third were larger than 25 ha (see table 3.1). This echoes the finding of our 1997 study. Taken as a whole, the great majority of FBTs relate to relatively small areas of land². Among County Farms, in England the median size of FBT was somewhat larger, at 20.9 ha while in Wales it was smaller (8.6 ha).

¹ Because of the very wide variation in many of the characteristics of FBTs it is often most useful to consider the median value of these characteristics rather than the mean, which may be unduly influenced by extreme values for a small number of FBTs. The median represents the value for the FBT that lies at the midpoint of the range. For example, if 101 FBTs were ranked in order of size the median size would be that of the 51st FBT in the list.

² Discussions in the focus groups suggest that there may be considerable regional variation in the average size of FBTs. This was confirmed by our telephone surveys. Lincolnshire farmers who had rented FBTs reported FBTs that

Table 3.1 Size distribution of FBTs

Size group (ha)	England (%) N=2,433	Wales (%) N=35	County Farms	
			England (%) N=184	Wales (%) N=20
<5	23.4	28.6	19.0	25.0
5<10	14.5	14.3	10.9	30.0
10<25	26.7	22.9	30.4	25.0
25<50	18.2	8.6	34.2	20.0
50<100	9.6	22.9	4.9	0.0
100<200	5.4	2.9	0.5	0.0
≥200	2.2	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0

Type of FBT

3.6 As in our previous study, we distinguish three different categories of FBT – those comprising only bare land, which tend to provide the marginal extra area over which an existing farmer can spread fixed costs; those comprising land and some farm buildings, which again tend to be used mainly for this purpose; and those comprising land, farm buildings and a house, what we term “complete” holdings¹. As shown in our previous study, it is clear that the vast majority of FBTs comprise relatively small lots of bare land and these account for the majority of the land currently let as FBTs. In England these bare land FBTs made up 81 per cent of the total (59 per cent of the area) and had a median size of 12.3 ha. In Wales they made up 83 per cent of the total (68 per cent of the area) and had a median size of 10.6 ha².

3.7 “Complete” holdings with a house as well as land and farm buildings made up a much smaller proportion of the total number of FBTs (9 per cent in both England and Wales) but tended to be much larger (median size 36.4 ha in England, insufficient data for meaningful analysis in Wales). However, among the FBTs let by Local Authorities – what we refer to as the

were three times the size of those in either the North Wales or Kent/East Sussex study areas. The Somerset/Dorset respondents had FBTs about half the size of those in Lincolnshire.

¹ i.e. including a house or some other form of dwelling such as a farmworker’s cottage or sublettable cottage.

² In all areas where we held focus groups, the letting of bare land was the norm. It was a unanimous point of view that this was leading to the decline of the traditional landlord and tenant system. Some spoke of a ‘fractured’ system in which a particular farming business may be made up of several separate types of agreement including, for example a combination of ’86 Act agreements, FBTs, Landlord and Tenant Part 2 agreements and contract farming agreements. It was also a unanimous perception that while there may be more land let there were fewer tenants. As regards opportunities for taking on whole units all parties agreed that while the occasional whole farm let came up on the open market, County Council holdings where they still existed appeared the only real option.

County Farms Estate - a much larger proportion (50 per cent in both England and Wales) comprised “complete” holdings, with a median size of 30 ha in England and 23 ha in Wales.

3.8 When considering other characteristics of FBTs and their associated agreements it is very important to bear in mind these three different market segments since, in a number of important respects, the characteristics of the bare land FBTs are very different from those in the land with buildings FBTs, which differ in turn from the “complete holding” FBTs.

Farming Enterprise

3.9 As table 3.2 shows, FBTs are used across the range of enterprise types, though the County Farms show a predominance of farms concentrating on dairying. It should be noted that the data for the English FBTs provided by the CAAV (first two columns) is not directly comparable with that from our postal surveys. The CAAV asks respondents to indicate all the enterprises present. The percentages are therefore based on the total number of enterprises mentioned and a significant proportion of these will be found on farms with a mixture of enterprises. Moreover, some respondents simply indicate a pasture-based enterprise, recorded here as “other”. Even taking into account these points, it is clear that FBTs in England are much more orientated towards arable lettings than they are in Wales or among the County Farms.

Table 3.2 Farm enterprise-type of FBTs

Farm-type	England		Wales		County Farms			
	%	Median size (ha)	%	Median size (ha)	England		Wales	
					%	Median size (ha)	%	Median size (ha)
Dairy	9.4	27.9	2.9	~	50.0	24.9	55.0	12.2
Livestock	29.4	17.0	88.6	16.2	14.7	11.7	30.0	12.6
Mixed	<i>n.a.</i>	<i>n.a.</i>	5.7	~	7.6	14.6	15.0	~
Arable	47.5	24.2	2.9	~	21.2	19.7	0.0	
Horticulture	2.0	8.1	0.0		3.8	1.7	0.0	
Other	11.7	<i>n.a.</i>	0.0		2.7	2.4	0.0	

~ numbers too small for meaningful analysis; *n.a.* no separate data available – see main text.

Length of Term

3.10 The mean length of term for all FBTs in England was 4.1 years. However, this included a small number of FBTs with a very long term. It may therefore be more useful to consider the median term (2 years in the case of England) though both are shown in table 3.3.

Table 3.3 Term of FBTs in years

FBT-type	England*		Wales		County Farms			
	Median term (years)	Mean term (years)	Median term (years)	Mean term (years)	England		Wales	
					Median term (years)	Mean term (years)	Median term (years)	Mean term (years)
Bare Land	2.0	3.2	3.0	5.0	2.0	6.3	2.0	4.1
Land and Buildings	3.0	4.9	~	~	2.5	4.3	~	~
Land, Buildings and house	10.0	11.4	~	~	10.0	11.3	6.0	6.9
All FBTs	2.0	4.1	3.0	5.9	5.3	8.7	5.3	5.4

~ numbers too small for meaningful analysis;

* this excludes life tenancies and tenancies from year to year, which are unlikely to affect the median

3.11 With a median of 10 years in England, the term of FBTs let as “complete holdings” is significantly longer than that of FBTs comprising either land and buildings (3 years) or bare land alone (2 years). As table 3.3 shows, the median length of term of all FBTs offered by Local Authorities tends to be longer than the term offered by other landlords but this is simply because a larger proportion of their FBTs are for “complete holdings”.

Table 3.4 Term of FBTs

Length of term	England*	Wales (%)	County Farms	
			England (%)	Wales (%)
Up to and incl 1 year	32.2	11.4	15.8	
2 years	20.3	8.6	12.0	25.0
3-4 years	17.1	45.7	7.1	20.0
5 years	13.3	14.3	16.3	10.0
6-9 years	3.0		8.7	40.0
10 years	4.0	5.7	10.3	
11-20 years	5.3	11.4	23.9	5.0
Over 20 years	2.3	2.9	6.0	
	100.0	100.0	100.0	100.0

* this excludes 2 life tenancies and 54 from year to year

3.12 Since our last survey in 1997, there has been a noticeable lengthening in the term of FBTs let by Local Authorities. In England there has been a marked increase in the proportion of longer-term FBTs (10 years or more) from 22 per cent in 1995/6 to 40 per cent in 1999/2000.

This is in contrast to the picture outside the Local Authority sector, where the CAAV survey (CAAV 2001: 10) shows relatively little change in the mean term of FBT over this period.

3.13 This information has shown the length of term of individual FBTs. It should be remembered that in some cases, successive shorter-term FBTs will be relet to the same tenant enabling them to continue farming the same land for a longer period of time, though without the security of a longer-term let. In other cases, FBTs will simply be allowed to continue beyond the initial term. Effective terms may therefore be longer than those suggested by the various averages reported by surveys such as that of the CAAV.

Table 3.5 Extent of FBT Re-letting to Existing Tenants by various categories of Land Agent

Amount of FBT activity	Proportion re-letting FBTs to existing tenant					Total (%)
	None (%)	Less than 20% (%)	20-39% (%)	40-59% (%)	60% or more (%)	
1-9 p.a.	3.8	13.2	7.5	34.0	41.5	100
10-29 p.a.	1.6	7.8	15.6	20.3	54.7	100
30 or more p.a.	0.0	0.0	25.0	16.7	58.3	100
All respondents	2.3	9.3	13.2	25.6	49.6	100

3.14 Our survey of land agents provided some useful information on the extent to which expiring FBTs are re-let to existing tenants, or simply continue beyond the initial term. Table 3.5 shows that nearly half (49.6 per cent) of our respondents reported that 60 per cent or more of the FBTs with which they deal are re-lettings to existing FBT tenants. The table also shows that the proportion varies according to number of FBTs that the land agents deal with. Those who deal with only small numbers of FBTs each year are less likely to be re-letting to existing tenants. Based on the information in this table, we estimate that a minimum of 45 per cent of FBTs are re-let to existing tenants and the proportion is probably closer to 50-55 per cent.

3.15 Table 3.6 shows the Land Agents' estimates of the proportion of FBTs that they deal with that are allowed to continue beyond their initial term. Over one-third (36.4 per cent) of our respondents reported that 60 per cent or more of the FBTs with which they deal are allowed to continue in this way. Those who deal with only small numbers of FBTs each year are less likely to report that this happens. Based on the information in this table, we therefore estimate that a

minimum of 33 per cent of FBTs are allowed to extend beyond their initial term, and the proportion is probably closer to 40-45 per cent.

Table 3.6 Extent of FBTs continuing beyond initial term by various categories of Land Agent

Amount of FBT activity	Proportion FBTs continuing beyond initial term					Total (%)
	None (%)	Less than 20% (%)	20-39% (%)	40-59% (%)	60% or more (%)	
1-9 p.a.	20.8	24.5	13.2	9.4	32.1	100
10-29 p.a.	7.8	17.2	18.8	15.6	40.6	100
30 or more p.a.	0.0	25.0	33.3	8.3	33.3	100
All respondents	12.4	20.9	17.8	12.4	36.4	100

Break Clauses

3.16 Among respondents to our farmer survey, 18 per cent did not know if they had a fixed date break clause in their agreement. Among those that did, 70 per cent had such a clause, the vast majority of these (just over 90 per cent) being exercisable by both the landlord and tenant. It should be borne in mind that our survey approach tended to gather details only of longer-term FBTs. However, while the proportion with a fixed date break clause was greater for those with an FBT term of more than 10 years (89 per cent), it was still close to 70 per cent for those with terms between 2 and 10 years. Only for FBTs of 2 years or less was the proportion significantly lower (33 per cent). Among the County Farms covered by our postal survey, the proportion of FBTs with a break clause was somewhat lower (just over 40 per cent for those with terms between 2 and 10 years and 70 per cent for those with a term of more than 10 years).

Conclusion

3.17 The information presented thus far confirms that the Act is achieving one of its main aims – to encourage more letting of agricultural land. But it also emphasizes the great variation between FBTs in terms of their size and term as well as the type of farm enterprise that they support. The differences between the three main types of FBT that we identify – bare land only, land and buildings, and what we term “complete holdings” (i.e. including a dwelling) – is of particular importance. It underlines the fact that the market for FBTs is highly segmented with

different types of landlord and tenant seeking to use the different types of FBT for different purposes. This point is well-illustrated by the County Farms Estate where a much larger proportion of FBTs are complete holdings with a relatively long term, over half of them supporting a dairy enterprise. The theme of market segmentation is developed further in the next section of this chapter which examines the participants in the market for FBTs in more detail.

Participants in the Market for Farm Business Tenancies

3.18 This section examines the characteristics of landlords and tenants currently involved in the market for FBTs. It answers two main questions, viz.

- Who is letting FBTs and where is the land coming from?
- Who is renting FBTs and where is the land going to?

Once again the data presented in this chapter are drawn from the CAAV Annual Tenanted Farms survey, augmented by our supplementary surveys in Wales and among Local Authorities.

Who is letting land as FBTs?

3.19 Table 3.7 shows that the great majority of FBTs in England are let by private owners, not surprising since such a large proportion of farmland in this country is privately owned. In Wales, with its historically small privately-owned let sector, the proportion falls to just under half.

Table 3.7 Ownership of land let as FBTs

Type of Owner	England (%)	Wales (%)	County Farms	
			England (%)	Wales (%)
Private Owners	65.7	48.6		
Traditional Institutions ¹	30.3	51.4	100.0	100.0
Financial Institutions	3.9			
	100.0	100.0		100.0

¹ includes Central Government, Local Government (except Wales), Utilities, Crown, Church, Universities

Where did the land come from?

3.20 Table 3.8 shows the previous occupation of the land granted into FBTs. These results show a significant proportion of “new land” coming in to the tenanted sector. Indeed, the CAAV survey for 1999/2000 shows that something in excess of 23,000 ha of land previously farmed in-hand came into the let sector through FBTs. Taking into account losses of let land (for example, land taken in hand or land sold to sitting tenants) this amounts to a net increase for the tenanted

sector of around 15,000 ha. This net increase in the let sector which has occurred at a relatively consistent rate since 1996 suggests that the 1995 Act is achieving one of its main objectives.

Table 3.8 Previous occupation of land let as FBTs

Previous occupation	England		Wales		County Farms			
	%	Median term (years)	%	Median term (years)	England		Wales	
					%	Median term (years)	%	Median term (years)
Farmed in-hand	21.1	3.0	8.6	~	0.0		0.0	
FBT	49.5	2.0	8.7	~	17.9	5.0	10.0	~
Short-term agreement	3.6	3.0	60.0	3.0	17.5	2.0	0.0	
AHA 1986 tenancy	24.0	5.0	20.0	5.0	63.0	10.0	90.0	5.8
Other*	1.7		2.9	~	1.6	~	0.0	

~ numbers too small for meaningful analysis; * includes Joint Ventures

Who are the tenants of FBTs?

3.21 Table 3.9 shows that a minority of FBTs went to those people identified by survey respondents as “new entrants” to farming, though the proportion is, of course, very much higher among the County Farms. The CAAV survey for 1999/2000 identified 229 lettings to new entrants, 28 per cent of which were complete holdings. Our own surveys of the County Farms Estate showed that 91 per cent of lettings to new entrants were complete holdings. Despite land sales and structural changes in the County Farms Estate over recent years, this continues to be an important route of access to farming for new entrants. Clearly, a number of other landlords are also providing some opportunities to new entrants to the agricultural sector through FBTs. However, the total numbers of new entrants renting FBTs (both County Farms and others) are very small in relation to the total number of farm businesses in the country as a whole.

Table 3.9 Type of Tenant of FBTs

Identity of tenant	England (%)	Wales (%)	County Farms	
			England (%)	Wales (%)
Previous Occupier	91.0*	68.8	34.2	15.0
Other farmer		28.6	32.6	50.0
New entrant	9.0	2.9	33.2	35.0
	100.0	100.0	100.0	100.0

* the CAAV survey makes no distinction between these two categories

3.22 The majority (61 per cent) of new entrants identified by the CAAV survey were reported to be renting bare land (and a further 11 per cent land and buildings only). This suggests a rather different type of “new entrant” outside the County Farms Estate, either using the FBT to increase the area of a farm they have purchased or using the FBT land to help them make a start in farming from a home located elsewhere, either in the village or on a holding farmed by other members of their family. Appendix 2 throws more light on the various different types of new entrant.

Conclusion

3.23 This section has emphasised the importance of private owners in the market for FBTs , though it should be borne in mind that this category includes both landlords with substantial landed estates as well as some individual owner-occupiers seeking to rent out some or all of their land. Most of the FBTs are let to existing farmers¹. However, the findings do show that some new entrants are coming into the sector through farm business tenancies even though the absolute numbers involved are relatively small, particularly where FBTs of complete holdings are concerned. County Farms continue to provide an important route for new entrants to farming.

The content of FBT agreements

Introduction

3.24 Previous sections have looked at the extent to which the flexibility encouraged by the 1995 Act is being used with respect to the length of term of the FBT. However, the Act also envisaged a great deal more flexibility in the content of FBTs. Most of the information in this section of our report is drawn from the telephone surveys of landlords, land agents and farmers though some additional information for the County Farms comes from our postal survey. In each case it is important to take into account our earlier points about market segmentation and to bear in mind the types of FBT (whether short-term or longer-term, bare land or complete holdings) that are being described.

¹ Where landlords were seeking to let blocks of land the perception of our focus groups was that the process by which a suitable tenant was found was altering. Agents were far more focussed on possible candidates and rather than the traditional advertising approach suitable candidates were ‘targeted’. These were invariably the larger

The Landlords

3.25 The landlords we interviewed were very up-beat about the use of FBTs and their responses indicated that they were using the flexibility of FBTs in a range of letting opportunities. 70 per cent (83 per cent of private landlords)¹ said that their introduction in 1995 had increased their willingness to consider letting more land. A further nine per cent of respondents were undecided over this question. Flexibility, ease of possession and high returns from FBTs were given as reasons for the positive responses along with the advantages of use for reorganisation of land with development potential. The FBT allowed them to retain control over land with such potential in the shorter-term, keeping open their options on future development. Many of the ‘negative’ answers referred to the lack of opportunity for further use of FBTs with all their land being already let.

3.26 We asked a number of questions to establish whether the introduction of FBTs had made them more willing to change the terms of their lettings.

User restrictions

3.27 A more positive attitude towards permitting their tenants to diversify into non-agricultural activities was expressed, with 42 per cent agreeing that FBTs had made them more willing to allow such activity and a further 14 per cent undecided (two thirds of whom were private landlords). Turning to their actual practice with FBTs, 34 per cent of the landlords (28 per cent private) had been approached by a tenant asking for permission to diversify. Their reaction to such an approach had been very positive with 82 per cent granting conditional consent and 18 per cent granting open consent. The use of the conditional consent was noticeably greater for non-private landlords (93 per cent). This accords with the findings of the CLA survey of diversification in the agricultural let sector (CLA 2000).

established farmer because they could offer the highest rent; they presented the least risk; and were mostly interested in these “bare land” lets.

¹ As explained in chapter 1 our telephone survey covered two main groups of landlords – those, such as the Crown Estate, The Church, The National Trust, Local Authorities, Financial Institutions and Utilities who we term the “professional landlords” and those “private landlords”, owning land which may range from a single farm to a large family estate containing many farms.

Assignment and subletting

3.28 The traditionally strong negative attitude towards assignment and subletting amongst agricultural landlords is perhaps changing marginally with 6 per cent saying that they are more willing to allow their tenants to become involved with such tenancy developments since the introduction of FBTs (8 per cent undecided). Over a quarter (27 per cent) of the landlords (18 per cent private) had been approached by the tenant of an FBT for consent to assign or sublet and over 50 per cent (53 per cent private) had granted a conditional consent; 41 per cent refused and one said that it varied according to circumstances.

Repair liabilities

3.29 36 per cent of landlords (32 per cent private) felt that the introduction of FBTs had changed their attitudes towards repairing responsibilities in agricultural tenancies, referring to variation according to circumstances and the use of the flexibility for granting tenancies on full repairing and insuring (FRI) terms. The financial institutions were particularly positive over this with five of the six interviewed reporting a change in attitude. A small number of respondents referred to the preference for full landlord responsibility where old or valuable buildings existed.

Rent review

3.30 The attitude towards rent reviews had also changed with 34 per cent of landlords now considering alternatives to the traditional three-year rent review cycle (32 per cent private). This was, perhaps, to be expected, especially in view of the flexibility over term of the FBTs and it is perhaps more surprising that 63 per cent said that their attitudes towards rent review had not changed as a result of FBTs. This may be partly explained by a number of landlords commenting that many of the FBTs were short term, requiring little consideration over rent review terms and generally, that the terms would be adjusted depending on circumstances; there was some evidence of the use of five year reviews where appropriate.

Environmental clauses

3.31 Most landlords, 80 per cent (71 per cent private), said that the introduction of FBTs had enabled them to include environmental clauses in their agreements, further elaborating on a wide range of clauses including:

- reductions in the level of inputs including sprays and ‘chemicals near watercourses’
- prohibition on the growing of GM crops

- prohibition of the use of sludge
- restrictions on stocking rates
- adherence to ESA, Countryside Stewardship and local wildlife trust guidelines
- prohibition of hedge removal and hard hedge trimming
- requirements for field margin management

3.32 40 of the landlords (64 per cent of respondents, 56 per cent private) said that they had been approached by the tenant of an FBT who was considering entering an agri-environment scheme and, of these, 98 per cent had responded positively (88 per cent ‘happy to facilitate’; 10 per cent ‘consent required and given’). In only one case was ‘consent required and not given’.

3.33 These responses from the landlords we interviewed suggest that while there are some differences between what we term the “private landlords” and the “professional landlords” there have been some significant changes in the detailed terms of tenancy agreements as a result of the 1995 Act. In general, the private landlords were somewhat less likely to report a change in their behaviour as a result of the legislation. Overall the changes were most marked where the introduction of specific environmental clauses were concerned. In other cases only a minority (albeit a sizeable minority) of landlords said that they were changing their practice with respect to rent reviews, repair liabilities and user restrictions. In terms of assignment and subletting there was very little change reported though a surprising number said that they had been approached by an FBT tenant for consent to assign or sublet.

Land Agents

3.34 Turning now to the land agents a similar picture emerges, with a significant proportion of respondents reporting some change as a result of the Act.

3.35 The vast majority of Land Agents (92 per cent) prepare the agreements themselves when acting for landlords and, unsurprisingly, over 90 per cent of them normally rely on a published standard. These responses will not surprise those involved in the relevant professions. However, given the tendency for this to produce an homogenous approach to individual transactions, the survey sought to discover how often those drafting the agreements sought to vary the standard terms of the Agreement, other than those which were entirely specific referring to the parties, i.e.

rent and duration. Almost equal proportions said they varied the terms “often” (50 per cent) and “seldom” (48 per cent). Less than 3 per cent said that they “never” varied these other terms.

3.36 Interviewees were then asked how often they included a number of potential variations of terms which we regarded as “indicators” of the use of the flexibility in drafting agreements permitted by the 1995 Act, namely:

- Fixed or phased rents
- Rent indices and formulae
- Provision to assign or sub-let the FBT
- Relaxation of the bar on non-agricultural use.
- FRI terms
- Specific environmental agreements.
- Fixed return on landlord’s improvements.

The results are shown in Table 3.10 below.

Table 3.10 Inclusion of Specific Provisions in FBT Agreements *

Inclusion of Provision	Often (%)	Seldom (%)	Never (%)
Fixed or phased rents	34.9	36.5	28.6
Rent Indices and formulae	6.3	39.7	54.0
Provision to assign or sub-let	0.8	20.6	78.6
Relaxation of user clause	11.1	34.1	54.8
FRI terms	36.5	36.5	27.0
Environmental agreements	30.2	46.8	23.0
Fixed return on landlord’s improvements	6.3	39.7	54.0

*responses relate only to FBTs with a term of three years or longer

3.37 The responses suggest that variation from the norm remains an unlikely, but certainly not unheard of event especially where fixed or phased rents, FRI terms and environmental agreements are concerned (mirroring the sizeable minority of landlords who said that the introduction of FBTs has encouraged them to change these same aspects of the terms of their lettings). Responses were naturally more conservative in respect of some of the more adventurous provisions, assignment and sub-letting, fixed return and rent indices. However there will only be a limited number of agreements where such variations are likely to be appropriate in

any event; certainly they are less likely to be relevant on many bare land lettings. It is interesting to note that less than half ever relaxed the user clause and in only 11 per cent of cases was this done often.

3.38 The provisions of the agreement reflect the terms at the outset. It is often suggested that agreements are designed as much to protect against future uncertainty as certainty; a bar on non-agricultural use, for example, may be included more as a gateway, to prevent unexpected change, rather than as a perpetual bar on specific activity. Respondents were asked, therefore, how often they had received requests to vary the principal terms of agreements after they were established and the details are set out in Table 3.11 below.

Table 3.11 Requests to vary terms of established agreements*

Inclusion of Provision	Often (%)	Seldom (%)	Never (%)
Rent review regime	6.3	31.7	61.9
Assignment & sub-letting	2.4	31.7	65.9
User clauses	7.9	31.0	61.9
Repair clauses	5.6	29.4	67.5
Specific management agreements	7.9	46.0	46.0

*responses relate only to FBTs with a term of three years or longer

3.39 These replies suggest that a number of issues (such as constraint on non-agricultural use), which have been identified as matters of concern, are not so critical in practice and certainly not the focus of continuous debate between the parties. However the fact that more than a third of agents had been approached, albeit generally seldom, in every case suggests a degree of dialogue. This area was also addressed in the other surveys and whilst the outcomes there are illuminating there remains some doubt how relevant these specific issues will be to many agreements.

The farmers

3.40 The telephone interviews with the farmers gathered some information about the way in which FBT agreements had been drafted and the content of these agreements. Where respondents confirmed that they were, or had been, tenants of land let on an FBT (141 respondents) they were

asked a number of questions about that agreement¹. The great majority (78 per cent) of these FBTs had been let by private landlords. Asked whether the tenants themselves or their agents had had a major influence in the drafting of the agreement (including rent), 61 per cent said that they themselves did. Over one-third (39 per cent) said that they did not have a major influence, and this tended to be the case particularly for shorter tenancies (45 per cent with no major influence). There was little difference in involvement between the different holding types (bare land, complete holding etc.).

3.41 Only 17 per cent of the FBT tenants were asked to contribute to the cost of preparing the agreement over and above the stamp duty, with a higher rate of 23 per cent where tenants of private landlords were concerned.

3.42 We again examined a number of indicators within these 141 agreements of the use made of the flexibility contained within the 1995 Act. In doing so, it is important to distinguish the arrangements where different types of FBT are concerned (eg bare land, land and buildings or complete holding, bearing in mind that these tend to vary systematically in length of term). Half (50 per cent) the respondents were referring to agreements which covered only bare land (median term 5.5 years); 32 per cent to FBTs covering both land and farm buildings (median term 5 years) while the remaining 18 per cent were referring to “complete holdings” (median term 10 years). Just over a quarter (28 per cent) of this final group were let by County Councils.

Rent review

3.43 The main rent review provisions were fairly evenly divided between reviews to open market (37 per cent) and fixed rents (40 per cent) (Table 3.12). There was a tendency for the longer term tenancies to have reviews to open market levels or according to fixed increments¹. A greater proportion of the shorter term (up to 2 years) FBTs had fixed rents. Only one of the FBTs (less than 1 per cent) had rents reviewed according to an index or alternative formula, much lower than the 9.9 per cent reported for FBTs of more than 10 years in our 1997 study.

¹ Where respondents had experience of more than one FBT, they were asked to refer to “the FBT which you believe is the most important”.

Table 3.12 Rent review provisions by term of FBT

Term in years	Fixed Rent (%)	Rent reviewed.....				No provision for rent review (%)	Don't know (%)
		to open market levels (%)	by fixed increments (%)	based on index or other formula (%)	on other basis (%)		
Up to 2 yrs	53.8	15.4	7.7			7.7	15.4
>2 up to 5	43.1	39.7	8.6		1.7	5.2	1.7
>5 up to 10	27.8	41.7	22.2	2.8	2.8	2.8	
More than 10 yrs	40.0	33.3	16.7		3.3	3.3	3.3
All FBTs	39.6	36.7	13.7	0.7	2.2	4.3	2.9

3.44 As table 3.13 shows the fixed rents provision was most common for bare land lets whereas most (72 per cent) of the complete holdings contained provisions for review to open market levels.

Table 3.13 Rent review provisions by type of FBT

	Fixed Rent (%)	Rent reviewed.....				No provision for rent review (%)	Don't know (%)
		to open market levels (%)	by fixed increments (%)	based on index or other formula (%)	on other basis (%)		
Bare Land	50.7	20.3	18.8		1.4	4.3	4.3
Land and Buildings	38.6	43.2	11.4			6.8	
“Complete” holding	12.0	72.0	4.0	4.0	8.0		
All FBTs	39.6	36.7	13.7	0.7	2.2	4.3	2.9

¹ Probably reflecting this same tendency, our postal survey of the County Farms Estate showed that 60 per cent of their FBTs have reviews to open market levels, with reviews mostly at a three year interval.

Repairing liabilities

3.45 15 per cent of respondents were unable to recall their responsibilities for repairs under the FBT (0% among complete holdings; 16% where land and buildings). In comparison with the findings of the 1997 research and excluding the ‘don’t knows’, a similar percentage of FBTs, 34 per cent, (45 per cent in 1997) made the tenant fully responsible for repair liabilities on the holding¹. Half of these are of holdings where the arable enterprise is the most important enterprise.

3.46 8 per cent of FBTs provided for the landlord’s 100 per cent repair responsibility, (only 4 per cent in 1997) and it is interesting to note that of these ten tenancies, eight were for more than five years, mostly let by private landlords, three of which were for complete holdings. A substantially higher percentage of the respondents with these FBTs (80 per cent) said that they (or their agent) had had a major influence in the drafting of the agreement!

Assignment and subletting

3.47 A relatively high percentage of respondents (13 per cent) were, again, unable to indicate what the terms of their agreement were concerning assignment and subletting (21 per cent among land and buildings 4 per cent among complete holdings). Excluding these, 93 per cent said that their agreement prohibited both compared with 76 per cent prohibiting both in the 1997 study and a further 21 per cent prohibiting assignment alone². However, 97 per cent said that this did not have any impact on the way they used the land or buildings. Only six farmers had approached their landlord to review these terms and four of these received a refusal.

Other specific requirements or restrictions in the agreement

3.48 The farmers were asked if there were any restrictions in the agreement over the use of the land/buildings. Overall, nearly 20 per cent did not know (24 per cent where bare land; 12 per cent land and buildings; 8 per cent complete holdings) but of those who did, 73 per cent said that there were no restrictions, though the proportion was somewhat lower (61 per cent) on those FBTs that were “complete holdings”³. Of the others, most referred to specified or general

¹ The County Farms postal survey showed only 15 per cent of FBTs made the tenant responsible for all repairs. The great majority (70 per cent) specified responsibilities similar to those of SI 1473 (model agreements).

² The proportion where both subletting and assignment were prohibited was 69% on the county farm FBTs covered in the postal survey with a further 23 per cent prohibiting assignment.

³ Among the county farms, 80 per cent of the FBT agreements confined them to agricultural use only while 18 per cent allowed some limited diversified activities.

agricultural activities with only one indicating that they were permitted to have an equine diversification activity on the holding. All but one (who referred to the restrictions over planting) said that the restrictions had not imposed any restriction on the development of the business. Only two of the farmers had approached their landlord to vary the terms, one of whom was successful in gaining a conditional consent.

3.49 93 per cent of respondents said that there were no specific management requirements concerning environmental issues in their agreement (excluding the 8 per cent who did not know!)¹. The few that did mentioned obligations under an SSSI or Countryside Stewardship, the mowing of grass in game conservation areas and the trimming of hedges.

3.50 Among the focus groups we encountered some concern as to how agreements to enter agri-environmental schemes could be squared with the short-term nature of many FBTs. A significant percentage of the FBT tenants responding to our telephone survey indicated that they had considered entering an agri-environmental scheme (44 per cent) and only 10 per cent of these (six in all) said that the terms of their agreement had had an impact on their final decision, the majority referring to restrictions from the length of term of the FBT. Only 21 per cent of respondents had approached their landlord to enter into a scheme – the proportion being much the largest among those with complete holdings - and all were happy to facilitate the application.

Disputes and their resolution

3.51 Farmers with FBTs, on the whole (79 per cent), said that they knew how disputes would be resolved under the agreement, though the percentage was somewhat lower among those renting “complete holdings” (64 per cent) compared with those with a bare land FBT or land and buildings (where it was 84 per cent and 82 per cent respectively). Of only five cases where there had been a disagreement concerning the FBT, four of these being on bare land lets, all had been settled without recourse to a third party.

Conclusion

3.52 Our findings suggest that most FBT agreements are based on published standards with little variation included. But while they may not occur frequently, some variations do exist, particularly with respect to the rent review regime and repair clauses. User clauses, facilitating farm diversification, are varied much less frequently and the prohibition of assignment or sub-

letting is relaxed very rarely indeed. The position regarding environmental conditions is less clear. While the landlords and land agents suggest that they include environmental clauses within a substantial minority of their FBT agreements, less than one in ten of the farmers said that their agreement had any such clauses, though the proportion did rise to 50 per cent on the County Farms.

¹ The picture was very different on the county farms covered by the postal survey, where nearly 50 per cent of the FBTs had some special requirements, largely for environment/conservation issues.

CHAPTER 4 EXPERIENCES WITH FBTs

Introduction

4.1 Much of this chapter focuses on the telephone survey results examining the experiences of farmers, landlords and land agents across England and Wales with FBTs. The farmers' survey, covering a sample of farmers, some who had had experience with FBTs and some who had not, investigated the overall level of farmers' awareness of FBTs. In addition to this, the information gathered on the business activities of these farmers provides an opportunity to assess the extent to which such activity might have been affected by the introduction of the Agricultural Tenancies Act 1995.

The Farmers

Awareness of and involvement with Farm Business Tenancies

4.2 Somewhat surprisingly, 37 per cent of the farmers had not heard of farm business tenancies. Furthermore, there was a distinct difference between the awareness of the wholly owner-occupiers, where 68 per cent had not heard of FBTs, and the mixed tenure(no FBT) farmers at 47 per cent. Whilst this may be less surprising where some farmers owning their own farms may be less inclined to rent land, this apparent lack of awareness must be of concern, as it may indicate a degree of ignorance of one of the major vehicles available for existing farmers to expand to improve profitability or maintain viability, or to retire from active involvement in farming, thereby becoming potential landlords. Also of significance are the 59 per cent of farmers farming only land let under the AHA 1986 who had not heard of FBTs.

4.3 These results contrast with the 1997 research where only 24 per cent of tenant respondents and 16 per cent among the landlords / owner-occupiers had not heard of FBTs. This may be explained by the much lower degree of coverage in the press and elsewhere, compared with that during the run-up to and immediate period following the introduction of FBTs. A level of complacency over the detail of the Act may also be indicated here with the responsibility for setting up the agreement being passed to the professionals.

4.4 The survey questions on the nature of the businesses provide some further detail, indicating that awareness was least good amongst farmers in the North Wales sub-sample (50 per

cent heard of FBTs) and best amongst farmers in the Lincolnshire sub-sample (82 per cent heard of FBTs). It also seems clear that the age of the principal in the farming business is a factor. For those under 30 years of age, two thirds had heard of FBTs, somewhat lower than the 81 per cent of farmers in the 30-40 age group. From there, however, awareness declined with age to only 35 per cent where the principal in the business was above retirement age (65). Perhaps also not surprising, was the finding that awareness of FBTs increased with size of business from only a third of farmers farming less than 25 ha to 78 per cent for those farming 200 ha or more.

Involvement with farm business tenancies

4.5 61 per cent of the farmers who had heard of FBTs had been, or were, involved as a tenant with them and this produced detailed evidence of experience with 141 FBTs¹.

4.6 The remaining 91 farmers (39 per cent of respondents) had heard of FBTs but had had no previous experience of them. Of these, 77 per cent said that they had not been interested in taking land on FBTs. They gave a variety of reasons ranging from the neutral such as ‘no need for additional land’ and ‘busy enough already’ (54 per cent) and ‘never thought about it’ or ‘don’t know’ (6 per cent) to the more negative including ‘terms too short’, ‘too complicated’, ‘lack of succession’ (14 per cent) and the lack of land to rent, mentioned by 18 per cent of respondents.

4.7 Similarly, for those farmers who had been interested in FBTs but who had not become involved in them (only 23), reasons included satisfaction with their existing business (10 per cent), the lack of opportunities in their area (32 per cent) and lack of success with tendering (16 per cent), along with the more negative characteristics of the agreements themselves including the level of rents and the lack of security associated with FBTs (26 per cent).

4.8 When asked about the help that extra land on an FBT would make to the business if it became available, 42 per cent of these farmers who had not been involved with FBTs said that this would not really help or they would not be interested in it. On the other hand 45 per cent gave more positive responses highlighting the benefits that would accrue from expansion of the business and the spreading of fixed costs, with a further 13 per cent commenting that they would not rule it out altogether, their interest depending on some condition such as IACS registration and proximity to the existing unit.

¹ It should be borne in mind that our samples were deliberately selected to include a high proportion of farmers involved with FBTs (see Appendix 3)

The characteristics of the farming businesses

4.9 As well as geographical distribution, tenure type and farm type, the first section of the questionnaire sought to establish information on the economic activities within businesses of differing characteristics, considering business structure, business size, business age and farmer age.

Farm type

4.10 The sample was drawn to provide responses from a range of different farm types as indicated in Appendix 3. The respondents were fairly evenly spread as far as main enterprise was concerned with a small number identifying themselves as mixed crop and livestock and 21 horticultural enterprises (Table 4.1). It is noticeable that 37 per cent of the businesses occupying FBT only land were mainly arable businesses which goes some way to confirming the usefulness of FBTs in such farming systems.

Table 4.1 Main farm enterprise

			Main farming enterprise.					Total	
			Dairy	Livestock	Mixed crop and livestock.	Arable	Horticulture		Other
Land Tenure	Wholly owned (Owner-occupier)	Count % within Row	31 24.8%	49 39.2%	9 7.2%	33 26.4%	2 1.6%	1 .8%	125 100.0%
	Mixed tenure (No FBTs)	Count % within Row	31 26.1%	24 20.2%	11 9.2%	45 37.8%	8 6.7%		119 100.0%
	Mixed tenure inc. FBTs	Count % within Row	33 34.0%	16 16.5%	3 3.1%	38 39.2%	7 7.2%		97 100.0%
	FBT only	Count % within Row	10 26.3%	9 23.7%	1 2.6%	14 36.8%	4 10.5%		38 100.0%
Total		Count % within Row	105 27.7%	98 25.9%	24 6.3%	130 34.3%	21 5.5%	1 .3%	379 100.0%

Business structure

4.11 Partnerships provide the structure for the greater majority of the businesses with 66 per cent administered in this way (Table 4.2). This is not surprising for family farms and others where resources are provided by more than one party. It is noticeable that a higher proportion of businesses occupying FBT land alone, compared with other tenure types, are sole traders, perhaps indicating some influence of businesses on county farms estates in this part of the survey.

Table 4.2 Business structures of the farmer respondents

		Frequency	Percent	Valid Percent
Valid	Sole trader	94	24.8	25.8
	Partnership	240	63.3	65.8
	Company	30	7.9	8.2
	Other	1	.3	.3
	Total	365	96.3	100.0
	No Reply	14	3.7	
Total		379	100.0	

Business size

4.12 The mean business size was 196 ha with a median of 121 ha. 73 per cent of businesses are less than 200 ha, with 38 per cent between 25 – 99 ha (Table 4.3). There is a clear tendency for the wholly owner-occupied holdings to be smaller (median 89 ha) with mixed tenure holdings, whether including FBT land or not, being larger (median 119 ha and 162 ha respectively). A median of 121 ha was recorded for businesses occupying land only on a FBT, considerably more than the median of 67 ha for businesses occupying land only under the AHA 1986.

Table 4.3 Business size (hectares)

			Total area farmed (Hectares)					Total
			< 10	10<25	25<100	100<200	>=200	
Land Tenure	Wholly owned (Owner-occupier)	Count	3	11	56	37	18	125
		% within Row	2.4%	8.8%	44.8%	29.6%	14.4%	100.0%
	Mixed tenure (No FBTs)	Count		5	47	27	40	119
		% within Row		4.2%	39.5%	22.7%	33.6%	100.0%
	Mixed tenure inc. FBTs	Count			25	32	39	96
		% within Row			26.0%	33.3%	40.6%	100.0%
	FBT only	Count		2	15	14	7	38
		% within Row		5.3%	39.5%	36.8%	18.4%	100.0%
Total		Count	3	18	143	110	104	378
		% within Row	.8%	4.8%	37.8%	29.1%	27.5%	100.0%

Business age

4.13 Only 5 per cent of respondents had been farming for less than seven years with the majority (58 per cent) having farmed for more than twenty years (Table 4.4). 13 per cent had been farming for ten years or less, and 29 per cent of these were farming on FBT land alone. The importance of FBTs is indicated by the 38 per cent of farmers in this group who have been farming in their own right for ten years or less.

Table 4.4 How long have you been farming in your own right?

			How long have you been farming in your own right?					Total
			0-6years	7-10years	11-15 years	16-20 years	> 20 years	
Land Tenure	Wholly owned (Owner-occupier)	Count	7	8	8	18	82	123
		% within Row	5.7%	6.5%	6.5%	14.6%	66.7%	100.0%
	Mixed tenure (No FBTs)	Count	2	11	11	20	74	118
		% within Row	1.7%	9.3%	9.3%	16.9%	62.7%	100.0%
	Mixed tenure inc. FBTs	Count	1	6	10	24	54	95
		% within Row	1.1%	6.3%	10.5%	25.3%	56.8%	100.0%
	FBT only	Count	8	6	5	10	8	37
		% within Row	21.6%	16.2%	13.5%	27.0%	21.6%	100.0%
Total		Count	18	31	34	72	218	373
		% within Row	4.8%	8.3%	9.1%	19.3%	58.4%	100.0%

4.14 Farmers were asked how long they had been farming on their main unit. 55 per cent had been farming on their main unit for more than 20 years, whilst 9 per cent had farmed their main unit for less than seven years (Table 4.5).

Table 4.5 How long have you been farming your main unit?

			How long have you been farming your main unit?					Total
			0-6 years	7-10 years	11-15 years	16-20 years	> 20 years	
Land Tenure	Wholly owned (Owner-occupier)	Count	7	6	8	19	80	120
		% within Row	5.8%	5.0%	6.7%	15.8%	66.7%	100.0%
	Mixed tenure (No FBTs)	Count	4	9	10	20	73	116
		% within Row	3.4%	7.8%	8.6%	17.2%	62.9%	100.0%
	Mixed tenure inc. FBTs	Count	3	16	8	22	44	93
		% within Row	3.2%	17.2%	8.6%	23.7%	47.3%	100.0%
	FBT only	Count	19	4	4	5	4	36
		% within Row	52.8%	11.1%	11.1%	13.9%	11.1%	100.0%
Total		Count	33	35	30	66	201	355
		% within Row	9.0%	9.6%	8.2%	18.1%	55.1%	100.0%

4.15 15 per cent of respondents indicated that they were first generation farmers with 61 per cent of these farming land owned by themselves or in the mixed tenure(no FBT) group, the balance farming with FBT land as part of their businesses (Table 4.6).

Table 4.6 First generation farmers

			First generation farmer.		Total
			Yes	No	
Land Tenure	Wholly owned (Owner-occupier)	Count	17	107	124
		% within Row	13.7%	86.3%	100.0%
	Mixed tenure (No FBTs)	Count	18	99	117
		% within Row	15.4%	84.6%	100.0%
	Mixed tenure inc. FBTs	Count	13	83	96
		% within Row	13.5%	86.5%	100.0%
	FBT only	Count	9	26	35
		% within Row	25.7%	74.3%	100.0%
Total		Count	57	315	372
		% within Row	15.3%	84.7%	100.0%

Farmer age

4.16 The mean age of the principal across the respondents was 55 years whilst the median was 52. Only 2 per cent of the farmers were under 30 years of age and only 19 per cent were under 41 (Table 4.7). It is clear that the farmers farming only FBT land, in this sample, are considerably younger than the other farmer groups. 53 per cent of the FBT only farmers are under 41 with a mean age of only 42 (median of 40). This is significantly different from the AHA only farmers where the mean is 57 and twice the proportion of mixed tenure (with FBT) farmers where the mean was 59. This may be partly explained by the fact that a quarter of the FBT only holdings are on county farms estates.

Table 4.7 Farmer age

			Age of principal in business.					Total
			Under 30	30 - 40	41 - 50	51- 64	65 & over	
Land Tenure	Wholly owned (Owner-occupier)	Count	2	12	32	53	26	125
		% within Row	1.6%	9.6%	25.6%	42.4%	20.8%	100.0%
	Mixed tenure (No FBTs)	Count	1	14	29	42	33	119
		% within Row	.8%	11.8%	24.4%	35.3%	27.7%	100.0%
	Mixed tenure inc. FBTs	Count	1	23	35	31	6	96
		% within Row	1.0%	24.0%	36.5%	32.3%	6.3%	100.0%
	FBT only	Count	2	18	12	5	1	38
		% within Row	5.3%	47.4%	31.6%	13.2%	2.6%	100.0%
Total		Count	6	67	108	131	66	378
		% within Row	1.6%	17.7%	28.6%	34.7%	17.5%	100.0%

4.17 The majority of the principals in the survey were between 41-64 (63 per cent) and

18 per cent were above the normal retirement age of 65. These statistics may overlook the age of other active party(ies), such as a son or daughter, in the business, a situation which is often suggested as explaining the high average age of the farmer in England and Wales from the June Census figures.

4.18 It seems clear from the results that principals in farming businesses are significantly more senior in age in Kent and East Sussex (mean of 57 compared with the mean for Wales of 51). This may be due to individuals ‘retiring’ to the country as farmers or reflect the capital required for farming in this part of the country.

Farmers’ expansion, investment and diversification activity in the last six years

Expansion and investment activity and land tenure

4.19 One of the objectives of the ATA 1995 was to ‘promote economic efficiency in agricultural land use.’ The survey, therefore, investigated the farmers’ expansion, investment and diversification activity in the last six years (Table 4.8).

Table 4.8 Expansion, investment and diversification activity and land tenure

	Farmers investing/expanding in the last six years <i>rank</i>	Farmers diversifying in the last six years <i>rank</i>
All respondents	62 % (232)	20% (76)
Wholly owner occupied	51% (64) 6	19% (23) 4
Mixed tenure(no FBT)	56% (66) 4	25% (30) 2
Mixed tenure (with FBT)	77% (75) 1	19% (18) 4
FBT only	71% (27) 3	13% (5) 6
AHA 1986 only	45% (19) 7	23% (10) 3
AHA 1986-predominant ¹	56% (57) 4	26% (26) 1
ATA 1995-predominant	75% (58) 2	10% (8) 7

¹ Mixed tenure respondents were re-categorised into two groups for each tenancy type: those with tenanted land of more than 20 hectares (either ATA or AHA) where this land was more than 50 per cent of the total holding, being categorised as ‘AHA1986-predominant’ or ‘ATA 1995-predominant’. This resulted in 103 businesses in the AHA predominant group and 77 businesses in the ATA predominant group.

4.20 62 per cent of the farmers had expanded or invested in the farm business within the last six years, with apparently greater activity from the farmers using FBTs perhaps not surprisingly as the FBT was one of the main means of expansion during that period. 20 per cent had diversified their businesses within the last six years with the greatest frequency of such activity amongst the AHA1986-predominant businesses. There was a statistically significant difference between the AHA 1986 only farmers and the FBT only farmers concerning expansion and investment but no statistical significance to the different frequencies of diversification activity.

4.21 It is interesting to note that the greatest frequency of activity overall was amongst the Mixed tenure (with FBT) farmers, with most involved in expansion and investment and almost an average proportion involved with diversification. The AHA 1986-predominant farmers were also active, although much less in expansion and investment and much more in diversification, as the main group of diversifiers.

4.22 A smaller percentage of farmers who are wholly owner-occupiers have expanded or invested within this period. This may be for a range of reasons including, satisfaction with the business and adequacy of farm size, investment away from the farming business, or financial pressure, uncertainty of the future or just a degree of naivety over the future prospects of their business.

4.23 Not surprisingly, a number of farmers had been involved in a range of activity and multiple responses were accepted from those who had been involved in more than one form of expansion or investment in the last six years (Table 4.9).

Table 4.9 Form of expansion / investment activity in the last six years

per cent of multiple responses	per cent involved (ranked)	Form of expansion / investment in the last six years					TOTAL
		More land	Add buildings	Fixed equipment	Stock numbers	Other ²	
All those expanding / investing	100	38	17	14	23	8	100
Mixed tenure (with FBT)	77	52	11	15	15	7	100
ATA 1995-predominant	75	49	13	10	24	4	100
FBT only	71	28	21	13	33	5	100
Mixed(no FBT)	56	33	18	15	25	9	100
AHA 1986-predominant	56	41	15	20	15	9	100
Wholly owner occupied	51	31	21	13	25	10	100
AHA only	45	32	16	13	32	7	100

4.24 38 per cent of the responses involved taking on more land, whilst 31 per cent indicated investment in additional buildings or fixed equipment. A further 23 per cent of responses indicated increases in stock numbers.

4.25 Many of the ATA 1995-predominant farmers have been involved in expanding through the FBT but what is also noticeable are the 34 per cent of responses for the FBT only businesses (equivalent to the percentage of responses in this category for the owner-occupiers) where the activity has involved investment in additional buildings and fixed equipment. Such investment would have been on FBT occupied land. Where the AHA 1986-predominant group are concerned, 27 per cent reported that the investment had been on their own land, 58 per cent on AHA-tenanted land and 13 per cent on FBT land.

4.26 31 per cent of the responses from the owner-occupiers involved taking on more land, by purchase or on licence. Initial interpretation may suggest the more progressive management of the mixed tenure businesses, identifying the need for expansion, the importance of reinvestment and the development of the resources within the business. Conversely, however, these

² 'Other' includes machinery and quota

differences may reflect the greater needs of the businesses to increase their size and the availability of equipment.

4.27 From 73 cases where the investment was reported as being made on tenanted land, the landowner was reported as having contributed to the investment in only 14 per cent of cases. It is perhaps interesting that, whereas only 7 per cent of the mixed tenure farmers had received input from the landlord, in the case of the 19 farmers on FBT only land, 32 per cent had experienced some investment from the landlord. In five of these six cases the landlords were County Councils.

Other characteristics of those who have expanded and / or invested in the last six years

4.28 It is clear that expansion and investment activity in the last six years has been least common with farmers in our Kent and East Sussex area (56 per cent), with the greatest proportion of farmers involved in expansion or investment found in the Dorset and Somerset sub-sample (65 per cent). This may be affected by a number of factors including the previous history of such activity in that area, the pressures on the predominant farm types during that period and the value and availability of agricultural property across the country. In addition, it is noticeable that businesses in the Kent and East Sussex area have been considerably more active with diversification in the period, perhaps adopting, therefore, different strategies for dealing with the decline in farm incomes (Table 4.10).

Table 4.10 Expansion, investment and diversification activity and location

			Expanded or Invested in the last 6 years	Diversified in the last 6 years
Area	Wales	Count	65	18
		% in Area	63.7%	18.0%
	Kent & E Sussex	Count	47	30
		% in Area	56.0%	35.3%
	Dorset & Somerset	Count	66	20
		% in Area	64.7%	19.6%
	Lincolnshire	Count	54	8
		% in Area	60.7%	19.6%
Total		Count	232	76
		% of all respondents	61.5%	20.3%

4.29 Such geographical differences may also be explained by the greater number of dairy farmers reported as having expanded or invested in the business in the last six years (71 per cent). Where the arable enterprise was most important, only 59 per cent reported such changes. Perhaps not surprisingly, the larger businesses have been more likely to invest / expand, with 75 per cent of such businesses involved with such activity within the last six years compared with only 49 per cent of businesses of less than 100 ha.

4.30 The age of the principal of the business also appears to have an impact on the frequency of investment and expansion activity with the mean age, for those that have, of just under 51 compared with 55.5 for those that have not. Also worthy of comment is the finding that the businesses most recently established on their present unit were more likely to have invested/expanded; 72 per cent where the main unit had been farmed for 10 years or less, compared with 60 per cent where it had been farmed for more than ten years.

Diversification activity and land tenure

4.31 Overall, 20 per cent of respondent farmers (76 cases) had diversified in the last six years (Table 4.11). This compares with the total proportion of farmers with some form of diversification activity in the late 1980's of 42.4 per cent in England and 34.5 per cent in Wales (McInerney *et al* 1989).

Table 4.11 Diversification activity and land tenure

	Farmers diversifying in the last six years		Farmers investing / expanding in the last six years	
	<i>rank</i>		<i>rank</i>	
All respondents	20% (76)		62% (232)	
AHA 1986-predominant	26% (38)	1	56% (57)	4
Mixed tenure(no FBT)	25% (30)	2	56% (66)	4
AHA 1986 only	23% (10)	3	45% (19)	7
Wholly owner occupied	19% (23)	4	51% (64)	6
Mixed tenure (with FBT)	19% (18)	4	77% (75)	1
FBT only	13% (5)	6	71% (27)	3
ATA 1995-predominant	10% (8)	7	75% (58)	2

4.32 Perhaps counter to expectation, the greatest frequency of recent activity with diversification is amongst those farmers occupying under the AHA 1986 (ie. the AHA-

predominant, Mixed tenure(no FBT) or AHA 1986 only groups). This somewhat contradicts suggestions that diversification is constrained on AHA holdings. The truth is probably nearer to the increasing need for these businesses to seek alternative means of supporting the rental payments for the holdings and the greater flexibility of the landlords in such circumstances. It may also expose a potential difference in the tenacity and industriousness of established agricultural tenants.

4.33 What is also noticeable is the lower propensity for farmers occupying land only under an FBT to have been involved in such activity (13 per cent). Whilst this may indicate restrictions in the agreement concerning diversification, it may, alternatively, reflect the younger age of these businesses and their principals, the focus on agricultural production, possibly a shortage of capital with which to diversify or simply a choice between diversification and expansion. In addition to this, the size of the business may also have an influence with 45 per cent of the FBT only holdings below 100 hectares leading, perhaps, in some cases, to the desire or need to concentrate on farming activities.

4.34 A wide array of diversification opportunities have been progressed in the last six years, with the greatest share as 'changes in farming practice' (17 per cent), equestrian involvement (16 per cent), employment off the farm (12 per cent), contracting (11 per cent), letting property (9 per cent) and the establishment of farm shops in six cases (8 per cent).

Other characteristics of those who have diversified within the last six years

4.35 Diversification activity was more frequently reported for businesses in Kent and East Sussex (35 per cent) with, at the other extreme, much less activity in Lincolnshire (only 9 per cent of farmers in that area). This is undoubtedly due to the proximity of markets and possibly also the availability of capital.

4.36 The very small (less than 10 ha) and much larger (200ha or more) businesses were seen to diversify more with figures of 33 per cent (one of only three farmers in this size category) and 24 per cent respectively. Corporate businesses were also more active, in this direction, with 38 per cent having diversified compared with only 17 per cent of sole traders. Finally, businesses with horticulture as their main enterprise had diversified more frequently at 48 per cent compared with dairy businesses at 14 per cent.

4.37 Interestingly and, again, against what might have been predicted, the age of the principal in the business had, in this survey, no apparent effect on the diversification activity. The mean age of the principal in the diversifying businesses was 52.96, with a mean of 52.70 for those that had not diversified within the last six years. This may indicate a balance between the motivation and education of the young and the establishment and capital of those more senior in their businesses. It may also, however, mask the presence of a younger ‘diversifier’ in the business, not reported as the ‘principal’ in this survey.

The New Entrants

4.38 One of the main objectives of the ATA 1995 was to increase the opportunities for new entrants and, following discussions at the Panel of Experts meeting, the telephone element of the study was extended to cover 60 new entrants as detailed in Appendix 3. The team was interested also in the activities of new entrants who started in farming before the introduction of the Act as compared with those who entered farming post 1995. The results of this part of the study are presented in Appendix 2.

The Landlords

The characteristics of the landlords

4.39 Collectively, the respondents are involved in the letting in the region of 270,000 ha of agricultural land, with a mean area per property of 4,150 ha and a median of 1,821 ha (Table 4.12). Respondents are heavily weighted towards the larger estates with 61 per cent of more than 2,000ha. This should be remembered when considering the overall results.

Table 4.12 Who are the owners and what is the size of the properties ?

			What is the size of the property?				Total
			more than 10ha <400ha	400-999ha	1000-2000ha	more than 2000ha	
Who are the owners of the property?	private	Count	6	6	5	13	30
		% within Row	20.0%	20.0%	16.7%	43.3%	100.0%
	utility companies	Count				2	2
		% within Row				100.0%	100.0%
	central government	Count			1		1
		% within Row			100.0%		100.0%
	county councils	Count		1		3	4
		% within Row		25.0%		75.0%	100.0%
	other local government body	Count				2	2
		% within Row				100.0%	100.0%
	traditional institutions (inc Crown & Duchies)	Count				3	3
	% within Row				100.0%	100.0%	
financial institutions	Count	1		1	4	6	
	% within Row	16.7%		16.7%	66.7%	100.0%	
conservation charities (inc. NT & RSPB)	Count		1	2	9	12	
	% within Row		8.3%	16.7%	75.0%	100.0%	
Other	Count			2	5	7	
	% within Row			28.6%	71.4%	100.0%	
Total	Count	7	8	11	41	57	
	% within Row	10.4%	11.9%	16.4%	61.2%	100.0%	

4.40 Over this area, respondents are involved with 4,138 agricultural tenancies with a mean of 66 per respondent and a median of 16 (Table 4.13). 41 per cent were involved with in excess of twenty agricultural lettings each, providing a useful base from which to seek attitudes and opinions.

Table 4.13 Size of property and number of agricultural lettings

			What is the size of the property?				Total
			more than 10ha <400ha	400-999ha	1000-2000ha	more than 2000ha	
How many agricultural lettings are there? - 0-5	0-5	Count	7	3	4	4	18
		% within Row	38.9%	16.7%	22.2%	22.2%	100.0%
	6-10	Count		2	1	3	6
		% within Row		33.3%	16.7%	50.0%	100.0%
	11-15	Count			2	3	5
		% within Row			40.0%	60.0%	100.0%
	16-20	Count			2	6	8
		% within Row			25.0%	75.0%	100.0%
	20+	Count		2	2	22	26
		% within Row		7.7%	7.7%	84.6%	100.0%
	Total	Count	7	7	11	38	63
	% within Row	11.1%	11.1%	17.5%	60.3%	100.0%	

4.41 A cross section of landlords were surveyed with private landlords comprising almost 50 per cent of the response (30). The balance came from twelve conservation charities, in addition to a number of county councils, government bodies, financial institutions and traditional institutions (Table 4.14). Twelve of the responses were from Wales representing 18 per cent of the total number.

Table 4.14 Who are the owners and how long has the property been owned ?

			How long has the property been owned?		Total
			6-20 years	more than 20 years	
Who are the owners of the property?	Private Landlords	Count	1	29	30
		% within Row	3.3%	96.7%	100.0%
		% within Column	20.0%	46.8%	44.8%
	Non private landlords	Count	4	33	37
		% within Row	10.8%	89.2%	100.0%
		% within Column	80.0%	53.2%	55.2%
Total	Count	5	62	67	
	% within Row	7.5%	92.5%	100.0%	
	% within Column	100.0%	100.0%	100.0%	

4.42 Most of the properties have been owned for more than twenty years (93 per cent) with only five properties owned for less. It is therefore not possible to draw separate conclusions for the activities of the ‘new landowners in the rural market’.

Management Objectives

4.43 The landlords were asked to indicate the two main management objectives for owning the property. Anecdotal evidence indicates that where this may be easy to answer for institutional owners, for private landlords this is less the case. This is not borne out by the response where the private landlords provided an average of 1.8 responses each, as compared with only 1.47 each from the non-private landlords (affected by single responses from the utility companies and central government agencies) (Table 4.15).

Table 4.15 The landlords and their main management objectives

			What are the two main management objectives of owning the property?						Total	
			preserve and enhance return from the property	retain as family home	protect the property for the next generation of family	provide rural employment	improve the environment	to hold pending development		Other
Who are the owners of the property?	Private n = 30	Count	19	7	11	2	14	1		54
		% within Row	63.3%	23.3%	36.7%	6.7%	46.7%	3.3%		
	Non Private n = 36	Count	18		1	4	14	6	8	51
		% within Row	50.0%		2.8%	11.1%	38.9%	16.7%	22.2%	
Total n = 66	Count	37	7	12	6	28	7	8	105	
	% within Row	56.1%	10.6%	18.2%	9.1%	42.4%	10.6%	12.1%	100.0%	

4.44 The economic imperative is evident with 56 per cent of the 105 responses selecting the option ‘the preservation and enhancement of the return from the property’. A further 42 per cent selected ‘the improvement of the environment’. Not unexpectedly, the private landlords selected a wider range of objectives, with ‘preserving and enhancing the return from the property’ selected in 63 per cent of cases.

4.45 The dominant farm type on properties is ‘mixed crop and livestock’ or ‘livestock’ (together 64 per cent). Three landlords were unable to settle for a single category and these have therefore been removed from the responses to this question. Two of these responses covered properties with dairy and arable main enterprises with the other, an arable and horticultural property.

Proportion of complete holdings

4.46 Nearly half of the landlords (45 per cent) said that between 75%-100% of their agricultural lettings were complete holdings. 43 per cent said that less than 25% of the land was let on FBTs, which perhaps confirms that many of these complete holdings are let under the AHA 1986. It is interesting also that 60 per cent (30) of the private landlords said that most of their agricultural tenancies (75%-100%) were of complete holdings.

Landlords’ experiences with Farm Business Tenancies

4.47 The integration of the FBT in the letting arrangements on properties is varied across the range of landlords. Overall, 30 per cent are using FBTs on more than 50% of their let land (Table 4.16). In many cases this is the main option and these figures do indicate the level of turnover/letting activity in the market. Only 11 per cent said that none of their let agricultural land was let under FBTs which must be considered as encouraging, with existing AHA tenancies re-let on FBTs and land from owner- occupation and investment properties also let under the new legislation.

Table 4.16 Proportion of land let on agricultural tenancies (by area) let on FBTs

			What proportion of the land let on agricultural tenancies is let on FBTs?					Total
			None	<25%	25-49%	50-74%	75-100%	
Who are the Landlords	Private	Count	5	10	5	3	7	30
		% within Row	16.7%	33.3%	16.7%	10.0%	23.3%	100.0%
	Non Private	Count	2	18	6	7	3	36
		% within Row	5.6%	50.0%	16.7%	19.4%	8.3%	100.0%
Total		Count	7	28	11	10	10	66
		% within Row	10.6%	42.4%	16.7%	15.2%	15.2%	100.0%

4.48 Of 57 respondents who had had experience with FBT lettings, 90 per cent said that they had had no difficulties with the preparation of the agreement. Those who had, referred to the complexity of the agreement compared with the simplicity of grass keep agreements. Two respondents mentioned difficulties with the milk quota clause.

Changes to letting activity since the introduction of FBTs

4.49 The second section of the questionnaire sought to investigate the significance of FBTs in a range of strategic changes to their properties since 1995.

- nearly a quarter (24 per cent) of respondents had purchased land since 1995 for letting on FBTs covering a total area of 3,925 ha (mean 280 ha and median 182 ha). This activity was seen across the range of landlords with fewer private landlords involved (10 per cent) and no such activity from the utility companies and central government.
- over half of the landlords (57 per cent) had amalgamated or rationalised the property using FBTs in the last six years, with such activity less common amongst the private landlords (43 per cent).
- 62 per cent of landlords had taken land back previously let on AHA 1986 tenancies for letting on FBTs, covering an area, from 35 respondents, in excess of 18,100 ha (mean 517 ha, median 136 ha).
- Fifteen landlords had released land from in-hand farming (including land on grazing licences) for letting on FBTs covering an area of 3,245 ha (mean 250ha, median

100ha). Of the responses, five mentioned improved returns from letting compared with their farming in-hand, two had retired from farming and three mentioned that they were now using FBTs instead of grazing licences.

- three landlords had taken land back from contract farming or share farming, involving, from 2 respondents, an area of only 68 ha. One commented on the control provided by in-hand farming during gravel workings and the other two referred to the better returns from FBTs.
- two landlords had taken land back, previously let on FBTs for in-hand, contract or share farming, covering an area, from 2 respondents of 168 ha. One of these was temporarily farming the holding in-hand prior to re-letting under a FBT (following the failure of the FBT tenant!), whilst the other had taken land back for grazing as the tenant was refusing to pay the rent under the FBT.

Investment and the impact of Farm Business Tenancies

4.50 Almost two thirds of the landlords had made significant investments in buildings and/or fixed equipment in the last six years, and of 51 responses given (including some multiple responses), 25 per cent of this investment had been made on land let under an FBT; most of the balance was on land let under an AHA 1986 tenancy with only 18 per cent on land farmed in-hand. The landlords, perhaps surprisingly, were evenly divided when asked if the occupation of the land had had any influence on the investment made (53 per cent 'no' / 47 per cent 'yes'). However, several landlords mentioned the preference for investment on in-hand property and there was a clear difference in the attitudes of the private landlords, with 70 per cent indicating that the nature of the occupation had influenced the investment made.

4.51 For the landlords as a whole, when dealing with investment on FBT land, only 17 per cent of landlords (14 per cent of private landlords) said that they were averse to making any investments on land let out on a FBT, although they were noted as often being of bare land (and often on short terms) with less call for investment.

CHAPTER 5 ACHIEVEMENTS AND IMPACTS – THE RESPONDENTS' VIEWS

Achievements of the ATA 1995

Introduction

5.1 Notwithstanding consultation and parliamentary procedure, new legislation will affect different parties in different ways. One of the main objectives of this research is to identify the perceptions of these different parties to inform the review of the legislation. This chapter focuses on the responses from the parties to the telephone survey as well as considering the feedback from the focus groups conducted across the country.

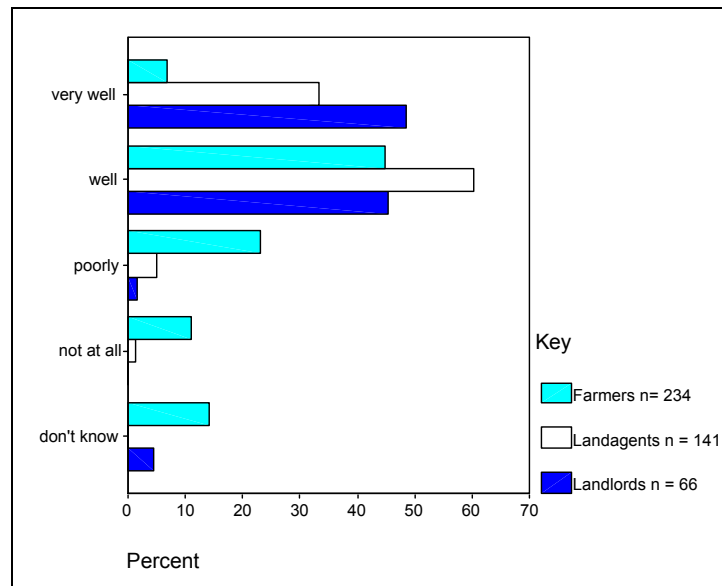
How well have the objectives of the Agricultural Tenancies Act 1995 been met?

5.2 Farmers, land agents and landlords were uniformly asked how well they felt that FBTs had met the main objectives of:

- encouraging more letting of agricultural land
- increasing the opportunities for new entrants
- promoting economic efficiency in farming in England and Wales³

5.3 It is worth commenting that the farmers felt least equipped to deal with this question with 14 per cent unable to provide an answer to the first and second parts and 28 per cent not prepared to give an answer concerning the impact of the Act on the economic efficiency of farming. This may have been due to lack of experience with FBTs or, alternatively, a reflection of the strong message that emerged in the focus groups that it was not the design and construction of the 1995 legislation that was the driving force in decisions relating to the letting of land but the economic and financial externalities, in particular, the farming recession and the tax repercussions of any particular decision. A small proportion of landlords were also unable to provide an answer to parts of this question (4.5 per cent, 12 per cent and 14 per cent respectively).

³ The wording of the question to the Land Agents was 'How well do you feel that FBTs have met the objective of promoting economic efficiency making the market for rented land responsive to market forces.'

Figure 5.1 Encouraging more letting of agricultural land

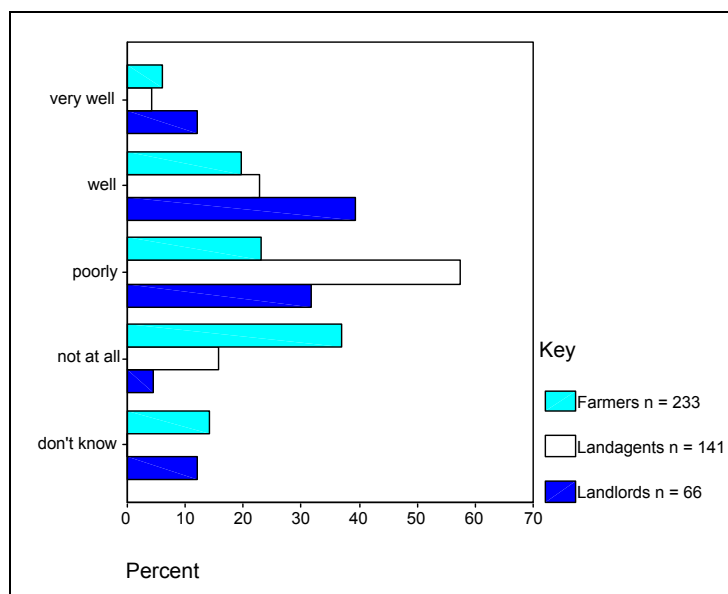
5.4 Excluding the ‘don’t knows’, there was a very positive feeling (78 per cent) towards the increase in the letting activity brought about by the Act (Fig. 5.1). This response was significantly moderated by the less positive feeling of the farmers (60 per cent well or very well) compared with the land agent and landlords (94 per cent and 98 per cent respectively). Those farmers who had not been involved with FBTs were much less positive with only 48 per cent in the ‘well’ or ‘very well’ categories, perhaps reflecting individual lack of success in obtaining a FBT or a degree of dissatisfaction over the characteristics of FBTs ‘on the market’ such as short terms and high rental levels. It is, however, interesting to note that the new entrants were very much more positive, with the CFE and the non-CFE new entrants recording 79 per cent and 67 per cent respectively in the these categories.

5.5 The focus groups identified one group of farmers who had specifically benefited from the legislation; the specialist grower who required ‘clean’ land on a regular basis. Finding land and landlords willing to let that land had become a far more straightforward process. Similarly, a number of farmers who had traditionally rented grazing now found themselves able to rationalise their rented holdings closer to the home farm due to extra land being made available through FBTs.

5.6 The Act was also identified at each of the focus groups as providing an exit strategy for the owner-occupier. The trend appeared most noticeable in the two southern groups, perhaps, because alternative employment beyond agriculture was most available there. Allied to this observation was the feeling that it was not only the older owner-occupier farmer who was looking for an exit route. Farmers in the age range of 45-50 years were now openly talking of retirement and tenants in the age range of 30-50 years were considering surrendering tenancies.

5.7 The land agents and farmers were almost identical in their negative feeling towards the legislation concerning achievement of the objective to increase the opportunities for new entrants with around 70 per cent in the ‘poorly’ or ‘not at all’ categories (Figure 5.2). Farmers involved with FBTs were marginally less dismissive with 67 per cent in these categories. What is also interesting is the opposing view provided by the landlords where almost 60 per cent felt that the Act had met this objective ‘well’ or ‘very well’.

Figure 5.2 Increasing opportunities for new entrants



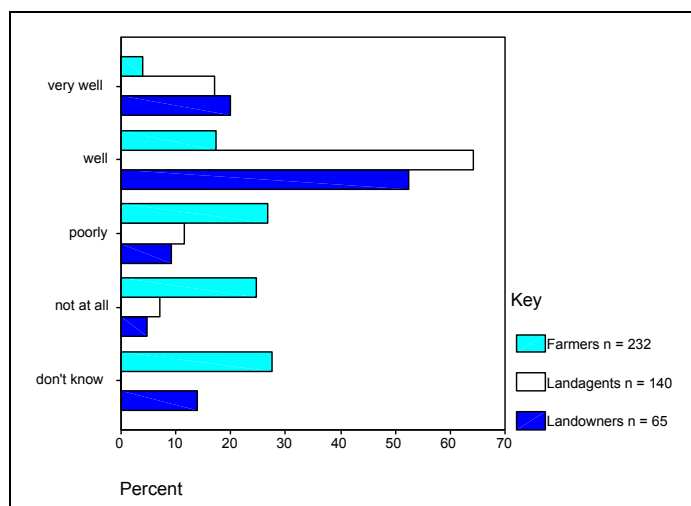
5.8 The new entrants were divided on this question. The CFE new entrants were much more positive than their counterparts on non-CFE estates with over half scoring ‘well’ or ‘very well’ compared with only 19 per cent in the non-CFE farmers. This perhaps reflects an appreciation of the use of FBTs on County Farms Estates in providing a more flexible vehicle to achieve the objectives of the estates. The response from those on non-CFE estates may relate to a struggle to obtain occupation of a holding as a result of competition from larger farmers for high FBT rents.

5.9 In the focus groups there was no great optimism for opportunities presented to new entrants. The lack of entire holdings including house and buildings, competition from established farmers and farm businesses, the safety first approach taken by landlords and the farming recession all conspired to indicate that FBTs had failed to benefit the new entrant. Indeed there was a degree of cynicism expressed across the groups as to whether this had ever been a genuine objective of the legislation. “ Did anyone believe it would work” “join the real world”. For those, tenants whose farms formed part of a County Farms Estate, while restructuring was allowing the opportunity for some estates to provide a way forward within the estate, opportunities for a move to the private sector were dwindling as the traditional holdings with land and buildings became scarcer.

5.10 The farmers overall were again significantly more negative than the other groups concerning the impact of the Act on the promotion of economic efficiency in farming in England and Wales (Figure 5.3). Only 29 per cent were in the ‘well’ and ‘very well’ categories compared with 80 per cent for the land agents and the landlords. This may be due to some lack of clarity over the exact meaning of the question (28 per cent said that they did not know how this had affected the economic efficiency of farming) or the perception of the benefit of FBTs to their own businesses (34 per cent of farmers felt that FBTs had had no impact in promoting economic efficiency).

5.11 The new entrants, this time, were together in their judgement that the Act had had little effect on the economic efficiency of farming in England and Wales with 60-70 per cent of the farmers indicating that it had met this objective ‘poorly’ or ‘not at all’. This finding confirms the view that, although the new entrants see the letting activity increasing due to FBTs, they feel barred to a great extent from taking up such opportunities because of the high rents and stiff competition from established farmers for the FBTs available. It should be noted that 35 per cent of the non-CFE entrants were not able to supply an answer to this question (only 6 per cent for the CFE tenants).

Figure 5.3 Promoting economic efficiency in farming in England and Wales



The Unintended side-effects of the ATA 1995

5.12 The three groups were asked what they felt were the unintended side effects of FBTs. Multiple responses were received (468 in total) as detailed in Table 5.1.

Table 5.1 Reported unintended side-effects of the ATA 1995

Per cent of multiple responses	Farmers (%)	Landlords (%)	Land Agents (%)	All Respondents (%)
Don't know	36	2	1	20
None	8	44	19	16
High rents	14	7	16	14
Short term issues	12	10	9	11
Not good for NE	10	8	13	11
Farms increasing in size	8	3	14	9
Agrmnt complexity	2	3	6	4
Surrender / regrant	0	9	3	2
Effects on small farmers	2	0	2	2
Splitting of units	1	0	6	2
Shift balance to L	1	2	0	1
Other	6	12	10	8
Total responses	100	100	100	100

5.13 A good degree of appreciation by some, and lack of appreciation by others, of the issues is presented by the farmers with 36 per cent of responses (and therefore respondents) indicating

that they were not aware of any unintended side-effects. This is not surprising as 39 per cent of the farmers interviewed had not had any involvement with FBTs at all. This could therefore account for the response although, for the remainder, it may represent inadequate experience of the issues to date or satisfaction with the FBT agreement(s) with which they have been involved.

5.14 Those farmers who did contribute were concerned over the level of FBT rents and the difficulties that this had presented for new entrants and small businesses as compared with larger established units which were perceived as more able to take advantage of the opportunities available. Some degree of balance was provided in the focus groups where non-farmer purchasers in the residential market were noted as no longer put off by the worry of purchasing additional land. This was most noticeable, as would be expected, in the South East and South West. A knock on effect from this was that in these two areas there was an increased amount of smaller parcels of lower quality land available on FBTs. As the land was of less economic value due to the size of blocks available and the quality, the competition for the land was less and, as such, this provided an opportunity for those squeezed out by the higher rents on other available FBT land. In some cases residential landowners were happy to let the ground purely on the basis that it was kept tidy.

5.15 In contrast, this type of situation was limited in the two other regions. While it may have been of little value to the arable farmers of the East Midlands, such an opportunity would have been an advantage valued by the smaller dairy farmers of the Welsh focus group. These farmers found themselves competing for FBT land not only against the larger farmer but also against those who had hill subsidies with which they could bid for FBTs.

5.16 Issues surrounding short-termism such as the lack of security, the risk and disincentive for investment attached to this and the reduced level of husbandry of farmers on short contracts were also foremost in the minds of respondents. The focus groups further elaborated on this with fears also expressed that, in making letting decisions, some landlords were basing them on the short term view to the detriment of land and farming. The example was cited of arable crops being grown and harvested on land recognised as unsuitable, thus denying grazing to livestock farmers in the area and leaving the land in a poor state for future use. It was also considered that due to the relatively short terms of most FBTs a risk was being run in that the land would be exploited

to the full by the tenant. Counter to this argument it was stated that if the land was not farmed appropriately the tenancy would not be renewed or allowed to run on, so it was in a tenant's interest to farm with an eye to the future. Indeed, in this regard, there was a consensus among the agents represented that many agreements were allowed to run on, thus demonstrating that proper regard was being had for the land and that the real length of FBTs might be longer than imagined.

5.17 The short-term agreement was also viewed by landlords in the focus groups across the country as a mechanism by which rent disputes could be avoided. Each time an agreement came to an end it fell for re-negotiation. If negotiation proved unsuccessful a new tenant was found. This degree of flexibility had therefore enhanced the feeling of uncertainty on the future experienced by many tenants.

5.18 Significant proportions of new entrants in the telephone survey felt unable to venture statements on the unintended side effects, and those from non-CFE estates were apparently even less well versed in this regard (Table 5.2). Of those who did comment, the main focus was, perhaps unsurprisingly, on the trials of new entrants in establishing themselves in farming. Similar short term issues were mentioned, this time referring to the problems of attracting adequate financing arrangements restricted by short term tenancies and difficulties experienced with agri-environmental agreements and short terms.

Table 5.2 Unintended side-effects – the view from the new entrants

	CFE (%)	NonCFE (%)
None	9	5
Don't know	29	47
Exclusion of new entrants/small farmers	15	26
Short term preventing bank loans, ag env, investments	12	11
No succession	6	0
Less security	6	0
Other	15	32

5.19 Perhaps one of the main findings, also from this element of the telephone survey, was the high percentage of responses from the landlords indicating the absence of any unintended side effects resulting from the introduction of FBTs. This compounds the level of general satisfaction from the landlords already revealed in paragraph 5.4, 5.7 and 5.10 above. There was, however, a degree of concern over the impact of the availability of opportunities for new entrants, the short-termism effects of low tenant investment, the level of husbandry relating to some of the short terms and the surrender and re-grant issues of adding land to AHA 1986 tenancies.

5.20 The land agents, with arguably more varied involvement with the parties to the agreements, were more divided. As well as similar concern over the impact of short-term agreements, an additional major issue amongst this group was the high level of rents and the encouragement that this had had for the splitting up of holdings with existing established farmers enabled to expand and spread fixed costs.

5.21 In contrast, this was also identified as having a detrimental effect on the availability of opportunities for new entrants as well as resulting in further pressure on the small family farms where AHA 1986 rents were perceived, by some, as having risen as a result of FBTs. Difficulties over the negotiating position of these farmers when competing against larger businesses for FBTs on high rental levels were also articulated.

5.22 Contributors at the focus groups in all areas had experienced high rents following the introduction of FBTs and this brought about an interesting, though not comprehensive, diversion of views between landowners and tenants. The tenant's perspective saw the higher rents draining money out of agriculture, the landlord saw it as a mechanism by which the weak fell by the way side leaving the future available to the farmer with both practical and managerial skills. Many landlords and their representatives also saw the shorter time scales of FBTs as a positive factor. The tenant who wished for his FBT to 'roll on' would be motivated to farm to his and the land's best advantage if he wanted to succeed in renegotiating the tenancy.

5.23 The agents also identified difficulties over surrender and re-grant and AHA 1986 tenancies. A number of agents expressed the need to adopt a professional approach, on an individual basis, to the preparation of each agreement and for clear advice to reduce the lack of awareness amongst tenants over the content of the agreements that they were signing up to.

5.24 Tenants, agents and landlords in the focus groups suggested that, although there were strategies and mechanics in the past, such as Ministry Licences and Gladstone v Bower Agreements, that could achieve much of what was now occurring under FBTs the “hassle” and “worry factor” had now gone and that most parties were beginning to feel more comfortable with the concept. For the tenants, however, a worrying perspective was, again, a remaining lack of understanding concerning the implications of entering into an FBT. One indication of this was the provisions relating to the notice to quit. A number of examples were given of tenants who were under the impression that a three year tenancy would end by effluxion of time and that no notice to quit had to be provided. Many FBT agreements were seen as over long, designed to cover every eventuality and, in some cases, wholly inappropriate as they had not been drafted to reflect individual needs. This mitigated against tenants fully understanding the consequences of entering into an FBT agreement.

The impact of the ATA 1995 on AHA 1986 tenancies

5.25 Raised as an unintended side-effect of the legislation in the previous section and certainly not ‘intended’ under the Act, the impact of the Act on AHA 1986 tenancies was of interest to the team and these questions were again asked of all respondent groups as an element of the telephone survey. The team was keen to investigate the possible effects on rental levels, the changing sizes of AHA holdings and any effects on AHA successions. Over 1200 multiple responses were received overall providing valuable insights into the effects of the legislation on AHA holdings. The farmers were, understandably, less responsive overall with one quarter and over one half unable to provide answers to the first two questions and the final question respectively. This is most probably due to lack of experience with AHA tenancies and perhaps, specifically, succession tenancies.

Table 5.3 Impacts on AHA 1986 holdings

Per cent of multiple responses	Farmers (%)	Landlords (%)	Land Agents (%)	All respondents (%)
<i>Impact on rental levels of AHA holdings</i>				
Don't know	25	8	2	14
No effect	10	32	25	18
Increase	64	60	72	67
Decrease	1	0	1	1
Total responses	100	100	100	100
<i>Impact on size of AHA holdings</i>				
Don't know	23	4	1	13
No effect	12	18	21	16
Assisted size increase	63	78	67	66
Restricted size increase	2	0	11	5
Total responses	100	100	100	100
<i>Impact on succession of AHA holdings</i>				
Don't know	53	4	5	31
No effect	11	54	45	28
FBTs useful as succession alternative	1	29	36	16
Decreased importance of succession	33	13	6	22
Indicated value of succession rights	1	0	3	1
Other	1	0	5	2
Total responses	100	100	100	100

The impact on the rental levels of AHA 1986 holdings

5.26 The respondents were in agreement that the AHA 1995 had resulted in some increase in the level of rents on AHA holdings (67 per cent), although 18 per cent indicated that this was not the case. The perceived impact is variable amongst those who feel that an increase has resulted with answers ranging from 'limited effect but a bit of pressure on rents' to 'a 20% increase'. The true increase will vary from area to area but the reality is that an increase is perceived to have taken place and this was clearly not intended.

The impact on the size of AHA holdings

5.27 Again, almost two thirds of responses suggested that FBTs had assisted the increase in the size of some AHA 1986 units. A number of interviewees felt that the increase in size of holdings would have occurred anyway because of economic pressures and attributed the association with FBTs to the availability of a suitable vehicle for this move. A small number of respondents (5 per cent) felt that the Act had restricted the expansion of their holdings, perhaps referring to the inability to add land to existing AHA1986 tenancies.

The impact on AHA successions

5.28 Half of the landlords and land agents considered that there had been no effect on succession tenancies, with a number of these landlords indicating their commitment to the succession programme. Of the remaining landlords and land agents, a third recognised the opportunity to use FBTs as an alternative to a succession tenancy. The motives for adopting such a strategy varied between ‘succession avoidance tactics’ and ‘a useful alternative where the proposed successor was ineligible under any of the tests’. Interestingly, a small number of respondents mentioned the heightened risk of successors becoming ineligible under the commercial unit test as a result of FBTs taken on.

5.29 Perhaps reflecting the views of the landlords and land agents, a third of the responses from the farmers indicated that they felt that the introduction of FBTs had resulted in a decrease in the importance of succession. This negative perception may be to some extent balanced by those prospective successors who are unsuccessful in the succession tests of the 1986 Act but nonetheless are offered an FBT, thus providing an opportunity that may not have otherwise existed.

5.30 The responses from the new entrants as a group, although incomplete, (a high proportion of the non-CFE respondents did not feel able or prepared to answer these questions) suggests slightly less effect on increasing AHA 1986 rents and the size of AHA units but much greater feeling concerning succession, with 66 per cent of CFE and all of non-CFE respondents perceiving the decline of succession to agricultural tenancies with the introduction of FBTs.

CHAPTER 6 THE FUTURE DEVELOPMENT OF FBTs

Introduction

6.1 Throughout this report we have emphasised the fact that the option to let or to rent land (and buildings) may be increasingly attractive in some forms of agricultural business restructuring. Previous chapters have demonstrated that the introduction of Farm Business Tenancies has indeed increased the amount of land entering the let sector, though the number of new FBTs let each year may now have stabilised or be declining. We have also shown that whilst some use is being made of the flexibility open to landlord and tenant in tailoring the detailed components of their agreements to their particular needs, this is as yet fairly limited. We were therefore interested to look at the prospects for the greater use of FBTs in the future.

6.2 First, we sought to establish what plans our respondents had for the future regarding FBTs. We then gathered their views on the changes in current arrangements that they thought would encourage the greater use of FBTs in England and Wales. As on other issues, we gathered information from landlords, land agents and farmers both through the telephone surveys and focus groups. In reviewing our findings, we turn first to the landlords.

Landlords' future plans involving FBTs

6.3 30 per cent of the landlords we interviewed were actively considering investment in further land with a view to letting it under a FBT. This was most common among the "professional" landlords, where the figure rose to 41 per cent (compared with only 17 per cent among the private landlords). Indeed, four of the six financial institutions covered in our survey reported that they were actively considering investment with FBT lets in view.

6.4 Just under half (48 per cent) of the landlords said that they were actively considering amalgamations or rationalisation of their holdings using FBTs. Such activity was found to be greatest among central and local government landlords and the financial institutions. Only 38 per cent of private landlords (compared with 63 per cent of the "professionals") said that they were considering this.

6.5 Only one landlord was actively considering changing land from contract farming or share farming for letting on FBTs. On the other hand, eight (19 per cent of respondents) were actively

considering changing land from in-hand farming for letting on FBTs. Five of these were private landlords.

6.6 Nearly one third (30 per cent of landlords) were in negotiations or entering negotiations to take back land let on AHA 1986 tenancies for letting on FBTs, the proportion being somewhat higher among the “professional” landlords (37 per cent as against 21 per cent for the private landlords).

6.7 45 per cent of the landlords reported that they were planning significant investment in buildings and/or fixed equipment on agricultural land. The difference between the different types of landlord was most marked here with 60 per cent of the professional landlords planning such investment as against 27 per cent of those categorised as private.

6.8 In the majority of cases (57 per cent), the planned investments were due to take place on land let under the AHA 1986 with a further 33 per cent on land under FBTs, and a further 7 per cent on in-hand land. Only 23 per cent of respondents who were planning such investments said that the nature of occupation of the land had an impact on the investment, although this figure was much higher (50 per cent) among the private landlords than among the professionals (14 per cent).

6.9 Although the sample is not large, there is a good deal of planned activity here involving the use of FBTs, particularly among the “professional” landlords. This indicates the usefulness of FBTs, with their flexibility and control very positive features from the landlord’s point of view.

Encouraging change in the use of FBTs by Landlords

6.10 The landlords were then asked what changes in “the current arrangements” would encourage them to change a number of their current practices – to let land on a longer term, to allow more diversification, to let to new entrants and to let complete farm units.

6.11 Two-thirds said that there was no particular change that would encourage them to let land on a longer term, several commenting that they were already letting on longer terms where appropriate. The others suggested that a change in fiscal arrangements to encourage long lets

(7 per cent), stronger assurances that no retrospective legislation would be enacted (5 per cent), a reduction in the notice required for terms greater than two years (3 per cent) or more flexible arrangements for compensation for tenant's improvements (3 per cent) would encourage them to let their land on a longer term.

6.12 Just over 90 per cent felt there was no real need for changes to encourage them to allow more diversification since they were already allowing this. Those that did cite specific changes mentioned the need for further flexibility to allow more rural non-agricultural activities to be covered under a FBT instead of the Landlord and Tenant Act (5 per cent), the easing of business rates or the reduction in the level of bureaucracy such as that experienced in the planning system (2 per cent) or the provision of greater freedom of contract on compensation for tenant's improvements (2 per cent).

6.13 98 per cent replied that they could see no changes in the current arrangements that would encourage them to let to new entrants, one third of these commenting that the economic climate is much more of a factor as well as the risk attached to new entrants compared with established farmers. 15 per cent of these respondents said that they were letting to new entrants already.

6.14 While half the respondents said that they were already letting complete farm units, the other half replied that it is still more profitable to let the different elements separately. They could suggest no changes to the current arrangements that would encourage them to let complete farm units.

6.15 While the landowners and their agents encountered in the focus groups now felt more at ease with the administrative and legal aspects of the FBT, concern was still expressed in the following areas:

- the length of and catch all approach of FBT agreements
- diversification and the danger of falling into a Landlord and Tenant 1954 Part 2 agreement
- the relevance of the notice agreement at the commencement of the FBT
- the bolting on of FBTs to '86 Act tenancies with the danger of surrender and re-grant.
- the restrictions placed on 'consenting adults' as regards for example rent review clauses. As one respondent put it "Why can't two grown up boys decide and agree what they want to do?"

Land Agents' views on change in current arrangements for FBTs

6.16 The Land Agents were also invited to consider possible changes to the current arrangements though in this case they were asked the more general question “What two changes in the current arrangements do you think would encourage greater use of FBTs in England and Wales?”

6.17 There was a range of responses to this question, with some respondents referring to the important influence of the downturn in the agricultural economy. A number of respondents felt change should be avoided, either because of the success of the legislation to date or because any amendments were likely to discourage use. Once again this was the most consistent reply (37 per cent of responses). The majority of agents making proposals were seeking to extend flexibility even further and the most common calls for changes were:

- amendment to the capital tax regime (20%)
- enabling parties to opt into elements of the 1986 Act regime (5%)
- enabling greater freedom with rent provisions (3%)
- relaxing compensation code (2%)
- introducing simpler procedure for dealing with late payment of rent (2%)

6.18 Interestingly the number of respondents seeking to extend security under FBTs were very small (3 per cent). Indeed they were outweighed by the number who suggested removal of security of tenure under the 1986 Act (5 per cent).

6.19 Once again the agents themselves were less enthusiastic about a number of issues their professional representatives had raised than one might have anticipated and these responses were confirmed when the specific proposals were put to them (see below). The responses clearly reflected the anxiety to maintain flexibility with the majority of respondents feeling any further statutory constraint would both discourage the availability of land and complete units.

Farmers' views on change in current arrangements for FBTs

6.20 When asked what two changes in the current arrangements they thought would “encourage greater use of FBTs in England and Wales”, about a quarter (27 per cent) of the farmer respondents said that they did not know. Among those that did have a view (and not surprisingly this was very much greater among those who had some experience of using an FBT

as against those who did not), 27 per cent said that no changes were required. Interestingly, the proportion giving this response was greater among those who had some experience of using an FBT (31 per cent) as against those who had not (18 per cent).

6.21 For the rest, the most commonly mentioned suggestions related to steps to increase security of tenure or lengthen the term of FBTs (mentioned by 34 per cent of respondents). A further 24 per cent mentioned lower rents, though, not surprisingly, this was more frequently mentioned by those who had not used an FBT (38 per cent) as compared with those who had (17 per cent). The remaining suggestions covered a wide range of changes such as reversion to the AHA 1986 arrangements, “increased flexibility”, or “encourage letting of complete holdings”.

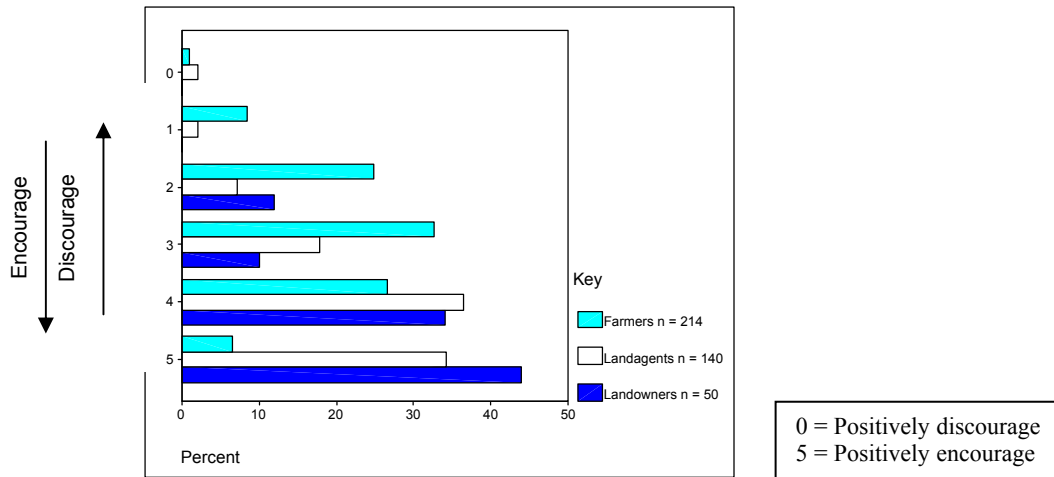
Specific changes to encourage the greater use of FBTs

6.22 All respondents to the telephone surveys who were aware of FBTs were asked how four specific changes would affect the use of FBTs. Where landlords and land agents were being interviewed, two separate questions were asked, one relating to an increase in the amount of land let on FBTs and the other to the number of complete units let on FBTs¹. The four changes were the same as tested in our 1997 report, namely:

- A more favourable tax regime
- A minimum length of term
- A rent formula similar to that under the 1986 Act; and
- More statutory fall back provisions

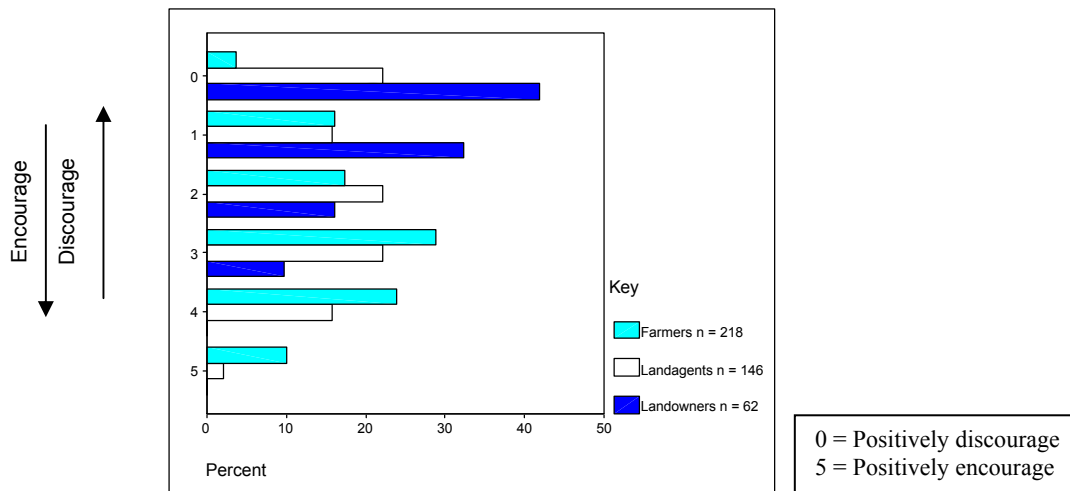
6.23 Respondents were asked to rate the likely impact of these initiatives on a scale of 0 to 5, where 0 equaled positively discourage and 5 equaled positively encourage, responses are set out in the following Tables (which exclude the relatively small proportion who replied “Don’t Know”). For ease of comparison, the different groups of respondent are included in the same chart. Since the question posed to the farmers comes closest to the first of the landlord/land agent questions, it is their replies to that question which are included on that chart.

Figure 6.1 A more favourable tax regime for landowners



6.24 There was great strength of feeling from the land agents and landlords that a more favourable tax regime would encourage greater use of FBTs (71 and 78 per cent in categories 4 and 5) (Figure 6.1). The farmers felt much less strongly about this (33 per cent) perhaps due to a certain degree of ambivalence towards the landlord’s situation being improved compared with that of the tenants. This strength of feeling had been universal among all three respondent groups in the 1997 study.

Figure 6.2 A minimum length of term

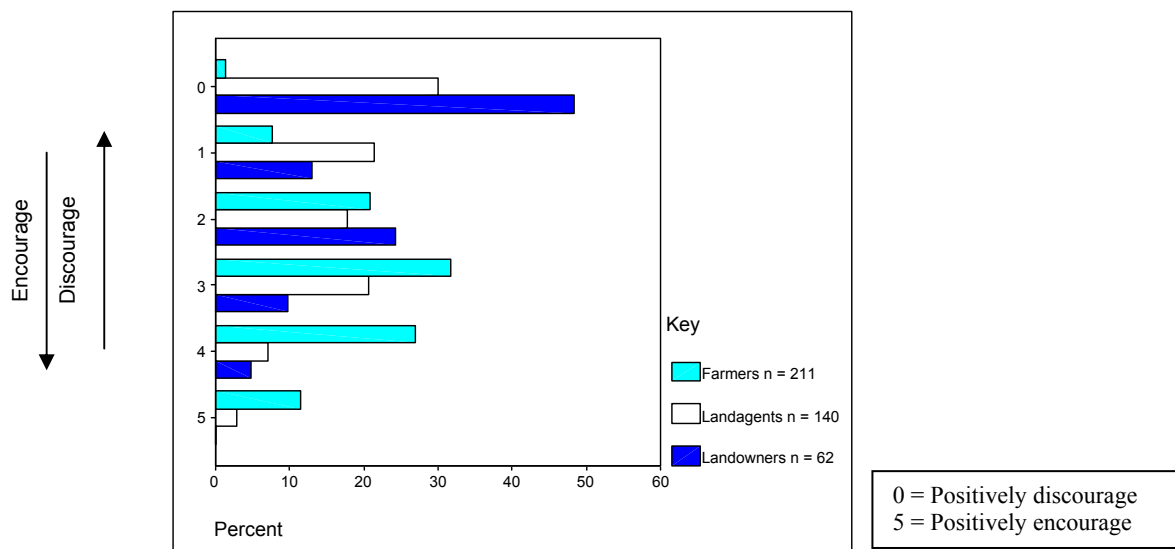


¹ In the event there was virtually no difference in their responses between these two questions. Only where the change towards a minimum length of term was considered did the land agents suggest that this was more likely to encourage an increase in the number of complete lets.

6.25 The landlords were strong in their feeling that minimum terms would positively discourage greater use of FBTs, presumably, focusing on their own circumstances and wishes to some extent (74 per cent in category 0 and 1) (Figure 6.2). The land agents, whilst more evenly spread, were still more clustered around the negative in this regard and, as might have been expected, the farmers were even more widely spread with 34 per cent feeling that a minimum term would increase the use of FBTs.

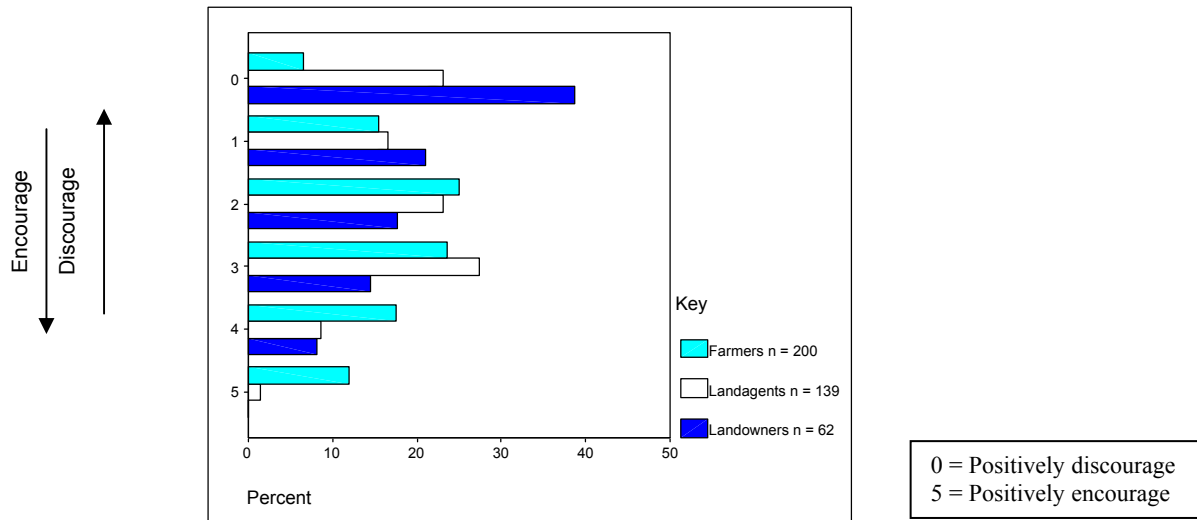
6.26 Again the landlords were strong in their feeling concerning the availability of a 1986 Act rent formula (61 per cent in category 0 and 1 and only 5 per cent in category 4) (Figure 6.3). The land agents were similarly less enamoured with this suggestion (only 10 per cent in categories 4 and 5). The farmers, were not surprisingly mostly spread (70 per cent) amongst the categories 3-5 indicating more positive feeling towards this, perhaps indirectly commenting on the level of FBT rents compared with those of 1986 Act tenancies.

Figure 6.3 A rent formula similar to that for traditional (1986 Act) tenancies



6.27 With similar feeling, the landlords felt that further statutory interference would discourage the use of FBTs (60 per cent in category 0 and 1 and only 8 per cent in category 4) (Figure 6.4). The farmers, on the other hand, felt slightly more inclined towards the benefits of further fallback provisions although their responses were evenly split between the discouraging (0,1 and 2) and the encouraging categories (3,4 and 5). 63 per cent of the land agents fell into the former categories suggesting slightly stronger feeling against any further interference. Such differences between the respondent groups follows similar trends to those of the 1997 study.

Figure 6.4 More statutory fallback provisions



6.28 It is interesting to note that in only one case were there any statistically significant differences in the farmers' responses to these questions between those who had direct experience of FBTs and those who did not. In considering the effect of introducing more statutory fall back provisions, those who did have some experience of FBTs were more likely to say that this would positively encourage greater use of FBTs. In fact, 36 per cent rated their reply 4 or 5 compared with 26 per cent among those farmers who had no experience of FBTs.

CHAPTER 7 CONCLUSIONS AND RECOMMENDATIONS

Introduction

7.1 In 1997 our research largely focused on the first year of operation of the Agricultural Tenancies Act. A number of circumstances combined to make this a potentially atypical period; the agricultural economy was relatively buoyant, anecdotally there appeared to be a considerable area of land which had been held by landlords pending enactment which was then released into the lettings market and awareness and anticipation was high given the considerable publicity and debate about the legislation.

7.2 Five years later circumstances are very different, farm incomes are depressed across many sectors and whole patterns of trading regimes and economic activity have been overturned by Foot and Mouth Disease. Many farmers are reassessing their businesses and talk is of exit, restructuring or diversification. The Curry Report (Anon 2002), and not farm business tenancies, is at the forefront of the farming press, and a crucial test of the effectiveness of the Act has become its ability to facilitate the beneficial restructuring of the farm sector

7.3 The farm sector is witnessing the acceleration of a number of underlying trends that had already become evident some time ago – the continuing reduction in the hired farm workforce, the concentration of the bulk of production in the hands of a relatively small proportion of the country's farm businesses, the expansion of part-time farming and the increasingly urgent search by farming families for more diversified sources of income.

7.4 These trends have begun to change some of the traditional roles and relationships within the industry - changes that lie behind many of the findings reported in our present study. Established tenant farmers on 1986 Act tenancies are seeking to expand their businesses by renting additional land on FBTs. The availability of additional land to rent on reasonable terms is just as important to them as it is to the established owner-occupier or newcomer to the industry. Some elderly owner-occupied farmers without a successor are exploring the opportunity to rent out their land on an FBT in order to finance their retirement from farming. Some of the country's smaller family farms may therefore be numbered among the "new landlords", letting the land that will enable their neighbours to expand. An increasing number of newcomers to the sector constitute another type of "new landlord". They have bought into farming primarily because of the residential attractions of the farmhouse and are seeking others to farm the land itself. In short, the types of tenant and landlord in UK farming are becoming increasingly diverse.

7.5 In 1997 we warned that it was too early to judge, with any authority, the likely impact of a piece of legislation which was planned to have a significant impact on a sector where previously terms had been measured in lifetimes. Those forecasting the future relied heavily on informed conjecture and all viewed such projections with circumspection. Given the dramatic change in the economic background and the radically different shape of the rural economy being projected, and indeed promoted post Foot and Mouth, it may in some senses still be too early to draw firm conclusions on the long term impact of the Agricultural Tenancies Act. However it has now been on the Statute Book for six, very challenging, years and a number of trends are emerging which enable us to comment with greater authority on its impact to date and its likely impact in a hopefully more settled future.

7.6 The focus of this study has been an economic evaluation of the Act and the first part of this chapter draws together our main conclusions in this respect. However we have also considered a number of potential amendments to the legislation, and indeed changes to complementary legislation, particularly in Chapter 6 and we set out our recommendations in respect of these issues in the second part of the chapter. In considering these legislative changes we have had regard both to proposals submitted to us and to the likely new shape and direction of the rural economy influenced, as it will be, by changes in economies of scale, pressure for diversification, interest and investment from new owners, refocused support regimes and changing consumer demand, both for food and intangible countryside benefits (often referred to as CARE - Countryside, Amenity and Rural Environment – goods). Food production will remain the primary activity for the majority of farmers but it will not hold the universal sway it has in the past and legislation, particularly that which is supposed to be flexible and responsive, must be able to accommodate this change.

Conclusions

Introduction: The market for FBTs

7.7 Throughout this evaluation, we have found it useful to think of the FBT as a new product, and to consider the market that has been established for it over the past six years. Unlike its predecessors, the FBT is not a single standardised product. In fact it is more like a family of products, each related to other members of the FBT family, but with important differences between them. These different types of FBT are used by different types of farmer for quite

different purposes. For example, the bare land FBT sought by an expanding arable farmer is very different from the “complete holding” sought by an aspiring new entrant. And just as there are different types of farmer so there are different types of landlord. Many are the familiar participants in the market for rented farmland – the private landed estate, the Crown Estate, the National Trust, the County Councils and so on. Others are the relative newcomers, such as the residential farmer looking for someone to farm the land around the farmhouse that he has recently acquired or the owner occupier with no farming successor seeking to withdraw from farming while retaining ownership of the land and occupation of the house. In any evaluation of the effectiveness of the 1995 Act it is very important to bear in mind the fact that we are not considering the market for a single uniform product.

7.8 This picture of the FBT market is important. In the first place, it encourages us to consider the different players in the market, recognising that it is the individual decisions and actions of these players that ultimately determines whether the Act achieves its aims. Next, the picture encourages us to think about the efficient operation of the market. For example, do all the players (or potential players) have adequate information on which to base their decisions? Finally, it encourages us to think of possible interventions in the market by Government to achieve objectives for Society as a whole. For example, if current policy is to facilitate the restructuring of agricultural businesses through expansion, but the supply of new let land from the traditional landlords is drying up, what incentives would encourage new landlords to enter the market? Again, if Government wishes to encourage new entrants to farming and the Act alone is not achieving this, what additional incentives or provisions are required? Or again, if Government is seeking to encourage farmland to be managed in a more environmentally sensitive way (perhaps following the lead of some of the County Councils in our survey) what incentives can encourage private landlords to include environmental conditions in their FBTs?

7.9 Our analysis shows that:

- The great majority of FBTs are small (less than 25 ha) and only comprise bare land.
- Complete holdings (with a dwelling as well as land and buildings) account for only 9 per cent of the total number of FBTs in England and Wales overall.
- Complete holdings form 50 per cent of FBTs let by the County Farms Estate and 90 per cent of the FBTs let to new entrants on the County Farms Estate
- The median length of term varies with type of FBT and is 2 years for bare land lets, 3 years for lets that also include farm buildings, and 10 years for complete holdings
- About half of all expiring FBTs are re-let to the existing tenant.

- Two-thirds of FBTs are let by private owners rather than traditional institutions such as the Church, County Councils, the Crown Estate or the National Trust.
- About one-fifth of the FBTs let in 1999/2000 were on land previously farmed in-hand.
- About 9 per cent of FBT tenants in this period were new entrants.

7.10 FBTs have a significant role to play in facilitating the restructuring of individual farms and the agricultural sector as a whole. But for the FBT market to operate efficiently there must be good information available to both potential buyers and sellers. Perhaps the most surprising finding to emerge from our surveys is that the level of awareness of FBTs in the industry as a whole appears to have diminished significantly since our previous survey. In the present survey 37 per cent of farmers said that they had not heard of FBTs (rising to 68 per cent among farmers who were owner occupiers). This is an important finding. If potential new landlords and new tenants are unaware of FBTs, or their value in restructuring the business, they will not enter the market.

7.11 In order to monitor the operation of the market for FBTs better information is required by DEFRA. Rents give some indication of the balance between supply and demand in this segment of the wider market place for the occupation of land, but the present information is inadequate because it makes no distinction between different types of FBT. It is particularly important that such information distinguishes the three main types of FBT – bare land, land and buildings, and complete holdings. DEFRA also needs regular information on the operation of the market. The annual CAAV survey provides a lot of this information but there are some important gaps – information on re-lets, the level of detail on types of landlord, the coverage of County Farms and so on.

Achievements of the Agricultural Tenancies Act (1995)

7.12 The research has been able to draw relatively firm conclusions in respect of the achievement of the three principle objectives of the Act up to this point in time. The one qualification remains the difficulty of identifying the extent to which outcomes can strictly be attributed to the influence of the Act itself rather than external factors, not least the very rapid downturn in agricultural fortunes from a relatively prosperous position for most sectors in 1995.

Encouraging more letting of agricultural land.

7.13 This project confirmed the findings both of our previous studies and other reports, that significant additional land has been made available to let since 1995. Even the most trenchant critics of parts of the legislation have appreciated its contribution in this area. It is harder to identify how much of this land is genuinely new to the sector and how much reflects conversion from grazing licences, Gladstone v Bower lettings, contract and share farming arrangements. However there is evidence that new landlords are entering the sector and letting land on FBTs either directly or indirectly (as a consequence of a residentially driven purchase).

7.14 Our study suggests that the balance of different types of participant in the market may be changing and that there may be increasing differentiation in different parts of the country. For example, the arable farmer seeking additional hectares of bare land is more common in the Lincolnshire area and his livestock counterpart in Dorset. The newcomer, attracted to farm ownership primarily by the residential qualities of the farmhouse and using the FBT to deal with the associated land appears to be an increasingly common phenomenon in our Kent and East Sussex study area. The farmer intent on retaining occupation of the farmhouse and ownership of the land while withdrawing from farming may become increasingly evident in several different areas. These “new landlords” may hold the key to some of the continued expansion of the let sector.

Encouraging new entrants

7.15 Most respondents and consultees have judged the legislation to be disappointing in this respect, and we are inclined to agree with them. However there is a valid question whether this disappointment is warranted or whether it is based on an over optimistic assessment of the likely impact of the Act. Evidence suggests that approximately 9 per cent of lettings are to new entrants and given the radical changes that have taken place in agriculture generally it is debatable whether any better performance could have been expected. Indeed many commentators have questioned the ability of legislation to counteract economic influences and emphasized that the County Farm Estates remain important contributors in this process.

Promoting economic use of resources

7.16 There is considerable evidence here to suggest that the flexibility introduced by the ATA has been a considerable success in encouraging more efficient use of resources. In particular FBTs have provided a relatively simple vehicle to enable farm businesses (including, potentially, AHA tenants) to expand by persuading landlords that letting is an option and enabling farmers to rent additional marginal acres. There is good evidence in this study of landlords using the

legislation to restructure and rationalise their properties, and a number who have invested in agricultural property with the specific intention of letting it on FBTs. One of the criticisms of the Act has been the extent to which it has encouraged fragmentation of holdings, but again this may be a function of economic forces rather than the legislation itself. There is also concern about short-termism. This may be particularly relevant in the context of complete holdings to the extent that it affects investment in buildings and fixed equipment, although the average term for these complete holdings is significantly longer than for other FBTs. Our findings suggest that in recent years FBT tenants are just as likely to have invested in buildings and fixed equipment as their AHA counterparts. However, we have a residual concern that uncertainty over eventual levels of compensation may emerge as a significant problem over the next five years as medium and longer-term agreements come to an end.

7.17 We have emphasised that an increasingly important part of the economic evaluation of the 1995 Act hinges on the extent to which it has helped or hindered the restructuring of individual businesses and the sector as a whole. In addition to the points already made, we conclude that:

- on-farm value-adding and diversification activities may have been inhibited by the use conditions of FBT agreements, though we found relatively little evidence of tenants seeking permission to diversify on holdings that only comprised FBTs;
- conservation farming and the production of CARE goods may be inhibited by the relatively short or broken term of FBTs, the rigidities of some Agri-Environment Schemes or operation of the business condition of FBTs;
- FBTs provide an opportunity for owner-occupiers without a successor to withdraw from farming while retaining ownership of the farm. The provision of incentives (such as tax relief) may be justified if such arrangements can secure an adequate net benefit eg. from the provision of opportunities to new entrants or the provision of CARE goods through appropriate environmental conditions (or indeed a combination of both of these outcomes).

Recommendations

Proposals for Amendment

7.18 The research team received a range of proposals for legislative amendments that would either increase the use and effectiveness of FBTs or remove apparent inconsistencies and increase the ease of use. It will come as no surprise to those experienced in this area that there was no unanimity between consultees. However, the most consistently sought changes were:

To increase the use of FBTs:

- A more favourable tax regime, either generally or targeted at specific issues including extending the term of lettings and encouraging lettings to new entrants.

To remove inconsistencies and increase the ease of use:

- The ability to contract back into the provisions of the 1986 Act by agreement.
- Adjustment to agri-environment regulations to enable short term tenants to enter schemes if supported by landlords.
- Relaxation of the compensation provisions.
- Relaxation of the provisions on rent review.

7.19 A consistent theme was that in the areas where the Act is prescriptive this impedes its effective operation and greater flexibility should be sought.

7.20 The majority of these proposals were received sufficiently early in the project that their appropriateness could be tested through the surveys and focus groups. In many instances the individual farmers, landowners and agents we interviewed did not share the specific concerns of stakeholder bodies, whether representative or professional.

7.21 The research team has not confined itself to proposals made by stakeholder groups and others. In particular in projecting forward the likely changes in agriculture and the rural economy we have made recommendations which will enable the legislation to accommodate very different rural businesses in the future.

7.22 Some commentators may feel it is too soon to make any substantive amendment to legislation which has only been enacted six years. Indeed many respondents felt change was dangerous, “its not broken so don’t fix it” but the following recommendations are intended to

build on the successes of the Act to date, in particular its flexibility and not, as some representations would have sought, to look back to a previous regime.

Detailed Recommendations

7.23 Given the relative success of the Act in achieving its objectives the research team does not feel that there is any evidence of the need for substantive amendment to the underlying principles of the legislation based on progress to date. However significant changes are taking place in the countryside and we believe changes should be considered that will ensure the ATA does not inhibit potentially beneficial changes at individual farm level.

7.24 The agricultural economy is already moving towards a rural economy with many more diversified businesses and an increasing amount of land managed solely or predominantly for conservation, access or environmental objectives. FBTs have generally found favour as a form of tenancy but, whilst they can accommodate transition to such uses during the term they cannot be used for such activities at the outset of the term because they may fail to satisfy the agriculture and business conditions.

7.25 This is likely to become an increasing problem in the future where FBTs come to be relet and where the use of the property satisfied the agricultural requirement when originally let but no longer does so as a consequence of subsequent diversification. In many cases the original parties may wish to renew a tenancy which has expired rather than allow it to continue from year to year with the lack of security that will involve. As presently enacted the ATA debar the parties from using FBTs, with which they are becoming increasingly familiar, to let such holdings and would oblige them to adopt an alternative regime.

7.26 The business condition limits the use of FBTs as a tool in conservation land management. This runs counter to the increasing importance of established and emerging countryside charities as land managers and the redirection of subsidies from market support to encouragement for CARE goods.

Recommendation 1 FBTs are the principal mechanism for letting rural property but their use is constrained by the agriculture and business conditions. This particularly limits their use with wholly or substantially diversified or conservation activities and this conflicts with trends in the rural economy and the rising importance of these activities in rural land management. We consider this to be an unnecessary restriction on the use of FBTs. We recommend serious consideration be given to relaxing the agricultural requirement and

removing the business condition from the legislation which would then enable it to accommodate a much wider range of non residential activity on rural land and buildings.

7.27 The restructured rural economy, as envisaged in the Curry Report (Anon 2002), will require even greater flexibility between the parties than the current arrangements afford, not least to encourage investment and diversification, which in turn may well require fixed agreements on terms including both rent and compensation. Whilst freedom of contract is a characteristic of much of the ATA it is not available here. The current provisions limit the parties' ability to construct agreements which share risk and reward, link rents to fluctuating returns or provide certainty over the eventual level of compensation.

7.28 Whilst devices are available to circumvent some of the constraints of the current legislation they are complex, expensive to establish and untested. We recognise the importance of effective default mechanisms and see no reason to vary those already in place¹. However we do not believe that the legislation should continue to obstruct those parties who wish to adopt bespoke terms or to increase their compliance costs. Consenting adults should be free to reach their own agreements and the legislation should reflect this allowing, for example, parties to adopt elements developed from the 1986 Act or other legislation should they so wish.

***Recommendation 2* The provisions of the ATA in respect of rent and compensation fail to allow the freedom of contract that is conspicuous throughout much of the rest of the legislation. This inhibits those parties who wish to create bespoke agreements on rent or achieve certainty over compensation. Whilst the current default mechanisms should remain in place we recommend amendment of the legislation to remove the current constraints on parties' freedom to agree terms in respect of rent and compensation for tenants' improvements.**

7.29 For many, encouragement of new entrants remains an area of concern and we have considered the extent to which this might be addressed in the ATA. However, we do not see how the Act itself can be either easily or effectively amended to improve the situation. There are wider issues of policy here, to the extent that promotion of new entrants may naturally impinge on the ability of some other farmers to expand. Notwithstanding this, we consider that significant progress in this area can only be made through means that lie outside the ATA itself.

***Recommendation 3* Whilst concern has been expressed over the position for new entrants we do not see how the ATA can be effectively amended to improve matters. Consequently we do not recommend any changes to the ATA legislation specifically targeted at**

¹ The proposal may require some amendment to the provisions for reference to Arbitration.

encouraging new entrants. We suggest that supplementary means to assist new entrants are investigated if this remains an important objective of government policy.

7.30 There is evidence that FBTs are becoming an increasingly important mechanism for restructuring individual farms, thus accommodating the changes currently taking place in the rural economy. However decisions on land management are not solely influenced by land tenure legislation and in many cases fiscal considerations will be equally important. The absence of Capital Gains Tax reliefs on let land, for example, can inhibit restructuring and reinvestment and many owners are nervous of the impact that diversification on let agricultural property may have on Inheritance Tax reliefs.

7.31 At the same time new and very different types of individual with land to let are emerging. First there is the residential farmer seeking to occupy the farmhouse but to let the surrounding land. Second there are some older owner occupiers without an immediate farming successor who wish to cease farming whilst retaining occupation of the farmhouse and ownership of the land. Letting this land through an FBT may be an attractive option. However, it is presently constrained by the Inheritance Tax treatment of the resulting property.

7.32 For many, the current tax regime remains a disincentive to letting land on FBTs. The most commonly recommended vehicle to effect change in the use of FBTs mentioned by respondents was amendment to the tax regime. Consequently this seems an obvious vehicle to seek to influence the use of FBTs and provide an incentive to achieve some of the objectives referred to elsewhere in this report. However, whilst we recognise the validity of many of the arguments, we remain concerned, a concern that is shared by some stakeholder groups, that untargeted fiscal amendments could coincidentally encourage tax avoidance and that subsequent action by the Treasury to constrain such avoidance might produce greater disincentives to using FBTs than exist at present.

***Recommendation 4* There are fiscal disincentives to letting land whether under the AHA or ATA legislation. For both established and potential new landowners amendment to the tax regime may remove some of the limitations on the restructuring of the rural economy. Consequently we recommend that consideration should be given to targeted fiscal amendments within strictly defined areas.**

7.33 Concern has been expressed over the interaction between AHA and ATA tenancies particularly where parties may wish to extend holdings let under the AHA, where the risk of inadvertent conversion to FBTs exist, and over the impact on lifetime succession under the AHA.

7.34 This concern would, at least to some extent, be addressed by our second recommendation but further attention to this issue may be required, not least to overcome the disproportionate compliance costs associated with relatively small extensions or variations of existing agreements. In common with the specific proposals in Recommendation 2 above we consider the default situation should remain unchanged but that further relaxation of the ATA would enable parties to adopt a different approach where they were able to agree so to do. Further, this section does appear to have introduced a distortion, by default, into earlier legislation.

Recommendation 5 There remain concerns about the impact of Section 4 of the ATA, both the extent to which it may inhibit some parties from extending existing agreements and its unintended impact on certain succession cases under the Agricultural Holdings Act. We recommend that DEFRA review these specific areas to consider the extent to which amendment of *Section 4* of the 1995 Act may be required.

7.35 Clearly FBTs have an important role to play in encouraging and accommodating the restructuring taking place in the rural economy. Earlier recommendations are focused on ensuring legislation, whether the ATA itself or otherwise does not obstruct this role. However the legislation can only be effective if potential users are alive to its possibilities and characteristics.

7.36 There is evidence that awareness of FBTs is variable across England and Wales. More worryingly, awareness of FBTs amongst farmers has fallen markedly since our 1997 report. This may be a consequence of timing, “Curry and restructuring” are the topical issues, not Farm Business Tenancies. However FBTs are one of the major vehicles available for existing farmers to expand to improve profitability or maintain viability, or to retire from active involvement in farming. It is a cause for concern that a significant number of farmers may be unaware of the potential usefulness of an FBT in this context, particularly if these farmers are amongst groups on whom fiscal amendments, for example, are targeted. It is clear also that some of those entering into FBTs may not fully appreciate the non-standard nature of many FBTs, unaware, therefore, of the impact of varied agreements on their businesses.

Recommendation 6 FBTs are an important land management tool particularly in a changing rural economy. However their usefulness may be undermined by lack of awareness and understanding. We recommend that DEFRA seeks to promote the awareness of the use of FBTs across England and Wales and the necessity for prospective tenants to understand fully the content of agreements that they are entering into.

7.37 Throughout this report we have emphasised the importance of good information to enable DEFRA to continue monitoring the operation of the Agricultural Tenancies Act (1995). In our own study we have made considerable use of the existing data routinely available through the June Census, the *Annual Survey of Tenanted Land* (ASTL) and the CAAV's *Annual Tenanted Farms Survey*. This has highlighted the fact that there are a small number of areas where the minor modification of existing sources (eg. providing information on rents for the three main types of FBT in the different robust farm types in ASTL, or information on County Farms lettings and the prevalence of relets in the CAAV survey) could yield much better information for monitoring purposes.

Recommendation 7 Information from three main sources – the Annual June Census, the Annual Survey of Tenanted Land and the CAAV's Annual Tenanted Farms Survey – provide useful information for monitoring the impact of the Agricultural Tenancies Act (1995) on a routine basis. However, our study has identified a small number of deficiencies in the available information which we believe could be remedied through minor modification to these surveys. We therefore recommend that DEFRA should review the information routinely available to monitor the operation of the ATA 1995 with a view to remedying any deficiencies and incorporating further improvements in a cost-effective manner.

Endpiece

7.38 In 1997 we concluded with an extract from the report on the focus group meetings “...in general the landowners and tenants had fewer anxieties than their legal advisers ... areas of possible difficulty and conflict had been identified and all participants were awaiting the march of time to see if they would in fact materialize...” The same quotation might almost suit today. Stakeholder groups are more exercised than the majority of their members about many elements of FBTs. The legislation has survived an era of unprecedented change in farming circumstances. It may not have been a complete success, but it has delivered many benefits, not least in facilitating restructuring.

7.39 There is scope for improvement, through constructive amendment, and considerable consensus exists across the industry in many areas. There is little doubt that most parties are still awaiting the march of time. Indeed, there are some anomalies that will not become apparent until significant numbers of longer-term tenancies come to an end and these too are addressed in our recommendations.

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ECONOMIC EVALUATION OF THE AGRICULTURAL TENANCIES ACT
**APPENDIX 1 A COMPARISON OF THE MAIN FEATURES OF THE
 AGRICULTURAL HOLDINGS ACT 1986 AND THE AGRICULTURAL
 TENANCIES ACT 1995**

	<i>AGRICULTURAL HOLDINGS ACT 1986</i>	<i>AGRICULTURAL TENANCIES ACT 1995</i>
Term	Fixed terms only available with Ministerial consent on terms of 2-5 years. Retirement tenancies only applicable to County Council Smallholdings. Unspecified terms or terms over 2 years automatically convert to secure tenancies only determined on death of tenant or, in limited specified cases by Notice To Quit.	Parties free to agree any length of tenancy determinable either at term date or past term date by 12 month incontestable Notice To Quit.
Break Clauses	Unenforceable under the 1986 Act.	Enforceable under the 1995 Act.
Succession	Statutory provision for succession on tenancies commencing prior to 12 July 1984 available on death or retirement of tenant to eligible, experienced close relatives subject to viability of the holding.	No statutory succession.
Rent Reviews	Parties free to seek reviews at 3 yearly intervals. Review under statutory code, having regard to comparable lettings, productive and related earning capacity and disregarding scarcity, not to open market value.	Parties free to agree no reviews, review to fixed amount or formulaic review within strict limits. Where no provision made in agreement statutory default reference to review to open market value at three yearly intervals subject to notice.
Repairs	Parties free to agree terms, default to S.I. 1473 where agreement silent.	Parties free to agree terms, no default where agreement silent.
User	Statutory definition of agricultural holding. Letting may convert to Landlord & Tenant Act 1954 agreement where change of use from agriculture.	Following compliance with Notice provision at commencement prevents conversion to Landlord & Tenant Act agreement through change of use.
		Continued overleaf.....

Compensation to Tenant	<p>Compensation for Tenants' Improvements undertaken with Landlord's consent. Parties free to agree conditions including writing down compensation over time.</p> <p>Compensation on unconditional consent based on increase in the value of the holding.</p> <p>No obligation on Landlord to compensate for work done without permission.</p> <p>Statutory code for tenant right and short term improvements.</p> <p>Compensation for milk quota for eligible tenants under Agriculture Act 1986.</p>	<p>Compensation for Tenants' Improvements undertaken with Landlord's consent. No freedom for parties to agree conditions.</p> <p>Mandatory statutory compensation based on increase in the value of the holding.</p> <p>No obligation for Landlord to compensate for work done without permission.</p> <p>Compensation for intangible improvements, e.g. grant of planning permission subject to Landlord's consent.</p> <p>No statutory code for tenant right and short term improvements.</p> <p>Compensation for milk quota under Section 20 ATA 1995 based on increase in the value of the holding.</p>
Dilapidations	Statutory code establishing basis of dilapidations in default of provision in agreement.	No statutory provisions.
Possession for non payment of rent	Provision for incontestable Notice To Quit.	No statutory provision.
Disputes	Reference to Arbitration under the AHA 1986 or Agricultural Lands Tribunal.	Parties free to agree basis of dispute resolution. In default reference to Independent Expert or Arbitration under the Arbitration Acts.

APPENDIX 2

THE NEW ENTRANTS

The characteristics of the New Entrants

A2.1 On average, those who had come into farming before 1995 had been farming for 8.8 years, and those after 1995 for 3.4 years. One-third were operating as sole traders and two-thirds as partners. There was no statistically significant difference in these respects between those on County Farms and those in the private sector.

A2.2 Many of the new entrants came from farming families (a point highlighted in an earlier study (Errington *et al* 1988). However, one-third were first generation farmers, though the proportion was much higher among County Farms respondents (where it was half) compared with about a quarter in the private sector. One-in-five of those in the private sector were farming this holding along with another family holding, perhaps suggesting that they were receiving considerable family help to assist their entry into farming.

A2.3 Those entering farming via a county farm tended to be considerably younger than the new entrants in the private sector. Those entering county farms since 1995 were on average 35 years old at the time of our survey; those entering the private sector averaged 44 years old. This again emphasises the distinctive role of the county farms in offering opportunities for entry to farming to relatively young people.

A2.4 Most of the new entrants now have some further or higher education qualification. Just over one quarter have a university degree or HND in agriculture or a related subject. Many others had some other qualification, though a higher proportion (28 per cent) of the private sector new entrants had no qualifications since leaving secondary school (compared with 8 per cent among those on county farms).

A2.5 There was a very high level awareness of FBTs (90 per cent) among the respondents to the present survey. All those who had not heard of them were in the private sector.

The new entrants' farms

A2.6 Perhaps not surprisingly there was a very large difference in area farmed by the two categories of new entrants. The average (mean) size of those on the County Farms estate was 38 hectares compared with 137 hectares for the private sector new entrants. This was not simply because of the type of enterprise they were running. Most of the new entrants were either dairy or livestock farmers and even where the comparison is confined to those in dairy farming the private sector new entrants were on farms twice the size (80 ha compared with 40 ha) as those on county farms.

Table A2.1 Tenure-type of land farmed by new entrants

Tenure Type (% in each category)	CFE Pre 1995	CFE Post 1995	Non-CFE Pre 1995	Non-CFE Post 1995
Owned	0	2	60	46
1986 Tenancy	33	0	18	3
FBT	58	93	14	44
Share/contract	0	0	2	0
Other eg grazing licence	9	5	6	7
Total	100	100	100	100

A2.7 It is interesting to compare the make-up of the land farmed by these new entrants in terms of its tenure type. Not surprisingly, a large proportion of the land farmed by post-1995 tenants on county farms is let under FBTs with a small proportion of land owned. In contrast, private sector new entrants are more likely to own some of their land although those starting farming after 1995 have a slightly higher proportion of rented land (47 per cent as against 32 per cent) compared with those entering farming before 1995. For the great majority (more than 90 per cent) of those with some land in an FBT, this was all held under a single agreement. There is no evidence of new entrants “constructing” their farm business by dovetailing more than one agreement or enlarging their holdings by doing so.

A2.8 Those on county farms tended to have applied for more FBTs than those in the private sector. For example, among those entering the industry after 1995, the county farms respondents had applied, on average, for 3 FBTs while for the private sector respondents it was only 2.1 FBTs. A similar pattern was found among the pre-1995 new entrants where the numbers were 1.9 and 0.5 respectively. There was also a correspondingly greater success rate among private sector new entrants when applying for FBTs. For example, while 50 per cent of the county farms respondents

had been successful each time they applied for an FBT, among the private sector respondents it was 70 per cent.

A2.9 The new entrants were asked to identify the major constraints on “getting started in farming”, “sustaining a farming business” and “progressing a farming business”. Table A2.2 shows that for both types of new entrant (county farms and others) the lack of capital is by far the most commonly-mentioned constraint, much more so than either the lack of land available or the terms of the tenancy agreement. Nor do the pre- and post-1995 respondents show any difference in this respect.

Table A2.2 Main constraints on new entrants: getting started

	CFE (%)	Non-CFE (%)
Lack of land available	6	10
Lack of capital	65	52
Quotas	15	5
Lack of current profitability in farming	21	14
Terms of lease eg length of term, landlord restrictions, rent	15	14
Other	18	19
Don't know	6	5

A2.10 Our respondents were asked how much capital was required to set up their present business. A relatively large proportion (23 per cent among county farms; 44 per cent among the others) said either that they did not know or were not prepared to disclose this. For those who did, the median was £40K with a very large range (from £7K to 0.25 Million) but with little variation between county farms and the others. It is interesting to note that the capital requirements do not appear to have risen by as much as might be expected with inflation since the late 1980s. For example, the 1988 survey found a median startup capital requirement of £38K for those on county farms, compared with £40K in this survey, though the reader is reminded that because of the different sampling procedures used, the results may not be directly comparable.

Table A2.3 Main constraints on new entrants: Sustaining a farming business

	CFE (%)	NonCFE (%)
Lack of land available	0	0
Lack of capital	3	5
Quotas	0	10
Lack of current profitability in farming	44	33
Terms of lease eg length of term, landlord restrictions, rent	6	14
Other	27	24
Don't know	9	10
Small size of holding	12	5

A2.11 The responses reported in table A2.3 show that when it comes to sustaining a farming business, the current lack of profitability in farming is the most frequently-mentioned constraint. Where progressing a farming business is concerned, table A2.4 reveals an interesting difference between the county farms and the other new entrants. New entrants on county farms are more likely to see their path blocked by the lack of a suitable larger holding while those in the private sector quote lack of capital as the major constraint. This reflects the extent to which County Farm tenants, whether pre- or post-1995, are almost entirely reliant on the let sector.

Table A2.4 Main constraints on new entrants: Progressing a farming business

	CFE (%)	NonCFE (%)
Lack of suitable larger holdings	29	5
Lack of capital	9	29
Quotas	0	0
Lack of current profitability in farming	21	24
Terms of lease eg length of term, landlord restrictions, rent	6	5
Other	15	24
Don't know	18	19

New Entrants' experiences with Farm Business Tenancies

A2.12 89 per cent of the CFE new entrants and 59 per cent of the other new entrants had some experience of renting land through a Farm Business Tenancy. The median term (for both the county farms and private sector new entrants) is six years. About one-third (30 per cent) reported that the term of their FBT had affected the way in which the land has been used - the majority of these respondents were on relatively

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short term tenancies i.e. 5 years or less. Some mentioned that they invest less on their farm, others that they “don’t do much to it”, and yet others that they farm it very intensively. Even one farmer with a 15 year FBT felt that investment on the farm is partly restricted by the term of the agreement. However, another with a 10 year term said that this “has allowed longer term planning”. Another had an FBT with a 22 year term which had enabled him to plan ahead to go organic.

A2.13 Approximately half of those with an FBT, whether in the county farms sector or not, reported that they have a break clause in their agreement, in most cases exercisable by both tenant and landlord. In only one case did a respondent feel that the existence of a break clause affected the way the land was used – in this case influencing investment.

A2.14 When asked whether the use of FBTs had benefited their business and enabled them to meet their business objectives, over half the respondents said that it had though the proportion was larger (close to two-thirds) among the private sector new entrants than among the county farms respondents (where it was just one-half). In most cases those saying it had cited the fact that it had enabled them to start farming or had simply made more land available.

New entrants’ expansion, investment and diversification activity in the last six years

A2.15 About three-quarters of the new entrants (whether on county farms or in the private sector) had expanded or invested in their business over the previous six years. Table A2.5 shows the type of investment in which they had been involved.

Table A2.5 Type of Investment or Expansion

	CFE (%)	NonCFE (%)
Land	43	22
Buildings	54	33
Livestock	86	44
Fixed equipment	29	22
Other	21	0

A2.16 Given the very high proportion of their farmland rented as an FBT it is not surprising that three-quarters of the respondents from county farms made these

investments on land in an FBT. For the other new entrants it was more often (66 per cent of occasions) made on land that was either owned (55 per cent) or under an AHA 86 tenancy (11 per cent). In most cases on the county farms, the investment in buildings on FBT land appears to have been made by the landlord.

A2.17 44 per cent of the county farms new entrants and 20 per cent of the other new entrants had diversified in the past six years. Table A2.6 lists the types of diversification involved. As with other farmers taking part in our survey relatively little on-farm diversification is taking place, though it is important to note that some diversification is taking place on land rented as an FBT in the county farms sector.

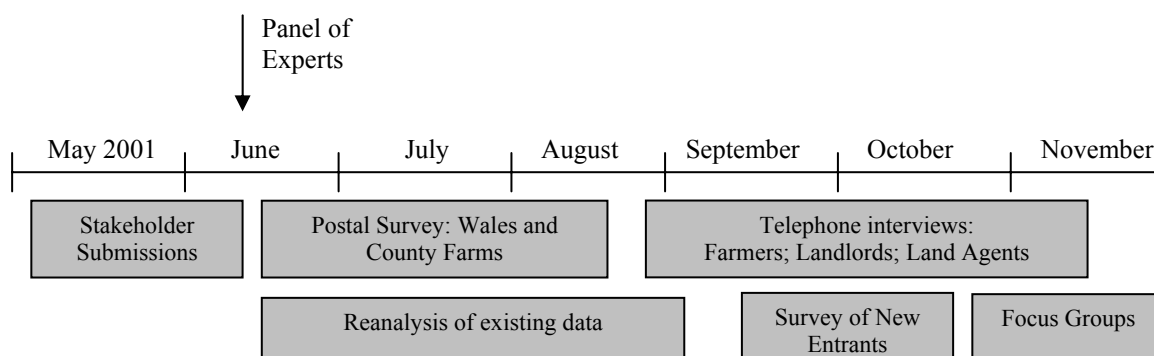
Table A2.6 Type of Diversification

	CFE (number of cases)	NonCFE (number of cases)
Equestrian/leisure	2	2
Direct sales eg Farm Shop, egg round	3	
Agric Contracting	1	
Letting property	1	3
Investment off farm	1	
Employment off farm	6	
Other	1	

APPENDIX 3 METHODOLOGY

A3.1 Figure A3.1 shows the timing of the main data collection components of the study, each of which will now be considered in turn.

Figure A3.1 Timing of the Project



Stakeholder Submissions

A3.2 In conjunction with the project Steering Group a list of stakeholders with a potential interest in the workings of the Act were contacted; the project was introduced and written comments invited on issues relevant to the evaluation. Formal written feedback was received from the organisations shown in figure A3.2. This feedback was used as the basis for discussion at the Panel of Experts meeting and to further inform the research.

Figure A3.2 Stakeholders consulted in the study

RICS	The Crown Estate
TFA	Agricultural Law Association
NFU	RSPB
CLA	Church Commissioners
National Trust	Wales Young Farmers Clubs
Farmers' Union of Wales	The Countryside Agency
CAAV	Ministry of Defence
Institute of Chartered Accountants	The Law Society
The Association of Chief Estates Surveyors and Property Managers in Local Government	English Nature
	NFYFC

Panel of Experts

A3.3 The first meeting of the Panel of Experts took place at the University of Reading on Wednesday 11th July 2001. The attendants are shown in Figure A3.3.

Figure A3.3 Panel of Experts: Attendants at the First Meeting

RICS – Alistair Martin* and Mark Sanders
TFA – George Dunn*
NFU – Ruth Lamb*, Colin Hall
CLA – Oliver Harwood*
NFYFC – Neil Cameron*
National Trust – David Riddle*
Farmers' Union of Wales – Barrie Jones
CAAV – Jeremy Moody*
John Kerr*, Farmer, Suffolk
plus:
Members of the University of Plymouth Research Team: Professor Andrew Errington*, Ian Whitehead*, Nick Millard*, Tim Felton, Rebecca Elsworthy.

*denotes those also attending the second panel of experts, which included additionally Sir Philip Williams (Landowner) and Julie Robinson (NFU). Barrie Jones was unable to attend this meeting but his comments and recommendations were relayed to the meeting by a member of the Research Team.

A3.4 Attendants were sent the three draft telephone questionnaires in advance of the meeting to provide good time for comment. The morning session dealt with the objectives of the research and explained the methodology. Most of the session concentrated on the feedback on the questionnaires which was positive and constructive and informed the final version of the questionnaires used in our surveys. The afternoon session involved a short presentation from the Team followed by an open discussion of some of the issues surrounding the operation of the Act.

A3.5 A second meeting of the Panel of Experts was convened at Seale-Hayne, University of Plymouth, on Friday 12th April 2002 to receive comments on the findings and recommendations from the project. The morning session was used to provide a summary of the key findings of the research, all attendees having been sent a copy of the Executive Summary and Chapter 7 Conclusions and Recommendations prior to the meeting. At this session, the recommendations were prioritised for treatment in the afternoon session. The afternoon meeting provided further opportunity for attendees to respond, this time with their views on the recommendations.

Reanalysis of existing data

A3.6 Chapter 3 describes the main characteristics of the Farm Business Tenancies currently in operation in England and Wales, drawing on several different sources of information. Our main source was the CAAV's Annual Tenanted Farms survey which we reanalysed for this project to provide data that is, as far as possible, comparable with that from our two postal surveys in Wales and among the Local Authorities operating "County Farms". The CAAV survey is the most comprehensive and reliable annual survey of the characteristics of Farm Business Tenancies¹.

Postal Surveys

A3.7 A postal survey of Rural Practice surveyors in Wales, sought to gather similar information for FBTs in Wales (the CAAV survey includes relatively few FBTs from the Principality)². The postal survey of all relevant Local Authorities provided a more detailed picture of FBTs in what is usually termed the "County Farms Estate". This group is of particular interest in relation to new entrants to the farm sector³. In both these cases the surveys gathered information on FBTs let in the period 1st Sept 1999 – 31st August 2000, the fifth full year of the operation of the Agricultural Tenancies Act⁴.

Telephone Surveys

A3.8 The study involved three substantial telephone surveys of samples of farmers, landlords and land agents. A supplementary telephone survey of new entrants provided additional information about this group of farmers whose needs the 1995 Act particularly sought to address.

¹ It should be borne in mind that the CAAV survey does not include FBTs arranged by members of other professional bodies or farmer-to-farmer lets made without reference to professional advice. It may therefore understate the total number of FBTs let in England and Wales. However, the consistent format of this regular and established survey provides a good picture of the main characteristics of FBTs and aggregate trends over time.

² Rural Practice Surveyors registered with the RICS were contacted. The response rate to this survey, at 42 per cent after two reminder letters, was similar to our 1997 survey. However, it provided information on only 35 FBTs let in Wales in the year ended 31st August 2000, again a similar number to those covered in our 1997 survey. This suggests that the number of FBTs in Wales is small.

³ This survey, which achieved a response rate of 68 per cent, after two reminder letters, provides details of a total of 184 FBTs let by County Farms in England and 20 in Wales.

⁴ It should be noted that this time period is slightly different from that used by the CAAV for its own survey (1st Nov 1999 – 31st October 2000) but it is not thought that this will have given rise to any major discrepancies between these different sets of data. In order to make the comparisons between FBTs in England and Wales, all Welsh FBTs were first removed from the database compiled by the CAAV, which was then reanalysed. As a result there are some minor differences between the data presented in this chapter and that for the entire CAAV survey published in CAAV (2001).

A3.9 In selecting the sample of **farmers** for this study, we took a “stratified random sample”. Our aim was to provide enough responses within any particular category of farmer to allow meaningful comparison between the different categories. For example, since only about 6 per cent of farmland is currently rented under FBTs, a simple random sample of farmers in England and Wales would yield too few farmers with experience of FBTs.

A3.10 In defining our strata we sought to cover the main types of land tenure - owner-occupation, land rented under an AHA tenancy and land rented as an FBT. We also sought to ensure coverage of farms with different types of enterprise – dairy, cattle and sheep (LFA), cereals and general cropping – and in different parts of the country. Table A3.1 shows the framework for sample selection, together with the number of responses finally achieved in each category. It should be noted that, because of the relatively small number of FBTs that comprise “complete holdings” (i.e. with land, farm buildings and a dwelling), we conducted a complete census of all such holdings in the study area. Despite this we were only able to gather information from 38 respondents in this category. This gives sufficient numbers for analysis of the differences between holdings of different tenure type but insufficient for more detailed comparison between the study areas.

Table A3.1 Framework for telephone survey of farmers: Number of responses set against targets (in italics)

Land Tenure Category	Area						Total within Tenure Category
	Dorset & Somerset		Kent & East Sussex	Lincolnshire	North Wales		
	Dairy	Cattle & sheep	General cropping	Cereals	Dairy	Cattle & sheep	
Wholly owned (Owner-occupier)	11	20	25	17	24	28	125
	<i>13</i>	<i>12</i>	25	25	<i>13</i>	<i>12</i>	<i>100</i>
Mixed tenure (No FBTs)	20	13	33	29	16	8	119
	<i>12</i>	<i>13</i>	25	25	<i>12</i>	<i>13</i>	<i>100</i>
Mixed tenure (with FBTs)	24	5	20	31	11	6	97
	<i>13</i>	<i>12</i>	25	25	<i>13</i>	<i>12</i>	<i>100</i>
FBT only	7	2	7	12	3	7	38
	<i>12</i>	<i>13</i>	25	25	<i>12</i>	<i>13</i>	<i>100</i>
Total	62	40	85	89	54	49	379
	<i>50</i>	<i>50</i>	<i>100</i>	<i>100</i>	<i>50</i>	<i>50</i>	<i>400</i>
Achieved Totals	102		85	89	103		379
Target Totals	100		100	100	100		400

A3.11 Where information gathered in the telephone interviews showed that the respondent had been wrongly classified in the original sample (perhaps because of changes in their tenure arrangements since the June 2000 census or inaccuracies in the original data) they were moved into the correct category for subsequent analysis. Detailed instructions were provided to the survey team to ensure that they were speaking to ‘one of the principal farmers or a partner working in the farming business’ and also to ensure a common approach to the survey.

A3.12 The telephone interviews took place during evenings in September, October and November 2001. The first two months are typically very busy for arable farmers. The team started with the livestock farmers in Dorset and Somerset and farmers in Kent and East Sussex and then moved to the Welsh farmers, finishing with the Lincolnshire arable farmers in November. A total of 476 farmers were contacted, two of whom provided information but were subsequently removed as invalid. There were relatively few refusals, the overall response rate being 80 per cent, ranging from 76 per cent in Kent and East Sussex to 83 per cent in Lincolnshire.

A3.13 For both the telephone survey and the focus groups, we sought to achieve an adequate coverage of the **landlords** involved (or potentially involved) in FBTs. We included both the ‘Professional Landlords’ such as the Crown Estate, the Church Commissioners, and the National Trust as well as a cross-section of private landlords. The four main groups were as follows:

- private landlords owning more than 10 hectares but less than 400 hectares
- private landlords owning between 400-2000 hectares
- private landlords owning more than 2000 hectares;
- non-private landlords including the Crown Estate, the Church Commissioners, the Royal Duchies, the National Trust, the Financial Institutions, the Water Companies, the National Park Authorities, the County Farms Estates and the Oxford and Cambridge Colleges.

A3.14 As with the 1997 study, names and addresses of the private landlords were sought from the Country and Business Landowners Association. The CLA were not prepared to release a list of their members but they did agree to write to a randomly-selected sample in support of the research project and any members willing to take part were invited to return a pre-paid card with their contact details direct to the

research team at the University of Plymouth. A total of 168 letters were sent out by the CLA to private landlords. In addition to this, the letter and card were again sent to 95 Institutional CLA members. A reminder letter was sent out by the CLA four weeks after the initial posting.

A3.15 A total of 97 cards were returned by CLA members and all were used. From these, 58 completed interviews (60 per cent response rate) were achieved (33 private landlords and 25 'professional landlords'). Of the remainder four (4 per cent) refused to take part, 25 (26 per cent) were owner-occupiers with no let land, four had too small an area (<10 ha) for inclusion, and the remainder were not contactable after three attempted telephone calls. To supplement the sample for the non-private landlords, a list was prepared of the main 'national' landlords, and a random sample of these were surveyed. Random selection was also made from additional lists prepared for each of the four study areas to include other non-private-landlords such as the National Trust, the Water Companies and the Ministry of Defence. This accounts for the balance of twelve landlords covered by the telephone survey. Three of the responses were not usable, because they proved not to be landlords, resulting in a useable of response of 67. The original research contract, for 50 responses, has therefore been exceeded towards the target of 100 responses suggested by members of the Panel of Experts. The summer time-frame, when many landowners were on leave, required a special degree of persistence and patience in attempting to contact those on the lists.

A3.16 Most of the properties of the landlords interviewed had been owned for more than twenty years (93 per cent) with only five owned for less. It is therefore not possible to draw separate conclusions for the activities of the 'new landowners in the rural market' who may be under-represented in our final sample.

A3.17 Whilst by no means all FBT's are arranged by **Land Agents** they play a fundamental part in a significant number of lettings, whether simply by advising clients on the options available to them, brokering the lettings or completing the detailed agreements. Consequently agents offer an important source of information, particularly on some of the motives behind the lettings and the design of agreements. The re-analysed CAAV data, the supplementary postal surveys and the telephone

surveys of farmers and landowners provided detailed information on the characteristics of agreements. Consequently, the survey of Land Agents concentrated on the approach agents take to drafting agreements and the influences, both actual and potential on the use of FBT's. In particular a range of questions sought to establish the extent to which agents took advantage of the flexibility available under the Act and how often, in practice, agreements dealt specifically with matters which were held out as being contentions or worthy of change.

A3.18 A total of 338 land agents were contacted, drawn as a systematic sample from lists (provided by the RICS) of rural surveyors in private practice in, or close to, the four study areas. Just over half of these (51 per cent) were found to be not currently involved in agricultural work, to have retired, moved away or were institutional or full time resident agents (and not interviewed, in order to avoid duplication with those covered in the landlords survey). Expressed as a proportion of those eligible for survey, the response rate was therefore 86 per cent, ranging from 70 per cent in Kent and East Sussex to 90 per cent in Lincolnshire. Respondents represented a wide cross-section of practices with equal proportions of small (less than 10 personnel) and larger (more than 30 personnel) practices. There was good coverage of all four study areas with similar numbers of respondents from each, and an adequate distribution between those practices identifying themselves as acting mainly for landlords/owner-occupiers (37 per cent), those acting for tenants/owner-occupiers (20 per cent) and those with a mixed client base (43 per cent).

A3.19 We aimed to interview a total of 60 new entrants, 30 from County Farms and 30 who were not. In addition to those already contacted through the farmer survey (see above), we drew a systematic sample of **new entrants** on County Farms from lists provided by Local Authorities and contacted all the new entrants known to the land agents we interviewed. Though a number of new entrants on County Farms were found to be new entrants to the Estate rather than to farming itself and were therefore ineligible, there were no refusals to take part in the survey. However, it proved particularly difficult to locate new entrants outside the County Farms sector. Interviews were eventually completed with 35 new entrants who were from County Farms and 25 who were not.

Focus Group Meetings

A3.20 The main purpose of the focus groups was to achieve a greater depth of understanding of the perceived operation of FBTs in practice, their advantages and disadvantages compared with other approaches to business development and the flexibility with which they had been used. The focus groups also provided the opportunity for preliminary exploration of the recommendations beginning to emerge from the study.

A3.21 Meetings were held in four different locations, each associated with one of our study areas – Tunbridge Wells, Martock (near Yeovil), Grantham and Welshpool. At each venue two separate focus groups were held, one for tenants and their advisers/agents, and another for landlords and their advisers/agents. Each meeting lasted approximately two hours. Altogether, 26 landlords/advisers/agents and 28 tenants/advisers/agents attended the meetings, an average of 7 participants per focus group. A written record of the discussion was kept and, with the consent of the participants, the meetings were tape recorded.

A3.22 A facilitator from the research team opened the meetings by outlining the aims and objectives of the research and indicating some initial findings from the telephone survey. A number of areas were then highlighted for possible discussion. The facilitator then took a 'back seat' as the debate developed among the participants, intervening merely to clarify points, ensure that everyone around the table had an opportunity to express their point of view and move the discussion on so that sufficient ground was covered.

A3.23 The original intention was for focus group participants to be drawn from the telephone survey (respondents were routinely asked whether they would be willing to take part in their local focus group meeting). In the event, it became apparent that this strategy would not produce sufficient numbers to hold successful focus groups. As first, the number of respondents interested in the focus groups was low and, second, those that indicated that they would be interested in attending the meeting did not always attend (despite being sent a letter of confirmation following the telephone survey). In the case of the focus groups for the tenants and mixed tenure farmers, other farmers used in the pilot survey or from the DEFRA lists were first contacted

but with little success. It was therefore necessary in the case of all venues to contact the local offices of the NFU(FUW) to seek assistance in providing names of those who could be contacted to attend. Most of the participating landlords (plus agents/advisers) came from those originally contacted in the telephone survey.

APPENDIX 4 POSTAL QUESTIONNAIRE

**DEFRA Economic Evaluation of the Agricultural Tenancies Act 1995
Section 1.**

Please record on the following pages details of the Farm Business Tenancies dealt with on the estate between 1st September 1999 and 31st August 2000 (one FBT for each column)

but excluding:

1) FBTs used in conjunction with milk quota sales and other atypical FBTs used for other quota arrangements (eg. sugar beet quota use).

1) FBTs of less than 12 months granted as replacements for grazing licences other than where a periodic FBT is being used as a vehicle to create a longer term letting.

Please tick one box only for questions 3, 4 and 5 in this section.

In question 6 where there are amalgamated holdings under the FBT please indicate the appropriate acreage to each category.

Name of compiler..... (Block letters please).

Organisation

Signature

Date

Total area of land managed (acres)

Please tick, as appropriate

We have not dealt with any FBTs in the relevant period

Please detail any reasons why FBTs have not been used or other forms of arrangement preferred.

.....
.....

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Section 1 (If you require extra space, please photocopy this form and continue as a separate sheet.

Agreement No.					
Were you acting for landlord or tenant?					
1. Area (acres)					
2. County					
3. Holding type					
Bare land					
Land & buildings					
Land/buildings/house					
4. Farm type					
Dairy					
Livestock					
Mixed					
Arable					
Horticultural					
Other					
5. Owner of holding					
Private					
Utility companies					
Central Government					
County councils					
Financial Institution					
Traditional institutions (inc. Crown Estate & Royal Duchies)					
Charities (inc. NT & RSPB)					
Other					
6. Previous occupation of the holding					
Previously farmed in-hand (excluding share farming and contract farming)					
Let on short agreements					
Previously AHA 1986 tenancy					
Previously farmed under share farming or contract farming					
Grazing licence					
Other please specify					
7. Tenant's Age					
8. Is this letting to a previous occupier (PO), other farmer (OF) or new entrant (NE)					
9. Other land farmed by the tenant (acres)					
10. Date FBT granted					
11. Term (Years)					
12. Break clause used (if so when)					
13. Rent (£/acre)					
14. Does the FBT include landlords milk quota?					
15. If not, what is the extra charge for milk quota use? (total)					

Section 2

This section is designed to give further information on only three of the FBTs that you have personally dealt with between 1 " September 1999 and 3 1t August 2000 te indicate variations in the agreements used for different purposes.

Part 1 A short term agreement of less than two years

Part 2 An agreement for 2-5 years

Part 3 A long term agreement i.e. greater than 10 years

Part 1. Please complete this sheet for one of the agreements that you have dealt with which is:

A short term agreement of less than two years.

Please indicate the number of the FBT that you are referring to from the table in Section 1

1. Model FBT agreement on which the agreement is based. Please tick one box

- RICS agreement
- CLA agreement
- NFU agreement
- other (please specify).....

2. Who drafted the agreement?

- Yourself
- Clients solicitor
- other (please specify)

3. Rent (total)

Previous rent where let (total)

4. Provision for rent reviews in the agreement.

- no provision in the agreement
- no rent reviews
- rent reviewed to open market lever
- rent reviewed by fixed increments
- Please specify.....
- rent reviews based on index
- Please specify.....
- if appropriate, what is the rent review cycle (years).....

5. Repair clauses.

- Landlord responsible for all repairs
- Landlord and tenant responsibilities similar to those of SI 1473(model clauses) as amended
- Tenant responsible for all repairs
- Other variation..
- Please specify in brief.....

6. Assignment and sub-letting.

- assignment prohibited
- subletting prohibited
- both prohibited
- neither prohibited with landlord's consent
- both permitted

7. Restrictions on business activities provided for in the agreement.

- agricultural activities only
- agricultural and some limited diversification activities
Please specify
- no restrictions
- other
Please specify

8. Specific management requirements provided for in the agreement.

- specific requirements largely concerning environment conservation
- other management requirements
Please specify.....
- no specific requirements

9. Landlord's dilapidations.

- please outline the provisions in the agreement for the landlord's claim for dilapidations on termination of the tenancy.

.....
.....

10. Milk Quota.

- please outline the provisions in the agreement

.....
.....

11. Disputes procedure.

* Please outline the provisions in the agreement for the resolution of disputes not governed directly by the ATA1995.

- no provision in the agreement
- arbitration for all disputes
- independent expert to be appointed
- other
Please specify.....

12. What factors determined the length (years) of the agreement?

.....
.....

Part 2	Please complete this sheet for one of the agreements that you have dealt with which is:
	<u>An agreement for 2 - 5 years,</u>

Please indicate the number of the FBT that you are referring to from the table in Section 1

1. Model FBT agreement on which the agreement is based. Please tick one box

- RICS agreement
- CLA agreement
- NFU agreement
- other (please specify).....

2. Who drafted the agreement?

- Yourself
- Clients solicitor
- other (please specify)

3. Rent (total)

Previous rent where let (total)

4. Provision for rent reviews in the agreement.

- no provision in the agreement
- no rent reviews
- rent reviewed to open market lever
- rent reviewed by fixed increments
- Please specify.....
- rent reviews based on index
- Please specify.....
- if appropriate, what is the rent review cycle (years).....

5. Repair clauses.

- Landlord responsible for all repairs
- Landlord and tenant responsibilities similar to those of SI 1473(model clauses) as amended
- Tenant responsible for all repairs
- Other variation..
- Please specify in brief.....

6. Assignment and sub-letting.

- assignment prohibited
- subletting prohibited
- both prohibited
- neither prohibited with landlord's consent
- both permitted

7. Restrictions on business activities provided for in the agreement.

- agricultural activities only
- agricultural and some limited diversification activities
Please specify
- no restrictions
- other
Please specify

8. Specific management requirements provided for in the agreement.

- specific requirements largely concerning environment conservation
- other management requirements
Please specify.....
- no specific requirements

9. Landlord's dilapidations.

- please outline the provisions in the agreement for the landlord's claim for dilapidations on termination of the tenancy.

.....
.....

10. Milk Quota.

- please outline the provisions in the agreement

.....
.....

11. Disputes procedure.

* Please outline the provisions in the agreement for the resolution of disputes not governed directly by the ATA1995.

- no provision in the agreement
- arbitration for all disputes
- independent expert to be appointed
- other
Please specify.....

12. What factors determined the length (years) of the agreement?

.....
.....

Part 3 Please complete this sheet for one of the agreements that you have dealt with which is:
A long term agreement i.e. longer than 10 years.

Please indicate the number of the FBT that you are referring to from the table in Section 1

2. Model FBT agreement on which the agreement is based. Please tick one box

- RICS agreement
- CLA agreement
- NFU agreement
- other (please specify).....

2. Who drafted the agreement?

- Yourself
- Clients solicitor
- other (please specify)

3. Rent (total)

Previous rent where let (total)

4. Provision for rent reviews in the agreement.

- no provision in the agreement
- no rent reviews
- rent reviewed to open market lever
- rent reviewed by fixed increments
- Please specify.....
- rent reviews based on index
- Please specify.....
- if appropriate, what is the rent review cycle (years).....

5. Repair clauses.

- Landlord responsible for all repairs
- Landlord and tenant responsibilities similar to those of SI 1473(model clauses) as amended
- Tenant responsible for all repairs
- Other variation..
- Please specify in brief.....

6. Assignment and sub-letting.

- assignment prohibited
- subletting prohibited
- both prohibited
- neither prohibited with landlord's consent
- both permitted

7. Restrictions on business activities provided for in the agreement.

- agricultural activities only
- agricultural and some limited diversification activities
Please specify
- no restrictions
- other
Please specify

8. Specific management requirements provided for in the agreement.

- specific requirements largely concerning environment conservation
- other management requirements
Please specify.....
- no specific requirements

9. Landlord's dilapidations.

- please outline the provisions in the agreement for the landlord's claim for dilapidations on termination of the tenancy.

.....
.....

10. Milk Quota.

- please outline the provisions in the agreement

.....
.....

11. Disputes procedure.

* Please outline the provisions in the agreement for the resolution of disputes not governed directly by the ATA1995.

- no provision in the agreement
- arbitration for all disputes
- independent expert to be appointed
- other
Please specify.....

12. What factors determined the length (years) of the agreement?

.....
.....

13 Have you expanded or invested in the farm business in the last six years?

- 1 yes
- 2 no

If yes then ask Q14, if no then go to Q17

14 What form did the expansion or the investment take?

- 1 taking on more land
- 2 investment in additional buildings
- 3 increase in stock numbers
- 4 investment in fixed equipment
- 5 other (please specify)-----

15 Was the land on which these investments were made:

- 1 owned by you
- 2 rented in on a traditional full (1986 Act) tenancy
- 3 rented in under a FBT
- 4 contract/share farmed
- 5 rented in on a business lease
- 6 other (please specify)-----

If the respondent answers with option 2, 3 or 5 then ask Q16, if not go to Q17

16 Was any of this investment made by the landowner?

- 1 yes
- 2 no

17 Have you diversified the farm business in the last six years?

- 1 yes
- 2 no

If yes then ask Q18, if no then go to Q20

18 What form did the diversification take?

- 1 equestrian
- 2 leisure
- 3 food processing
- 4 farm shop
- 5 contracting
- 6 obtaining employment off the farm
- 7 change in farming practise
- 8 investing off the farm
- 9 letting property
- 10 other (please specify)

19 Was the land on which the diversification took place:

- 1 owned by you
- 2 rented in on a traditional full (1986 Act) tenancy
- 3 rented in under a FBT
- 4 contract/share farmed
- 5 rented in on a business lease
- 6 other (please specify)

Q20 only to be asked if farmers has shown some owner occupation in Q8

20 Do you think you will stay on the farm when you have retired?

- 1 yes
- 2 no
- 3 don't know

FOR THOSE RESPONDENTS WHO ANSWERED NO TO Q1, CLOSE THE INTERVIEW WITH 'Thank you very much for your time'.

SECTION B

EXPERIENCE WITH FARM BUSINESS TENANCIES

Having established that background, I would now like to ask you about your experiences with FBTs.

If question 8 above has indicated involvement with land on an FBT do not ask Q21 but move to the preamble for question 22

21 Have you ever been a tenant of land let on a FBT?

- 1 yes (**go to Q22**)
- 2 no (**go to Q 62**)

The following questions relate to your experiences with renting on FBTs. If you have had experience with more than one FBT please refer to the FBT which you believe is the most important.

22 Are you still occupying land under a FBT agreement?

- 1 Yes, (**go to Q25**)
- 2 No, (**go to Q23**)

23 How long did you occupy land under this agreement?

24 Was that the original term or was it extended or broken early?

- 1 original term
- 2 extended (Please specify)-----
- 3 broken early (Please specify)-----

25 When did the FBT commence?-----

26 What is/was the term of the FBT? -----

27 Has/did the length of term affected the way in which you have used this land within your business?

- 1 Yes
- If yes, please specify**

2 no

28 Is/was there a fixed date break clause in the agreement?

- 1 yes (go to Q29)
- 2 no (go to Q31)
- 3 don't know (go to Q31)

29 Is/was this break clause?

- 1 Exercisable by the landlord
- 2 Exercisable by the tenant
- 3 Exercisable by both
- 4 don't know (go to Q32)

30 Does this break clause affect the way in which you use this land in your business

- 1 Yes

If yes, please specify-----

- 2 no

31 What area does/did the FBT cover? (hectares) -----

32 Of what does/did the FBT comprise? :

- 1 bare land
- 2 land and buildings
- 3 land, buildings and house

33 Who is/was the landlord?

- 1 Private
- 2 Utility Companies
- 3 Central Government
- 4 County Councils
- 5 Other local government body
- 6 Traditional Institutions (inc Crown and Duchies)
- 7 Financial Institutions
- 8 Conservation charities (inc NT & RSPB)
- 9 Other (please specify)-----

34 Did you or your agent have any major influence in the drafting of the agreement (including rent)?

- 1 yes
- 2 no

35 Were you asked to make a direct contribution towards the cost of preparing the agreement over and above the stamp duty?

- 1 yes
- 2 no

36 What are/were the provisions for the review of rent in the agreement?

- 1 fixed rent
- 2 rent reviewed to open market levels
- 3 rent reviewed by fixed increments
- 4 rent reviews based on an index or other formula (please specify)
- 5 no provision for rent review
- 6 other basis
- 7 don't know

37 What are the repairing liabilities under the agreement?

- 1 landlord responsible for all repairs
- 2 landlord and tenant share repairs
- 3 tenant responsible for all repairs
- 4 don't know

38 What are the provisions in the agreement concerning assignment and subletting?

- 1 both prohibited
- 2 assignment prohibited
- 3 subletting prohibited
- 4 both permitted only with landlord's consent
- 5 both permitted
- 6 don't know

39 Does this have any impact on the way in which you use the land/buildings?

- 1 yes (please specify)-----

- 2 no

40 Have you ever approached your landlord to vary the provision concerning assignment and subletting?

- 1 yes
- 2 no

If respondent answers yes go to Q41, if no go to Q42

41 What was the reaction of the landlord, did they:

- 1 grant conditional consent
- 2 grant open consent
- 3 refuse
- 4 other

42 Are there any restrictions in the agreement over your use of the land/buildings?

- 1 yes
- 2 no
- 3 don't know

If yes then ask Q43, if no, or don't know, then go to Q47

43 What are these?

- 1 specified agricultural activities only
- 2 general agricultural activities only
- 3 agricultural and some diversification activities
(please specify) -----

- 4 other (please specify)-----

- 5 don't know

44 Has this imposed any restrictions on the development of your business?-

- 1 yes, please specify-----

- 2 no

45 Have you ever approached your landlord to vary this provision?

- 1 yes
- 2 no

If yes go to Q46, if no go to Q47

46 What was the reaction of the landlord, did they:

- 1 grant conditional consent
- 2 grant open consent
- 3 refuse
- 4 other

47 Are there any specific management requirements concerning environmental issues within your agreement?

- 1 yes (please specify)-----

- 2 no
- 3 don't know

If respondent answers yes go to Q48, if no go to 49

48 Does this affect the way in which you use the land/buildings?

- 1 yes (please specify) -----

- 2 no

49 Have you ever considered entering into an agri-environment scheme?

- 1 yes
- 2 no

If respondent answers, yes go to Q50, no go to Q53

50 Did the terms of the FBT have any impact on the final decision?

- 1 yes (please specify)-----

- 2 no

51 Did you approach your landlord to enter into an agri-environment agreement

- 1 yes
- 2 no

If yes go to Q52, if no go to Q53

52 What was their reaction?

- 1 happy to facilitate
- 2 consent required and given
- 3 consent required and not given

53 Do you know how disputes would be resolved under your agreement?

- 1 yes
- 2 no

54 Have you had any disagreements concerning your FBT?

- 1 yes
- 2 no

If yes then ask Q55, if no then go to Q56

55 Was this resolved without recourse to a third party?

- 1 yes
- 2 no

**If the respondent is a 'new entrant' as determined in Q2 then move on to SECTION D.
If not, then go to Q56.**

56 What two changes in the current arrangements would encourage you to make more use of FBTs ?

57 Here are four changes that have been suggested; please indicate on a scale of 0 to 5 where 0 equals positively discourage and 5 equals positively encourage, what affect you consider the following would have on encouraging greater use of FBTs

	0	1	2	3	4	5
A more favourable tax regime for landowners						
A minimum length of term						
A rent formula similar to that for traditional (1986 Act) tenancies						
More statutory fall back provisions						

58 How well do you feel FBTs have met the objectives of:

	Very well	Well	Poorly	Not at all	Don't know
Encouraging more letting of agricultural land;					
Increasing the opportunities for new entrants					
Promoting economic efficiency in farming in England and Wales					

59 What do you believe are the unintended side effects of FBTs ?-----

60 What impact do you believe FBTS have had on 1986 Act tenancies in relation to

1 rental levels-----

2 extending the size of holdings-----

3 tenancy succession-----

61 Would you be interested in attending a Focus Group in your area to discuss the impact of the ATA 1995 ?
1 yes
2 no

Thank you very much for your time

SECTION C
THOSE WHO HAVE HAD NO EXPERIENCE WITH FBTS

62 Have you ever been interested in renting land in or letting land out under a FBT?
1 yes (**go to Q64**)
2 no (**go to Q63**)

63 What are the reasons that you have not been interested in renting land or letting out land under a FBT?-----

If Q63 was asked then go to Q65

64 What are the reasons for not renting in or letting out land under a FBT?-----

65 If you were able to obtain extra land under a FBT how would this help your business?-----

If the respondent is a 'new entrant' as determined in Q2 then move on to SECTION D.
If not, then go to Q66.

66 What two changes in the current arrangements would encourage you to make more use of FBTS?-----

67 Here are four changes that have been suggested; please indicate on a scale of 0 to 5 where 0 equals positively discourage and 5 equals positively encourage, what affect you consider the following would have on encouraging greater use of FBTs

	0	1	2	3	4	5
A more favourable tax regime for landowners						
A minimum length of term						
A rent formula similar to that for traditional (1986 Act) tenancies						
More statutory fall back provisions						

68 How well do you feel FBTs have met the objectives of:

	Very well	Well	Poorly	Not at all	Don't know
Encouraging more letting of agricultural land;					
Increasing the opportunities for new entrants					
Promoting economic efficiency in farming in England and Wales					

69 What do you believe are the unintended side effects of FBTs?-----

70 What impact do you believe FBTS have had on 1986 Act tenancies in relation to:

- 1 rental levels-----

- 2 extending the size of holdings-----

- 3 tenancy succession-----

71 Would you be interested in attending a Focus group in your area to discuss the impact of the ATA 1995 ?

- 1 yes
- 2 no

Thank you very much for your time

SECTION D

NEW ENTRANTS TO FARMING

72 Do you have any of the following qualifications?

- 1 BSc/MSc Agriculture or related subject
- 2 HND Agriculture or related subject
- 3 OND Agriculture or related subject
- 4 Other further education qualification
- 5 Other business experience

73 Is your holding farmed together with any other family holding?

- 1 Yes
- 2 No

74 How much capital was required to start up your present business?-----

75 How many FBTs have you applied for ?-----

76 What proportion of those applications have been successful?-----

77 What do you consider have been the major factors affecting the success or otherwise with these applications?-----

78 What do you consider to be the major constraints on new entrants

- 1 getting started in farming -----

- 2 sustaining a farming business-----

- 3 progressing a farming business-----

79 Has the use of FBTs benefited your business and enabled you to meet your business objectives?

1 yes, please specify-----

2 no

80 What two changes in the current arrangements would encourage you to make more use of FBTs?-----

81 Here are four changes that have been suggested; please indicate on a scale of 0 to 5 where 0 equals positively discourage and 5 equals positively encourage, what affect you consider the following would have on encouraging greater use of FBTS?

	0	1	2	3	4	5
A more favourable tax regime for landowners						
A minimum length of term						
A rent formula similar to that for traditional (1986 Act) tenancies						
More statutory fall back provisions						

82 How well do you feel FBTs have met the objectives of:

	Very well	Well	Poorly	Not at all	Don't know
Encouraging more letting of agricultural land;					
Increasing the opportunities for new entrants					
Promoting economic efficiency in farming in England and Wales					

83 What do you believe are the unintended side effects of FBTs?-----

84 What impact do you believe FBTS have had on 1986 Act tenancies in relation to:

- 1 rental levels-----

- 2 extending the size of holdings-----

- 3 tenancy succession-----

85 Would you be interested in attending a Focus group in your area to discuss the impact of the ATA 1995 ?

- 1 yes
- 2 no

Thank you very much for your time

A4.2

Telephone Survey to Land Agents

DEFRA Economic Evaluation of the Agricultural Tenancies Act 1995

- Q1 Name _____
- Q2 How many personnel are there in your practice? (to include all members of staff) _____
- Q3 In which areas of the country do you operate? (List government regions)
- | | |
|------------------------|--------------------------|
| Northern | <input type="checkbox"/> |
| Yorkshire & Humberside | <input type="checkbox"/> |
| North West | <input type="checkbox"/> |
| East Midlands | <input type="checkbox"/> |
| West Midlands | <input type="checkbox"/> |
| East Anglia | <input type="checkbox"/> |
| Wales | <input type="checkbox"/> |
| South East | <input type="checkbox"/> |
| South West | <input type="checkbox"/> |
- Q4 As an individual, are your rural clients:
- | | |
|----------------------------------|--------------------------|
| mainly landlords/owner occupiers | <input type="checkbox"/> |
| mainly tenants/ owner occupiers | <input type="checkbox"/> |
| mixed | <input type="checkbox"/> |
- Q5 Approximately how many FBTs are you personally involved in setting up per annum? (excluding those associated with milk quota transfers)
- | | |
|------------|--------------------------|
| zero | <input type="checkbox"/> |
| 1 - 9 | <input type="checkbox"/> |
| 10-29 | <input type="checkbox"/> |
| 30 or more | <input type="checkbox"/> |
- Q6 How many applications do you get for each FBT on average? _____
- Q7 How do you perceive the number of applications submitted for each FBT?
- | | |
|----------------------------------|--------------------------|
| increasing | <input type="checkbox"/> |
| decreasing | <input type="checkbox"/> |
| neither increasing or decreasing | <input type="checkbox"/> |
- Q8 Approximately how many share farming or contract farming agreements are you personally involved in setting up per annum?
- | | |
|------------|--------------------------|
| zero | <input type="checkbox"/> |
| 1 - 9 | <input type="checkbox"/> |
| 10 - 29 | <input type="checkbox"/> |
| 30 or more | <input type="checkbox"/> |

- Q9 Returning to FBTs, when acting for the landlord do you normally prepare the agreements yourself or do you refer this to your client's solicitor?
- deal with it myself
- refer to solicitor
- it depends on the circumstances

- Q10 If you prepare the agreements yourself do you normally rely on a published standard agreement?
- yes
- no

if no go to question 12

- Q11 Which standard agreement do you use?
- RICS agreement
- CLA agreement
- NFU agreement
- Other
- please specify _____

- Q12 Apart from specific details on the parties, rent and length of term, how often do you vary the other terms?
- often
- seldom
- never

Questions 13 and 14 relate to FBTs with a term of three years and longer only

- Q13 How often do you include the following on setting up an FBT;
- | | often | seldom | never |
|---|--------------------------|--------------------------|--------------------------|
| fixed or phased rents | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| rent indices and formulae | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| provision to assign or sublet the FBT | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a relaxation of the bar on non-agricultural use | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| FRI terms | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| specific environmental agreements | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| fixed return on landlord's improvements | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

ECONOMIC EVALUATION OF THE AGRICULTURAL TENANCIES ACT

Q14 How often have you been asked to vary the following areas of established FBT agreements?

	often	seldom	never
rent review regime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
assignment and subletting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
user clauses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
repair clauses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
specific management requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q15 How many FBTs have you set up since the introduction of the 1995 Act which are over 10 years and have no break clause in the first 5 years?

Q16 Have you been involved in any lettings to new entrants?

- yes
- no

if yes, how many

Q17 What changes in the legislation do you believe would encourage more lettings to new entrants?

Q18 What proportion of FBTs that you deal with are re-lettings to existing FBT tenants?

- 60% or more
- 40-59%
- 20-39%
- <20%
- None

Q19 What proportion of FBTs you deal with have been allowed to continue beyond the initial term?

- 60% or more
- 40-59%
- 20-39%
- <20%
- None

Q20 What two changes in the current arrangements do you think would encourage greater use of FBTs in England and Wales?

Here are four changes that have been suggested; please indicate on a scale of 0 to 5 where 0 equals positively discourage and 5 equals positively encourage, what affect you consider the following would have on;

Q21	increasing the amount of let land available for letting on FBTs	0	1	2	3	4	5
	a more favourable tax regime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a minimum length of term	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a rent formula similar to that for traditional (1986 Act) tenancies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	More statutory fall back provisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Here are four changes that have been suggested; please indicate on a scale of 0 to 5 where 0 equals positively discourage and 5 equals positively encourage, what affect you consider the following would have on:

Q22	Increasing the number of complete units available for letting on FBTs:	0	1	2	3	4	5
	a more favourable tax regime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a minimum length of term	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a rent formula similar to that for traditional (1986 Act) tenancies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	More statutory fall back provisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q23	How well do you feel that FBTs have met the objectives of:	very well	well	poorly	not at all
	encouraging more letting of agricultural land	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

increasing the opportunities for new entrants	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
promoting economic efficiency making the market for rented land responsive to market forces	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q24 What do you believe are the unintended side effects of FBTs?

Q25 What impact do you believe FBTs have had on 1986 Act tenancies in relation to rental levels:

Q26 What impact do you believe FBTs have had on 1986 Act tenancies in relation to extending the size of holdings

Q27 What impact do you believe FBTs have had on 1986 Act tenancies in relation to tenancy succession

Q28 Do you have any other comments concerning FBTs?

Q29 We are keen to contact a number of new entrants into farming who have been farming in their own right for less than 5 years. Do you know of any such new entrants and if so could we have their names and addresses. We would also be interested to have the names and addresses of any new entrants farming in their own right pre 1995.

Q30 Would you be interested in attending a focus group in your area to discuss the impact of the Agricultural Tenancies Act 1995?

- yes
- no

Thank You very much for your time

Q31 Area

- Dorset Somerset
- Kent & East Sussex
- Lincs.
- Wales

A 4.3

Telephone survey to landowners**DEFRA Economic Evaluation of the Agricultural Tenancies Act 1995****SECTION A DETAILS OF THE PROPERTY**

- Q1 Name _____
- Q2 Who are the owners of the property?
- private
 - utility companies
 - central government
 - county councils
 - other local government body
 - traditional institutions (inc Crown & Duchies)
 - financial institutions
 - conservation charities (inc. NT & RSPB)
 - Other
 - other (please specify) _____
- Q3 How long has the property been owned?
- up to six years
 - 6-20 years
 - more than 20 years
- Q4 What is the size of the property?
- more than 10ha <400ha
 - 400-999ha
 - 1000-2000ha
 - more than 2000ha
- Q5 What is the main farm type on the property?
- dairy
 - livestock
 - mixed crop and livestock
 - arable
 - horticultural
 - Other
 - other (please specify) _____
- Q6 What are the two main management objectives of owning the property?
- preserve and enhance return from the property
 - retain as family home
 - protect the property for the next generation of family
 - provide rural employment
 - improve the environment
 - to hold pending development
 - Other

other (please specify)

Q7 How much land if any is let on any form of agricultural tenancy (excluding family farming tenancies)?

Yes

No

How much? _____

if there is let land then go to question 8, otherwise go to question 21

Q8 How many agricultural lettings are there?

Q9 What proportion of these letings are complete holdings, that is a house and buildings as well as the land? (please give proportion in number of tenancies)

None

<25%

25-49%

50-74%

75-100%

Q10 What proportion of the land let on agricultural tenancies (by area) is let on FBTs?

None

<25%

25-49%

50-74%

75-100%

Q14 Have you experienced any difficulties in the preparation of the FBT agreements

Yes

No

What are they? _____

SECTION B CHANGES TO THE PROPERTY SINCE 1995, AFFECTED BY FBTS

The following questions relate to the management of the property since 1995

Q15 Have you purchased any land for letting on FBTs?

no

yes

what area? _____

Q16 Have you amalgamated/rationalised any holdings using FBTs?

no

yes

Q17 Have you taken back any land which was let on full traditional (1986 Act) tenancies for letting on FBTS?

- no
- yes
- what area? _____

Q18 Have you released any land from in-hand farming for letting on FBTS?

- no
- yes
- what area? _____
- what was the main reason for doing this? _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Q20 Have you taken any land back from contract farming or share farming for letting on FBTS?

- no
- yes
- what area? _____
- _____
- what was the main reason for doing this? _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Q21 Have you taken back any land previously let by you on FBTS for in-hand, contract farming or share farming?

- no
- yes
- what area? _____
- what was the main reason for doing this? _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

- Q22 Has the estate made any significant investments in buildings and/ or fixed equipment in the last six years?
- yes
 - no

If yes go to question 23, if no go to question 25

- Q23 Was the land on which the investment was made;
- let out on a full traditional (1986 Act tenancy)
 - let out under an FBT
 - contract farmed/share farmed
 - farmed in-hand
 - other (please specify) _____

- Q24 Did the nature of the occupation of this land have any influence on the investment made
- no
 - yes
 - please explain how _____

- Q25 Are you averse to making any investments on land let out on a FBT?
- no
 - yes
 - why is this? _____

SECTION C CHANGES TO TERMS OF LETTING DUE TO FBTS

- Q26 Has the introduction of FBTS made you more willing to consider letting more land?
- yes
 - no
 - don't know

why do you say that?

- Q27 Has the introduction of FBTs made you more willing to allow your tenants to become involved in diversification and non-agricultural activity?
- yes
- no
- don't know

- Q28 Have you ever been approached by a tenant of an FBT for consent to diversify?
- yes
- no

If Yes go to Q 29, if No go to Q 30

- Q29 What was your reaction, did you;
- grant conditional consent
- grant open consent
- refuse
- other (please specify) _____

- Q30 Has the introduction of FBTs made you more willing to allow your tenants to become involved in assignment and subletting?
- yes
- no
- don't know

- Q31 Have you ever been approached by a tenant of an FBT for consent to assign or sublet?
- yes
- no

If yes go to Q 32, if no go to Q 33

- Q32 What was your reaction, did you;
- grant conditional consent
- grant open consent
- refuse
- Other

other (please specify)

Q33 Has the introduction of FBTs changed your attitude towards repairing liabilities in agricultural tenancies?

- yes
- no
- don't know

If Yes - What terms do you now use? If No or Don't know- Go to Q 34

Q34 Has the introduction of FBTs led you to consider alternatives to the traditional three year rent review cycle?

- yes
- no
- don't know

If Yes- What alternatives are you now using? If No or Don't know- Go to Q 35

Q35 Has the introduction of FBTs enabled you to include environmental clauses in agricultural tenancy agreements?

- yes
- no
- don't know

If Yes- What kind of provisions are you including?
 If No or Don't know- Go to Q 36

Q36 Have you ever been approached by a tenant of an FBT who was considering entering an agri-environment scheme?

- yes
- no

If the respondent answers yes move to Q37, if no move to Q38

Q37 What was your reaction?

- happy to facilitate
- consent required and given
- consent required and not given

SECTION D FUTURE PLANS INVOLVING FBTS

Q38 Are you actively considering investment in further agricultural land with a view to letting under a FBT?

- yes
- no

Q39 Are you actively considering any amalgamations / or rationalisation of any holdings using FBTS?

- yes
- no

Q40 Are you actively considering changing any land from in-hand farming for letting on FBTS?

- yes
- no

Q41 Are you actively considering changing any land from contract farming or share farming for letting on FBTS?

- yes
- no

Q42 Are you in negotiations or entering negotiations to take back land let on full traditional (1986 Act) tenancies for letting on FBT?

- yes
- no

Q43 Are you planning any significant investment in buildings and /or fixed equipment on agricultural land?

- yes
- no

If yes go to question 44, if no go to question 46

Q44 Is the land;

- let out on a full traditional (1986 Act) tenancy
- let out under a FBT
- contract or share farmed
- farmed in-hand
- Other
- other (please specify) _____

Q45 Does the nature of the occupation of the land have an impact upon this investment?

- yes
- no
- don't know
- why do you say that? _____

SECTION E SUGGESTIONS FOR CHANGE

Q 46- Q 49 Can you identify any changes in the current arrangements which would encourage you to do any of the following:

Q46 1. to let land on a longer term?

Q47 2. to allow more diversification?

Q48 3. to let to new entrants?

Q49 4. to let complete farm units?

Here are four changes that have been suggested; please indicate on a scale of 0 to 5 where 0 equals positively discourage and 5 equals positively encourage, what affect you consider the following would have on

Q50	encouraging the greater use of FBTs	0	1	2	3	4	5
	a more favourable tax regime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a minimum length of term	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a rent formula similar to that for traditional (1986 Act) tenancies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	more statutory fall back provisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

How well do you feel FBTs have met the objectives of:

Q51	encouraging more letting of agricultural land?	very well	<input type="checkbox"/>
		well	<input type="checkbox"/>
		poorly	<input type="checkbox"/>
		not at all	<input type="checkbox"/>
		don't know	<input type="checkbox"/>
Q52	increasing the opportunities for new entrants ?	very well	<input type="checkbox"/>
		well	<input type="checkbox"/>
		poorly	<input type="checkbox"/>
		not at all	<input type="checkbox"/>
		don't know	<input type="checkbox"/>
Q53	promoting economic efficiency in farming in England and Wales?	very well	<input type="checkbox"/>
		well	<input type="checkbox"/>
		poorly	<input type="checkbox"/>
		not at all	<input type="checkbox"/>
		don't know	<input type="checkbox"/>

Q59 We are keen to contact a number of new entrants who have been farming in their own right for less than five years. Do you know of any such entrants and if so, could we have their names and addresses? We would also be interested to have the names and addresses of any new entrants farming in their right pre 1995. (Record below if only one address).

If the answer to Q 59 is more than 1 address please ask respondent to send in post to: Ian Whitehead, Seale Hayne Faculty, University of Plymouth, Newton Abbot, TQ12 6NQ

Q60 Would you be interested in attending a focus group to discuss the impact of the ATA 1995?
yes
no

Thank you very much for your time

Q61 Area
Dorset Somerset
Kent & East Sussex
Lincs.
Wales

