

THE ROCK REVIEW:

Working together for a thriving
agricultural tenanted sector

October 2022

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Foreword by the Chair



I am pleased to present this review on tenant farming in England. It represents the dedication of the Tenancy Working Group (TWG) members, those organisations and individuals who have supported us with evidence submissions and events, and the honesty of tenant farmers, landlords, land agents and others we have met throughout this review. It was an enormous privilege to meet so many people and I convey my heartfelt thanks to you all.

Above all we have seen first-hand the deep commitment that our agricultural communities have in creating a sustainable farming future and a thriving countryside that is there for everyone.

In February 2022 the Defra Secretary of State asked me to chair the Tenancy Working Group with two clear objectives. The first was to look at how the new government financial schemes should be accessible, open, and flexible to tenant farmers. The second was to look at longer term changes that would ensure a robust, vibrant, and thriving agricultural tenanted sector for the future.

With roughly a third of farmed land in England being tenanted, tenant farmers are vital to the nation's food production alongside the delivery of environmental outcomes.

Tenant farmers must therefore be properly integrated into the Future Farming policy, the design of all future schemes and supported for long-term resilience of the sector. They are, and must remain, a crucial part of the future agricultural and land management landscape.

The state of the tenanted sector is a result of legislative decisions and the impacts of various payment schemes that have come and gone. From the 1947 legislation that defined agriculture in a post-war era to the 1986 Agricultural Holdings Act and the 1995 Agricultural Tenancies Act that aimed to rebalance the landlord-tenant dynamics, to payments from the EU Common Agricultural Policy and the more recent Agricultural Transition Plan (ATP).

Uncertainty seems to be the watchword of our time. Brexit, Covid, the war in Ukraine, a cost-of-living crisis, political upheaval, and the largest change to agricultural support in a century.

As payments from the Basic Payments Scheme reduce, farmers across England are seeing their future cashflow diminish. The tidal wave of uncertainty around the new public schemes means they are struggling to see how they can remain viable without intensifying production.

Added to this, tenant farmers face multiple barriers to accessing government schemes and growing their businesses. Rent requirements, short duration tenancy agreements, restrictive clauses, and contractual issues can compound the uncertainty.

After delving into the issues facing the tenanted sector, we have surfaced with the following concerns that we want to address,

- Improving the tenant-landlord relationship
- Ensuring the growth and viability of businesses in the tenanted sector
- Preventing tenant farmers from going bankrupt
- Minimising the loss of land from the tenanted sector
- Reducing scheme complexity and ensuring flexibility and access for tenants

- Public support for permanent land use changes including tree planting, and the creation of habitats

Managing and coordinating how land in England is used needs to be improved. We eagerly await the findings of the House of Lords Committee on Land Use and look forward to seeing how the Land Use Framework, to be published in 2023, incorporates tenant farmers.

The Tenancy Working Group has been clear through its engagement and communications that landlords are and must be part of the solution. We have seen fantastic examples of collaboration between landlords and tenants to move forwards together in an uncertain future. These enlightened tenants and landlords have realised the benefits of a symbiotic relationship. There is no tenanted sector without landlords to let land, and what is best for landlords are viable, thriving tenants.

We also want to highlight that tenant farmers have rights. They have the right to sanctity of contract, the covenant of quiet enjoyment of the rented land, they have the right to develop a viable business, and they have the right to a future livelihood. Some of the issues we have seen that cause us concern are working to trample or diminish the ability of tenants to exercise these rights. With these rights come obligations such as stewardship of the land and paying rent.

Our challenge, and the one that we now pass to Defra, has been to navigate the balance of rights and obligations from both the tenant and landlord. Rights are not inherent, they are formed through decades of experience, cultural views, institutions, and legislation. They change over time to suit the needs of the present and future.

Our proposals and recommendations aim to ensure tenant farmers can exercise their rights. Through full and flexible access to Government schemes they can support the viability of their business as well as seek to create a resilient and viable agricultural tenanted sector for the 21st century; one that balances the rights and interests of both landlords and tenants.

This is a once in a century change. Defra need to adopt these recommendations with a sense of urgency. What we do now will echo through time.



Baroness Kate Rock

Chair of the Tenancy Working Group

Members of the Tenancy Working Group

Andrew Clark
Charles Cowap
Simon Dixon Smith
George Dunn
Alastair Martin
Matthew Morris
Emily Norton

Key Facts

8.9 million hectares - Total farmable area in England (2022)

64% - "Whole or Part tenant holdings"¹ as a proportion of the total farmable area

45% - "Whole or Part tenant holdings"¹ as a proportion of all holdings in England

48:52 - Ratio of land under Agricultural Holding Act tenancies to Farm Business Tenancies

3.03 years² - Average length of new Farm Business Tenancies in 2021

75% - Average share of tenant farmer net income from Basic Payment Scheme³

¹ Holdings who have land under some form of tenancy

² From CAAV 2021 survey

³ Average of 2018/19 to 2020/21, for solely tenanted holdings

Short Timeline of the Tenanted Sector

Year	Event/legislation	Impact on tenanted sector
1875	Agricultural Holdings (England) Act	First specific legislation on agricultural tenancies
1900	Agricultural Holdings Act	Introduces specialist arbitration for dispute resolution
1947	Agriculture Act	Rules of Good Husbandry and of Good Estate Management are codified. Principles of market support are established.
1948	Agricultural Holdings Act	Consolidation of the previous tenancy provisions. The key features of the regime were to provide a secure environment for tenants in which they could be encouraged to invest in their holdings with a view to the long-term.
1958	Agriculture Act	Arbitrators were directed to settle the rent at the level which would be payable in 'the open market by a willing landlord to a willing tenant', subject to minor considerations.
1973	UK joins EEC	Agricultural support arrangements change fundamentally with EEC accession.
1976	Agriculture (Misc. Provisions) Act	Introduced statutory succession to agricultural tenancies for those who could prove they were eligible and suitable. Two statutory successions were allowed.
1984	Agricultural Holdings Act	Succession rights removed for new tenancies granted after the Act came into effect but retained for all existing tenancies. The modern rent review formula was introduced incorporating the holding's productive and related earning capacity.
1992	McSharry Reforms to CAP	Introduced Arable Area Payments and Set Aside which are later replaced by Farm Single Farm Payments and the Basic Payment Scheme. 'Greening' and cross-compliance requirements are gradually built into the CAP.
1995	Agricultural Tenancies Act introduce the new Farm Business Tenancy (FBT)	Security of tenure is only agreed between landlord and tenant. Greater flexibility for tenants who wish to diversify. The basis of rent reviews defaults to market rental levels. The refusal of a landlord to agree to an improvement can be referred to arbitration. Compensation for improvements is to be based on the increase in the value of the holding as a holding. Tenancies of longer than two years will, on expiry, roll over from year to year until the landlord serves notice to quit.
1995	Finance Act 1995	Increased the rate of Agricultural Property Relief (APR) from Inheritance Tax for agricultural tenancies created on or after 1 September 1995 from 50% to 100%.
1997	Finance Act 1997	Land registered with certain habitat schemes, which had been agricultural land at the outset can keep APR.
2006	Regulatory Reform Order	Clarified the circumstances where the regrant of a 1986 Act tenancy after 1 September 1995 would continue to be regulated by the 1986 Act. Detailed changes to the rent review arrangements.
2019	Tenancy Reform Consultation	Defra launches tenancy reform consultation focused on "mortgage restrictions and repossession protections for agricultural land"
2020	UK leaves the EU	The formal withdrawal of the UK from the EU signals the start of the Agricultural Transition Plan for England, which phases out old area-based payments while gradually bringing in new schemes.
2020	Agriculture Act 2020	Significant changes to arbitration, retirement, and succession. Disputes over landlord's consent under the 1986 Act may be referred to arbitration or third-party determination. No parallel measures are made for the 1995 Act.
2020	Area let under FBTs falls for the first time	Defra Farm Business Survey data show a fall in the area and number of FBTs for the first time since they were introduced in 1995.
2022	New schemes launched	The first of the new government schemes as part of the Agricultural Transition Plan are launched

Table 1 A selection of the key agricultural tenancy legislative in England and the main changes brought in.

Executive Summary

We begin this review by providing a background to the tenanted sector including the legislation underpinning the tenancy system and the more recent changes in context, in payments, and in demands that tenant farmers are dealing with in the 21st century. It is important to understand what tenant farmers are dealing with when planning and running their businesses and why this review is much needed and timely.

We start by looking at two of the most important aspects of the tenanted sector: the collaborative relationship between landlord and tenant and tenancy agreements. The review then focuses on more specific areas of the tenanted sector and the different types of schemes and initiatives that the Department for Environment Food and Rural Affairs (Defra) can directly improve. We examine the impact of the

- environmental land management schemes,
- productivity schemes, and
- tree planting schemes, and the
- offer to New Entrants.

We look at the developing but important private markets for natural capital and how they may impact and work with tenant farmers. We also consider taxation and legislative changes to increase the resilience of the agricultural tenanted system, and finally how to embed the tenanted sector into Defra's policy and protocols.

Across the broad range of issues examined, we consistently present

- what we believe about the issue
- what we have found from our evidence
- what should change
- where we want our recommendations to take us
- list of recommendations for how Defra can move us closer to a vibrant agricultural tenanted sector within that topic.

Prior to this review being delivered to Defra, the Tenancy Working Group made several early recommendations to Defra. These have already been responded to by the Farming Minister and some have already been implemented. The response is noted in Annex 1.

In view of the upheaval in agricultural policy, short-term non-collaborative landlord-tenant relationships will not deliver viable and sustainable businesses for the tenanted sector. The recommendations in this review should be seen as complementary and mutually reinforcing to deliver “a vibrant tenanted sector [that] is vital to the future of agriculture.” Defra Secretary of State, Farmers Weekly, August 2022

Why we need a vibrant agricultural tenanted sector in England

The tenanted agricultural sector is of vital importance to this country. Holdings that are either wholly or partly tenanted cover more than half of farmable land in England. They represent a significant constituency in our rural communities and rural economy.

Tenant farmers are small businesses, innovators and, partly driven by the need to pay rent, can be the engine of efficiency and productivity improvements for the sector. We therefore welcome the Chancellor's September commitment to boost agricultural productivity growth, improve competitiveness and strengthen food security.

If we are to level up the whole nation then we need to unlock the potential of tenant farmers to play their part in adding value to the rural economy.

Every tenant has a landlord, and the review has sought to balance the interests of both parties. Landlords may be private individuals, investment trusts, corporations or institutions. They will have different aims and objectives but all will benefit from a positive relationship with a successful tenant.

Agricultural tenancies create opportunities for entrepreneurs and for the next generation to start productive agricultural businesses that deliver our food, fuel, and environmental services.

But they also have a high level of reliance on government support making them especially vulnerable to the policy changes being enacted by the government to transform agriculture in England.

The trajectory of the agricultural transformation is broadly welcomed. However, there are risks in how Defra is developing its schemes that cause concern in the tenanted sector. Without the ability to access government support, many tenanted businesses risk financial hardship with a considerable knock-on impact to productivity and investment in the rural economy.

Defra must grasp the opportunity in the policy landscape to be more ambitious in how it ensures the deliverability of the recommendations, specifically through scheme design. Data on land management, which can be collected as the new schemes are rolled out, will be an important enabler for this. Throughout this review, the lack of available data on how tenants currently engage with public schemes has been a barrier to understanding the scale of the issues facing tenants.

Ensuring the deliverability of the recommendations in this review requires a higher level of trust between tenant farmers and Defra. This will be of utmost importance if Defra wants to bring the tenanted sector with them as we move through the agricultural transition.

Recognising the importance of the tenanted sector in land management, this review was launched by the Defra Secretary of State who clearly stated that one of the roles of the group was to *“identify and explore ways to really make sure that our new schemes work for tenant farmers”*.

Pressures facing the tenanted sector

Tenant farmers are facing multiple pressures.

- The security of basic payments is being withdrawn as part of the agricultural transition.
- Tenant farmers are being asked to deliver more for the environment from customers, supply chains, and government, but a commensurate level of support has yet to crystallise.
- High levels of inflation are exerting upward pressure on input prices while commodity prices are, in some cases, reducing.
- Demands from non-agricultural land use such as solar, development, bioenergy, tree planting, and biodiversity improvements could take land out of production.
- Private markets for ecosystem services are catching the attention of investors across the country.

In addition to these pressures, we have heard how rent reviews are leading to rents either staying level or increasing.

Coping with these levels of uncertainty requires collaboration between tenants and landlords and stability in the form of security of tenure. Long-term tenancy agreements are one of the best ways to cope with these short-term uncertainties. It allows the tenant to plan beyond the uncertainty knowing that they will still have access to land for their business and that they can carry out environmental actions, and access the associated payments, that require longer-term agreements.

The demands on land in England are higher than they have ever been. Food production, housing developments, tree planting, energy production, net-zero ambitions, reversing declines in biodiversity, amenity, water quality, and combating climate change are all looking to our nation's finite land resource.

Furthermore, the government has been explicit about its focus on achieving 2.5% growth across the economy. This necessarily includes growth of the rural economy.

We cannot rely on the proportion of land that is owner occupied to meet these needs. Our recommendations ensure that Defra, working with other government departments, will unlock the entrepreneurial, productive, and growth potential of tenant farmers across the country to meet these aims.

Our vision for the tenanted sector

Our overarching vision is for a resilient and vibrant tenanted sector. Tenant farmers should be able to enter a diverse range of public and private schemes which support them to deliver food production and environmental benefits that we want and need as a nation. The schemes on offer to tenants should be simple and flexible for them to do what is right for the land, their tenancy agreement, the wider estate they may be on, and for government objectives. The eligibility of the schemes is such that both landlords and tenants are clear about where tenants can enter on their own and where they can enter collaboratively with the landlord.

We want tenants and landlords to be making significant investments in upgrading and improving their holdings from both an infrastructure and natural capital aspect.

We want the tenanted sector to be a mosaic of diverse, thriving, and innovative businesses whose benefits radiate out into the rural and wider economy, improving our land, waterways, and air quality, alongside the importance of sustainable food production.

The government's role in delivering this vision must be made clear. Government needs to be explicit about how it sees the future of the tenanted sector, what actions it will support, and how it will support tenants to deliver them. The focus should be on supporting the resilience and ability of tenant farmers, as stewards of our land, to deliver environmental improvements alongside contributing to food security.

In each chapter, we have outlined where we want to get to on the issues facing tenants. We have summarised them below. It is our view that the recommendations will move the tenanted sector towards

- collaborative and transparent arrangements which respect the ambitions of both parties and that those arrangements should become the norm.

- a relationship of trust, collaboration, and alignment between landlords and tenants with guidance for best practice and recourse for those who do not follow it.
- longer-term agreements that allow tenants to diversify and access multiple sources of funding without impacting the landlord's interests, so that both the landlord and tenant benefit and can invest in the productive capacity and environmental health of the holding.
- tenant proof schemes developed by Defra that are accessible for tenants. This needs appropriate eligibility criteria, flexibility to changes in circumstances, and trust between the government and the tenant farmer.
- government schemes for productivity that support investment with both tenant and landlord involved in a collaborative approach.
- a situation where both tenants and landlords understand where they can and cannot plant trees without the consent of the other party, for mutual benefit.
- a clear statement from Defra on what it wants to see from new entrants to the tenanted sector and how it intends to support them.
- private markets for natural capital that provide a new income stream for tenant farmers supported with clarity for how tenants and landlords can enter agreements together and how benefits from the private agreement are equitably shared.
- a range of tax incentives that support and incentivise tenants and landlords to take actions that lead to the above aims.
- an update to existing legislation that reflects the current and future demands on land, enables the structural changes needed to achieve the aims above, and provides clarity for practitioners, landlords and tenants alike.
- awareness throughout Defra of the issues facing tenants with policies, processes, and protocols to incorporate the tenanted sector into their work on policy and scheme design.

What we found

We found that most tenants and landlords want to do what is best for the environment on their holding. They both see themselves as custodians of the land for future generations.

Tenant farmers especially see themselves as playing an important role in providing food for the nation and for exporting high quality British produce alongside actively delivering environmental outcomes. With these important objectives in mind, there should be few barriers for collaboration and having flexible, long-term agreements. However, we found the opposite.

We found that an open and collaborative approach between tenants and landlords is sadly not the norm, and that Farm Business Tenancies (FBTs) are often used off the shelf without the flexibility that they offer. We also found that the average length of FBTs is less than 4 years, driven to some extent by the uncertainty of what future public schemes will pay, who can enter the schemes, and who they will pay.

We have found that Defra has only recently given thought to how the new schemes will impact tenants and how they can make these new schemes tenant proof. Specifically, how tenants can access schemes, carry out actions and receive payments. We recognise that there have been successes through changes to the current Sustainable Farming Incentive (SFI) eligibility and some acknowledgement of issues facing tenants in the productivity, woodland, and new entrant schemes, but the corresponding level of action has been minimal. Defra has a long way to go to make its schemes open to tenants.

We also found that the current tenancy legislation and tax incentives do not align to government policy of farmers delivering long term environmental benefits. These are discussions that must take place across government to ensure that Defra's policy objectives are supported by appropriate legislation and a forward thinking tax system. This should incentivise longer term FBTs, more land to be let, and an increase in on-farm investment.

These structural issues had been looked at previously through the work of the Tenancy Reform Industry Group, a 2019 Defra consultation, and the work to develop the Agriculture Act 2020. However, the context at the time was very different. The tenanted sector now finds itself well into the transition period without clarity on schemes, without clarity on tax, and without clarity on legislation. There is an opportunity now for Defra to work across government departments to lead these changes that can put the tenanted sector, both landlords and tenants, in a better position to collaboratively deliver on the many demands on land in England.

Achieving the vision

In the short-term, the focus must be on providing clarity on the schemes within Defra and starting conversations on the more investigative and structural points.

The war in Ukraine has driven up prices of wheat, fertiliser, gas, and other inputs that are critical to maintaining food supply. A weaker sterling has exacerbated these price increases especially where imports are concerned. Food security has risen to the top of the agenda.

To show that it is serious about addressing this, **Defra needs to define food security as a public good alongside other environmental objectives such as clean air, clean water, lower carbon emissions, and improving biodiversity.** This will open options for Defra to take supportive action through the public payments for public goods framework.

Our recommendations to Defra on schemes are more granular. They need to be because the policy is being developed now and the clarity is needed now. They focus on scheme eligibility and flexibility such as transferability of agreements. They call for certainty on what government is asking for with regards to the levels of land use change, in effect asking if the action is deemed permanent or not.

Environmental schemes, either as they stand now or in the future, must be designed so that they are accessible to tenant farmers. Therefore, the recommendations for scheme design can and should be seen as applicable to and current and future environmental schemes.

We are also recommending changes to how woodland and tree planting schemes are developed to allow tenants to play their role in any tree planting and net-zero ambitions.

Achieving these schemes needs more than just support for actions. In many cases, farm holdings need investment in foundational infrastructure and equipment. Defra is already providing grants, but small adjustments are needed to increase the eligibility, purpose, and ability for tenants and landlords to apply and invest in let holdings.

Finally, the pipeline of future tenant farmers needs to be invested in. We recognise that the industry needs to play a role in this, but Defra can do more to support new entrants to the tenanted sector and our recommendations will expand that offer.

In the longer-term there needs to be structural and legislative change to transform the tenanted sector in England. The last major piece of tenancy legislation was in 1995, prior to that it was legislation in 1984. There has been no major legislative change to update the tenanted sector in England for the past 27 years. The world, the country and farming has moved on significantly in that time. If the government wants to transform agriculture, it will need to support the transformation of the tenanted sector.

There are structural issues that can be addressed partly through policy and scheme design, but more strongly through changes in legislation and tax. These levers can embed a new structure within which landlords and tenants will be better able to thrive and access future schemes. They can also change how professionals who work with landlords and tenants operate, from an adversarial approach to one that is more supportive of collaboration.

Defra has a large role to play in all these changes, and to do that it will need to upskill itself on issues facing tenant farmers. We recommend that Defra immediately incorporates the tenanted sector throughout its thinking and its work by setting a Defra KPI and systematically collecting information on land management in England. This is extremely important if Defra is going to be able to measure success of its schemes and how they work for tenant farmers.

Where we go from here

From early in the process, we knew that collaboration between the landlord and tenant is the keystone of a vibrant and thriving tenanted sector. It was a consistent theme from roundtables held and written evidence received. Positive relationships driven by discussions between the landlord and tenant, while recognising the rights each party has on the land, can overcome many issues facing the tenanted sector. We heard, saw, and were encouraged by the many cases where this process has already begun. The parties in these cases were often called progressive, indicating that most of the sector does not operate in this way.

If the quantity of land available to the tenanted sector is to grow it is likely to come primarily from private landowners choosing to let out their land rather than farming themselves or selling to a third party. We seek to create an environment that incentivises this behaviour.

If there is one message to take away, it is that the tenant - landlord relationship must be seen as a mutually beneficial one. The landlord thrives when the tenants thrive, and they must work together to deliver the bright future that we know is within our grasp.

Headline recommendations

This review makes recommendations to deliver a more resilient tenanted sector that can

1. deliver sustainable food production
2. meet the challenges of climate change
3. deliver improvement and enhancement of biodiversity.

The recommendations have been developed to work together as a package to deliver on the aims and objectives of the Tenancy Working Group. When taken as a package, specifically building our understanding on how land is managed, the recommendations become more deliverable than when looked at in isolation.

We urge the government to swiftly consider, investigate, and action recommendations to deliver the clarity sought by the sector and the change demanded by society.

With over 70 detailed recommendations, we have highlighted the 18 headlines which the more detailed recommendations sit within. We have separated the recommendations into those that

- are for immediate action
- require action over a longer timescale.

We look forward to hearing Defra's response and to being part of the evolution of the tenanted sector.

Recommendations for immediate action

- **Defra must design all Environmental Land Management schemes and Productivity schemes to be accessible and open to tenant farmers. This should be done by starting from the basic principle that tenants should not need landlord consent to enter tenanted land into schemes and landlords should not be allowed to enter tenanted land into schemes unilaterally. Building from this, the necessary details are**
 - **Where there is alignment between scheme length and the length and terms of the tenancy agreement, the tenant can unilaterally enter tenanted land into schemes without landlord consent.**
 - **Where schemes require actions to deliver outcomes that are longer than the tenancy agreement, tenants who have had more than one historic renewal or who are on a rolling annual tenancy, and self-assess that they will have sufficient management control to enter schemes, should be able to unilaterally enter tenanted land into schemes.**
 - **Landlords can only enter tenanted land into scheme options that require permanent land use change jointly with the tenant and then only with consent of the tenant. The consent of the tenant should be entered into separately and subsequently to a signed tenancy agreement.**
 - **This must be met with adequate protections to stop land being taken back in hand and subsequently entered into schemes by landlords where tenants could have carried out the action, unless the tenant has not objected.**
 - **Tenants with AHA agreements should be considered to have sufficient security of tenure and management control to enter multi-annual schemes.**
- **Defra needs to allow joint applications to productivity schemes and joint applications from both landlord and tenant for fixed equipment.**
- **Defra should enable joint applications to woodland schemes that incentivise landlords to discuss woodland planting with their tenants so that both can benefit from any agreement.**
- **Defra needs to examine ways to incentivise investment into renewing and upgrading infrastructure. Defra and HMT should create appropriate incentives**

throughout the agricultural transition period to bring tenanted holdings into an improved state.

- Developers of government schemes such as EWCO, natural capital markets, and the forthcoming land use framework need to consider how they work together to mitigate land being removed from tenancies, and provide adequate protection to tenants who could manage woodland.
- Defra needs to develop a comprehensive and long-term new entrant policy that has clarity of vision with success criteria and should consider ways in which it can best use public funds to incentivise and support private landlords to play their part in safeguarding the future of the tenanted sector and progression of new entrants.
- Government needs to outline what it sees as its role, a roadmap, and broad guidelines for the development of private ecosystem markets alongside basic expectations for how demand and supply side actors should behave. This includes setting out clear guidelines to ensure that tenants are rewarded and not disadvantaged for their work in maintaining and improving the natural capital asset and managing the associated flow of ecosystem services.
- Defra needs a consistent process and protocol that requires testing of all schemes and options within the schemes with tenant farmers to ensure they are compatible with the constraints facing tenants and are tenant proof.
- To support the ability of Defra to enforce and deliver the scheme recommendations Defra should immediately begin to develop a data layer on the management of land in England through applications to grants. This should be complemented by a policy position that does not penalise a change in tenancy circumstances as this does not mean a change in intent to deliver an agreement.
- Defra should confirm that it will maintain tenancy in the portfolio of the Farming Minister and explicitly include land occupation as a strategic portfolio item for a Defra Director to ensure that government takes account of land occupation issues in development of policy, procedures, and practice.

Recommendations that require action over a longer timeframe

- Defra should examine how it can incentivise and provide advice on how landlords and tenants can collaborate to develop and enter mutually beneficial agreements that cover public and private schemes.
- Defra should consult on legislative changes to open up the ability for tenants to diversify their businesses without the landlord unreasonably refusing consent. In defining the tests for unreasonableness, consideration will need to be given for how the diversification impacts the landlord's tax status, land value and estate management plans. They should also consider legislation to extend existing AHA protections such as 'no unreasonable refusal of scheme entry' and 'access to arbitration' to FBT tenants

- To support this, Defra ministers should actively engage the services of the Law Commission to update legislation pertaining to agriculture, tenancies, and land use in England to bring it into the 21st century and make it fit for the multiple demands being made on land.
- The government should address the state of tenancy agreements head on with a broad consultation on tenancy reform in 2023. Part of the consultation should address why FBT agreements are using such a narrow band of the flexibility available within the ATA 1995, and ways to update the definition of agriculture and the rules of good husbandry to encompass actions for environmental benefits.
- Defra must examine ways to improve the licensing of land agents so their performance and behaviour can be appropriately scrutinised and held to account.
- Defra should appointment a Tenant Farmer Commissioner to ensure government policy is tenant proof and to ensure fairness within the tenanted sector. They should also have the remit to examine and strengthen dispute resolution processes.
- Defra and HMT should carry out a robust analysis on a strategic package of proposed recommendations made in the tax chapter to incentivise landlords to let more land for longer.
- Defra must publish an update on their progress against these recommendations every year of the agricultural transition plan. This should be tied to the annual progress update on the agricultural transition plan, There should be a specific section on how the recommendations of this review are being implemented.

Introduction

The context

After the 2016 vote to leave the European Union (EU), the UK has embarked on developing its own economic, environmental, and social path. This comes with challenges and opportunities. The opportunities, if grasped properly and taken advantage of, can position the UK for a better future in many areas. One area is agriculture.

As we have moved away from the EU system of government subsidies, each of the four nations in the UK has an opportunity to develop a public support system that is more appropriate to their context. In England, this was given shape through the Agricultural Transition Plan (ATP) released in 2018 and followed up with the Agriculture Act 2020 and Environment Act 2021.

Holdings that are either wholly or partly tenanted make up nearly half of the holdings in England. These holdings cover more than half of the farmable land in England. The structure of tenancy allows agricultural businesses to operate without having to own the land itself. Tenants are a large stakeholder in the agricultural sector and have a significant role to play in moving the agricultural and land-based sector towards a new future that balances food production and environmental outcomes.

However, the current system and context facing tenants will make it difficult for them to play their part in the transformation of agriculture in England. Three policy directions are being followed in England and are at various stages of development. One is the development of valuing natural capital, another is the new environmental land management schemes, and the third is for farmers to diversify their income sources. As these policies are implemented, tenant farmers are likely to face barriers to opportunities given the current structure of the agricultural tenanted sector.

The income of farmers in England, as in any sector, depends on many factors. Those factors outside of the business owner's control present significant uncertainty and risk such as markets and weather volatility. Government support has historically supported the viability and income stability of most farm businesses. It has also helped farmers to carry out environmental actions and for supply chains to maintain low-cost food supplies. However, even with this support, farming can be a hard business. On average from 2015 to 2020, farmers who owned and farmed land in Less Favoured Areas (LFA) saw a financial return equivalent to £6.92 per hour, less than the living wage. This was lower for tenant farmers who pay rent.⁴

We acknowledge that agri-food supply chains have a role to play in the viability of farming businesses. They can support the resilience of farmers through improved contracts, especially where tenant farmers struggle to secure working capital. Supply chain behaviour, long-term supply contracts, and the responsibility to support farm businesses is outside the scope of this review but is an area that merits further study.

The ATP stated that payments to farmers from the Basic Payment Scheme (BPS), tied to the amount of land farmed, would reduce steadily between 2021 and 2028. As BPS payments reduce, the funding would be reapportioned across different schemes such as productivity, new entrants, and the three Environmental Land Management (ELM) schemes – the Sustainable Farming Incentive (SFI), Local Nature Recovery (LNR), and Landscape

⁴ Green Alliance, Land of Opportunity, 2022, [Land of opportunity \(green-alliance.org.uk\)](https://green-alliance.org.uk)

Recovery (LR). Recent inflationary and input price pressures are a further squeeze on these funds and farmer incomes.

Currently, schemes can define the active manager using historic BPS claimants. However, as we move to a new payment system, using this measure to define the active farmer will hold less relevance. It will become harder to define who has management control and who is the “active farmer” and, therefore, who has access to future schemes. The eligibility criteria for these schemes will be critical to ensure tenants can access them.

The SFI is focussed on activities that farmers can do for the environment on the farm whilst farming. Actions require less permanent land use change and do not necessarily need the long-time commitment of more complex environmental actions. For tenants, this is most evident in the recent and welcome changes made to SFI around agreement length and no-penalty exits that have opened the scheme to tenants who have a year left on their agreement.

Further standards for future rounds of SFI may include tree planting such as agroforestry and orchards, hedgerow creation, and water body buffering. These are concerning as they may involve non-agricultural land use and permanent land use change. We do not know the details of these options, but if they are looking at creation of new environmental features then it is likely that tenants will struggle to take on these options, access the funding, and provide the associated environmental benefits.

The other schemes, LNR and LR, require farmers to do more for nature to receive payments. This could include turning parts of land over to habitat or wetland creation. These actions require time, land, and management control to generate the environmental benefits and ‘public goods’ that Defra seeks to deliver. Tenants will struggle to deliver longer-term agreements that call for land-use change.

The LNR and LR schemes will also be more complicated because they aim to achieve multiple objectives for agriculture, biodiversity, nature, and climate. It is also unclear how the success of these schemes will be measured. Furthermore, without food security being classed as a public good, Defra must be careful to balance the drive to meet statutory environmental targets with the need to ensure sufficient levels of domestic food production.

The role of the Tenancy Working Group

Defra has recognised that the environmental land management schemes, along with some of the productivity schemes, may not be as accessible to tenant farmers due to constraints such as restrictive clauses or the length of tenancy agreements. The balance between safeguarding public money to deliver environmental outcomes over a longer timeframe against the often, shorter-term nature of tenancy agreements is difficult to strike.

Acknowledging these tensions, and the significance of the tenanted sector, the Defra Secretary of State convened the Tenancy Working Group to report swiftly on two key asks

1. How Defra could make the new schemes fully accessible and open to tenant farmers.
2. What longer term changes Defra could make to ensure the resilience and viability of the tenanted sector over the longer term.

The detailed Terms of Reference that expands on these points, as well as the membership of the Tenancy Working Group can be found in Annex 3.

The recommendations were agreed by consensus between the members of the Tenancy Working Group who represented themselves in their own capacity.

Evidence

Unlike many reviews, this review has been carried out in parallel with Defra policy development. To ensure that the group could make recommendations based on the most recent policy thinking, Defra teams held policy teach-ins on a range of topics and schemes.

This is not the first time that tenancy has been looked at in England. From the Defra consultation in 2019 to the ongoing work of the Tenancy Reform Industry Group (TRIG) a literature review helped the group understand previously published documents on tenancy.

To expand our understanding of the sector, the TWG asked key organisations in the tenanted sector to submit written evidence to form one part of our evidence base. Responding organisations are listed in Annex 4.

The review wanted to hear directly from tenant farmers, landlords, agents, and others in the sector. This was done using three avenues.



Roundtables,



Written submissions



Survey responses

The first was to hold roundtable discussions across England with tenants, agents, and landlords. From Kendal to Sussex and from Cornwall to Northumberland, the review has met and heard from close to 300 people about their experiences and their concerns. Annex 5 shows the locations of roundtables.

The second means to interact with organisations in the sector were online calls with a range of stakeholders who regularly interact with tenants and the tenanted sector, some of whom also provided written evidence. Annex 6 provides this list of stakeholders.

The third avenue was an online survey that asked tenants about their perceptions of schemes, private markets, the relationship with their landlord, and on-farm investment. The findings are spread throughout the review and the survey structure is in Annex 7.

Guiding principles

In making recommendations to Defra as the Tenancy Working Group it has been important for the group to have some guiding principles.

Our recommendations aim to

- deliver what is best for the tenanted sector and tenant farmers
- encourage collaboration between landlords and tenants
- encourage land to stay in, or enter, the let sector
- increase the resilience of the tenanted sector
- not overly disadvantage one party (landlord or tenant) over the other
- recognise any risks and unintended outcomes that may come because of implementation
- be practical and implementable
- be challenging to government and the status quo
- consider the needs of tenants but not to the extent that landlords reduce the amount of land available to rent

Overview of the Tenanted Sector in England

The proportion of tenanted land varies across England. Table 2 shows that the highest levels are in the Northeast (42%) and lowest in the East of England (29%). With rented farms being a substantial portion of farmed area in England, it is crucial that tenants can access new schemes to deliver environmental targets and improve productivity.

	Farmed Area	Rented Area	Rented as % of total
Eastern	1,411,233	409,555	29.0%
West Midlands	943,726	287,650	30.5%
South-West	1,788,999	563,235	31.5%
South-East (incl. London)	1,136,908	368,842	32.4%
Yorkshire and The Humber	1,136,416	379,072	33.4%
East Midlands	1,192,499	398,287	33.4%
North-West and Merseyside	972,206	342,606	35.2%
North-East	623,578	263,304	42.2%
England	9,205,565	3,012,551	32.7%

Table 2 Share of farmed area that is rented in England⁵

The structure of the agricultural tenanted sector in England is rooted in a long history of legislative changes as detailed in Table 1. Within this, there are three key pieces of legislation that changed the sector in the last 80 years.

After World War II farmers were encouraged to increase and intensify production on land to meet the nation's food security needs. This was supported by legislative definitions of 'agriculture' and 'rules of good husbandry' that have remained largely unchanged since the Agriculture Act of 1947.

The Agricultural Holdings Act 1986 consolidated prior legislation that recognised tenants' need for long term security over tenanted land to make investments in productivity and develop long term plans. It also recognised the livelihood-based nature of agriculture where tenants and their families were all likely to be involved with the farming business. This legislation led to Full Agricultural Tenancies, also called Agricultural Holdings Act tenancies (AHAs). These agreements provide lifetime security of tenure, succession rights where the tenancy was granted before 1984, a compensation framework for tenant's improvements, and a defined rent review process.

While this gave tenants the security to plan and invest, it dramatically reduced the amount of land entering the let sector each year. It also meant that landlords who had entered into these agreements effectively lost a large part of management control over their land for potentially up to three generations.

The unintended consequences of this act were recognised with the Agricultural Tenancy Act 1995, which led to the creation of Farm Business Tenancies (FBTs). This legislation had three core policy objectives that were to

1. increase the amount of land entering the let land sector
2. increase opportunities for new entrants

⁵ Information from the Forestry Commission

3. make rented land more agriculturally efficient and responsive to market forces

The protections afforded to tenants by the 1986 Agricultural Holdings Act gave the tenant more security and management control over the land but reduced the amount of land in the let sector. The 1995 Agricultural Tenancies Act sought to redress this by bringing in freedom of contract and altering the property rights so that the tenant no longer had the security afforded to them as in the AHA. Annex 2 gives an overview of how the benefits vary between the two tenancies.

The 1995 Act initially brought more land to the let sector between 1995 and 2003. However, as Figure 1 shows, there has been a stagnation in the amount of let land entering the market since 2003.

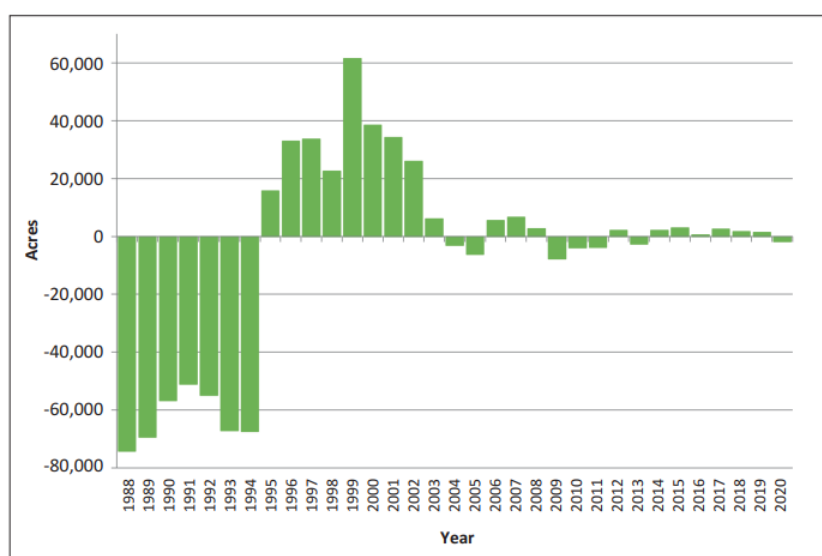


Figure 1 Area of land lost/gained from the let sector since 1988⁶

Many would agree that AHA tenancies positioned the landlord-tenant dynamic at one end of the property rights spectrum in favour of the tenant, and that the 1995 ATA resulted in a pendulum swing to the opposite end of the spectrum. This has come with an erosion of tenant protections and with FBT property rights falling in favour of the landlord.

It is the aim of the recommendations in this review to redress this balance on two fronts. Firstly, working within the existing structure to ensure tenants have fair access to the new public support schemes whilst recognising the landlords' rights and interests in the land. And secondly to look at how the structure of the sector itself can be adjusted to reach a more equitable relationship between landlords and tenants.

Quote:

"It should not be outside of the abilities of people to come to a sensible middle ground between these two extremes"

Roundtable participant

⁶ CAAV 2022 Survey

21st Century Demands on Land

Quote:

“As society’s demands for the land change, so too should tenancy agreements.”

Written submission

Land in England currently faces more demands and pressures on it than at any other time. Some of these pressures are

- Food production and food security
- Housing developments
- Production of bio-fuel for bio-energy
- Non-housing related developments, such as solar panels
- Biodiversity improvements and habitat creation
- Tree and woodland planting
- Nature based solutions for climate

Some of the newer demands and pressure on land will only grow over the coming decade considering the important global, national, and local commitments to achieve aims such as net-zero and biodiversity targets.

The TWG supports these commitments and believes that tenant farmers have huge potential to deliver them through the creation and maintenance of multi-functional landscapes. We heard from many farmers that ‘farming with nature’ should be the norm with all the environmental and business benefits of increased resilience and potential improvements in profitability.

However, tenants and the wider sector will only be able to reach their potential if they are able to access public funding and if there are improvements to the structure within which tenancies operate.

This review has spent the last 8 months working with key organisations in the agricultural tenanted sector, with Defra policy teams, with landlords, and with tenants themselves to develop a comprehensive suite of recommendations to unlock the potential of the tenanted sector.

Future of Payments

Quote:

“A fully functioning farm, with a profitable business, can reinvest, deliver on high standards of food production, and deliver on environmental targets and net-zero aspirations. If a farm business is at risk of becoming unviable, all this changes.

I am now in a situation where I must seriously consider letting BPS run out and intensify my farming system, completely stopping all environmental measures to ensure profitability. This is completely contrary to how I wish to farm but, obviously, I must protect my business.”

Roundtable participant

In 2020 Defra published the Agricultural Transition Plan outlining a vision for farming by 2028 and a staged approach to get there. This included the design of new public support schemes to be phased in as the current area-based payments are phased out.

Two years later Defra has only managed to launch the first part of the Sustainable Farming Incentive (SFI) and the first pilot of Landscape Recovery (LR). Within SFI, they have launched three standards with an indication of 14 more to come between 2023 and 2025.

These further standards are in the very early stages of development. Depending on the actions involved, tenants may not be able to enter these further standards due to misalignment between the eligibility and descriptions of the schemes and provisions in tenancy agreements. All the SFI standards must adhere to the core principle of SFI that tenants can access them without landlord consent.

Beyond the indicative topics highlighted in the Introduction, we found that little clarity exists for farmers on the future SFI standards from an action or a payment basis. Even less clarity exists on what the next scheme, Local Nature Recovery, will offer in terms of capital and revenue options and payments. And Landscape Recovery is a competitive fund for only a handful of large projects which, by definition, is not open to all. This lack of clarity has a bigger impact on tenant farmers than owner occupiers because of the lack of flexibility they have.

What this adds up to for tenant farmers, who pay rent every year, is a very clear decline in income and no visibility of what public support they can access nor how much they stand to benefit from accessing them. We heard clearly from our roundtables that *“without the indication of where payments are going and the direction of travel then it is difficult to enter schemes and see how things add up for a viable business.”*

Rent is key to the structure of the tenanted sector and is a sign of vibrancy. Without it, there is no driver for the landlord to let land. Returns from rent also support landlord investment in the holding. However, looking ahead to future developments, tenants will need to meet new demands on how they manage land, change how they invest in the business, and diversify their income to remain viable and meet rent demands.

When asked about how comfortable they felt about being able to pay rent in the future, more than half of respondents to our survey selected the options indicating they ‘will struggle to pay rent’ or ‘will not be able to pay rent’. This was supported by evidence from written submissions and roundtables with one submission stating that *“The progressive removal of BPS will make it very difficult for some [tenant] farmers to pay their rent until the date of the next rent review.”*⁷

The sector is acutely aware that the new scheme payments are not meant to replace the lost income from the BPS and rarely was this a request at the roundtables, but in the uncertain context described, how can the government expect any tenant farming business to plan, thrive, and be resilient?

When faced with uncertainty of the new, the instinctive reaction is to run towards certainty. In farming this amounts to intensifying production until schemes are developed in enough detail for tenants to know what they can access, how much they stand to gain, and how it works to ensure a viable business.

Acknowledging this, Defra extended applications and increased payments for Countryside Stewardship (CS) schemes. Although this was followed by an increase in uptake it is unlikely to be because the scheme is suddenly more attractive, but that it is the only stable offer from government that farmers are familiar with. However, given the paucity of data that Defra

⁷ Written Evidence from RICS

holds on tenancy and land occupation, we are unable to ascertain how many of the CS participants are tenants and what options they are selecting.

Tenant farmers are caught between a rock and a hard place. Many see themselves as stewards and custodians of the land and nature. We have heard how area-based payments and income from food production allow farmers to carry out environmental work on the farm. However, increasing market volatility and uncertainty of public support means that farmers are facing a carousel of confusion. When they look at their cashflow and business planning they find themselves in a time of significant uncertainty.

A source of income certainty can be from supply chain contracts that tenant farmers enter. Longer and better contract terms for tenants can encourage a tenant to invest in their holding knowing they have a secured buyer of their produce. Whilst this is outside of the remit of this review, the role and impact of supply chains on the tenanted sector should be considered in more detail.

The government can and must do more through its schemes and through long-term structural changes to avoid land being removed from the tenanted sector which would run counter to the policy objectives of the government and societal needs.

Other reviews that recognise issues of tenancy

The issues of the tenanted sector around accessing government schemes and contributing to food security and environmental targets have been identified in several landmark reviews.

In 2017 the Tenancy Reform Industry Group (TRIG) made recommendations to government on reforming agricultural landlord and tenancy legislation. Building on this, the government held a consultation in 2019⁸ with some recommendations being incorporated in the Agriculture Act 2020. However many recommendations from the TRIG report were not adopted.

The 2018 summary of responses to the **Defra Health and Harmony review** highlighted, at the early stage of policy design, the potential issues in the tenanted sector.

“The current tenancy law was thought to limit opportunities in the tenant sector, whilst it was suggested that the availability of land could make it difficult for new, dynamic farmers to get into the industry. Many farmers felt that a combination of uncertainty about the future, low farm profits, and expensive equipment created barriers to investment in their businesses

The need to encourage more agricultural tenancy opportunities and longer-term tenancies were also frequently identified. Tenancies encouraged more opportunities for new entrants and provide tenants with security to invest in longer term activities such as improving soil health.”

In 2019 the **House of Lords Select Committee on the Rural Economy** recommended that

“The Government should also address restrictions on tenant farmers that may prevent diversification”

The **House of Lords Science and Technology report on Natural Capital** highlighted that:

“The Government should urgently address the barriers that tenant farmers face to engage with the Environmental Land Management Schemes. This could include

⁸ The consultation focussed on “mortgage restrictions and repossession protections for agricultural land in England”

mechanisms for landlords and tenants to negotiate arrangements that allow them to share the costs and benefits of improvements.”

The 2021 **National Food Strategy** identified that

“tenants face particular challenges: short tenancy agreements can prohibit them from making long-term changes like planting trees.”

And recommended that

“Defra should ensure that it is easy for tenant farmers to enter the schemes, as well as for farmers who own their land. Each scheme should be carefully proofed to ensure it does not inadvertently disadvantage tenants or commoners”

The 2022 **Climate Change Committee Progress Report to Parliament** also recognised these issues and recommended that the government

“Provide support to tenant farmers to overcome contractual issues that restrict the long-term commitment and investment required to reduce emissions and sequester carbon on the land they manage.”

This review agrees with these issues and goes one step further to make recommendations for how Defra and the government can unlock the potential of the tenanted sector to contribute to a more sustainable and secure future for the nation.

Landlord - Tenant Collaboration

What we believe

- Long-term success in the tenanted sector occurs when tenants and landlords work together collaboratively for mutually beneficial outcomes.
- Successful and thriving tenancies are at the heart of successful multi-tenure estate management.
- Delivering multi-functional land use for food security and the environment will rely on collaboration between landlords and tenants.

What we found and what should change

Landlord approaches to managing estates are varied as is their level of collaboration with tenants. Some landlords farm part of their estate in hand, some have positive relationships and collaborate with their tenants, some are reluctant landlords with protected tenants that they may be unable to work with, and some landlords are absent or have negative relationships with their tenants. There are landlords and tenants all along the spectrum.

We know that there are many landlords who wish to retain a long-term interest in owning land without the responsibility to farm and manage it on a day-to-day basis⁹. In these cases, many landlords are aware of, and acknowledge, the important role that tenants play in managing a rural estate.¹⁰

One institutional landowner summarised it clearly when they mentioned the symbiotic relationship they have with their tenants and that their aim is to “*ensure that farmers on the estate are viable and economically resilient.*”¹¹

We know that in many cases, tenant farming businesses can offset the landlords cost of managing and conserving an estate and that bringing land back in hand does not necessarily mean less risk nor more money for the landlord; it brings different management and economic challenges.

One institutional landowner estimated that the cost to manage the estate using contractors, with no tenants, would exceed the current rental income by somewhere between 15 to 20 times. This may be an extreme case where the other end of the spectrum may see a landlord wanting to farm in-hand exposed to high levels of lost opportunity cost where their business would differ from that of the existing tenant.

We have also heard from many landowners and land agents that, given the freedom of contract, all things are possible. Indeed, the Country Land and Business Association (CLA) survey, published in September 2022, has highlighted that 67% of respondents would be willing to enter collaborative schemes with their tenants if the agreement and schemes allowed it. However, we heard from tenants and estate managers that collaboration is not possible without a present and positive relationship. We have also heard that the flexibility in FBT agreements is not taken advantage of.

Focussing on delivering positive, collaborative landlord-tenant relationships for mutual benefit, we highlight several areas to improve collaboration between landlords and tenants.

⁹ Written evidence from TFA

¹⁰ Written evidence from MOD DIO

¹¹ Written evidence from MOD DIO

In the face of new government schemes potentially requiring landlord's consent, many tenants felt that they would be unable to secure landlord's consent if the relationship is either not present, in the case of an absentee landlord, or in a negative state.

We recognise that the government is limited in what it can do to incentivise improved behaviour and that the industry needs to take more control of this. Our recommendations address what we think the role of government can be in raising the expectations and realities of positive landlord-tenant and agent behaviour.

Sharing a vision

The behaviour of tenants, landlords, and agents varies across the country. Every landlord, every tenant, every farm business, and every farmer are different.

One consistent feature we found was that productive and resilient relationships took root where landlords collaborated and had regular interactions with their tenants. This was often facilitated by an in-house land agent and a practice of sharing the vision, plan, and priorities of the estate. Prudent landlords who manage their estates with a multi-generational horizon should be thinking about these issues. Visions and plans need not be complicated and the process itself can be the starting point of regular and engaged conversations between landlords and tenants to do what is best for the landlord's vision and the tenants' businesses.

Where a landlord shares their vision for the estate, be it tree planting or woodland, public access, net-zero ambitions, or viable businesses, it provides an opportunity for coordination across the estate and gives tenants an opportunity to work in a way that aligns with the vision while supporting their own business goals, including entering land into public schemes.

Case Study: Progressive Estates and Landlords

Over the years, the in-house agent and a landowning family in North-East England have created a space for open dialogue with all the tenants.

The estate team have taken time to listen to the tenants about what they want for their businesses as well as share what their vision is for the estate. It was openly acknowledged that sometimes these two visions did not align which led to occasional tension.

The open dialogue meant that when tensions did arise, they could be openly discussed leading to collaborative resolution.

One example was shared where the landowner wanted to undertake tree planting at scale on the estate and developed a plan before speaking to the tenants. On raising the plan with them, the tenants pointed out that some of the proposed areas for tree planting would not be suitable either because of the impact on their business or because of an inappropriate location. Working together the landowner and tenants reallocated where the trees were to be planted to benefit both parties.

Although the tenants we spoke to were uncertain about their future through the Agricultural Transition, they were confident that the landlord would do what it could to support them.

From a visit to an estate

Collaborative dialogue

Quote:

“The landlord tenant relationship has become more transactional than relationship based”

Roundtable participant

Our survey revealed that 44% of respondents reported being uncomfortable discussing changes to their tenancy agreements with their landlords. In a period of heightened uncertainty about what the future looks like, open and ongoing dialogue between parties to a tenancy agreement is crucial to collaboration. Our survey however shows that this process is often not an easy or comfortable one for the tenant farmer.

We also heard from many tenant farmers that poor communication, no indication of a strategy, and a status quo position of ‘us versus them’ are drivers of poor relationships between landlords and tenants.

Recognising this, one institutional landowner highlighted that landlords and their respective estate managers, or agents, need to better understand the issues facing tenants. The same organisation also pointed out that landlords should be more proactive and flexible thinking about varying the terms of existing tenancy agreements or consenting to changes in how a tenant wishes to manage the holding.¹²

The onus of starting a collaborative conversation should be borne by the landowner, and where an agent exists, the landlord should include this as a requirement for them to act on. Landlords and both landlords’ and tenants’ agents are well placed to encourage and facilitate conversations relating to collaboration through the agricultural transition period and beyond. Tenants, in turn, should be open to these conversations. This may require landlords to enable agents to have ‘no agenda’ meetings with tenants so that discussions can move from being transactional to being more collaborative.

In these conversations, landlords need to recognise an existing tenant’s covenant of quiet enjoyment. We have heard that some landlords are *“keen to impose their own agenda and philosophy on existing tenants, including those on secure tenancies protected by the AHA. Some tenants experience this as an unreasonable interference with their freedom to farm as they wish within the terms of their existing contracts.”*¹³

The Tenant Farmers Association (TFA) and the CLA produced joint guidance in 2022 about how tenant farmers and landlords should approach discussions about entering new government schemes through a partnership approach. This shows that a collaborative approach between the two sides of the landlord-tenant relationship is possible building on common ground and shared interests.

Virtuous cycles

The heart of the landlord-tenant relationship is a thriving tenanted business. Not only does this have benefits to the landlord, but it also has beneficial implications for local rural communities.

One institutional landowner acknowledged these wider implications of a good relationship stating that *“parts of the estate bring socio-economic benefits to the local community and the*

¹² Written evidence from National Trust

¹³ Written evidence from RICS

landlord proactively manages the estate to ensure a resilient and viable tenanted community is maintained.”¹⁴

While it is not the landlord’s responsibility to underwrite a tenant’s business, as BPS reduces and the impact of ELM payments remain uncertain, it is in the interest of landlords to do what they can to support their tenants with stability and viability through periods of uncertainty. However, what we have heard is that landlords are using shorter term FBT agreements to hedge against the uncertainty.

We have seen examples of collaboration where landlords are having early and regular conversations with their tenants about how the landlord can support the tenant to diversify, expand, or become more resilient. These landlords have been called progressive, socially responsible, or even enlightened by roundtable participants.

This openness and dialogue between parties has increased trust and places the relationship in a positive, virtuous, and mutually beneficial cycle. The tenant is empowered to develop their business, and the landlord gains security of rental income.

Unfortunately, for every example we heard of this behaviour, we heard an equal number of examples, if not more, where the relationship was characterised by poor communication and was in an acrimonious state.

In this time of uncertainty and transformation, it is more important than ever that the landlord-tenant relationship is collaborative, open, and honest. We want to ensure that the majority of landlord-tenant relationships are tending towards this structure and away from relationships characterised by distrust.

Acknowledging these limits, ***Defra should examine how it can incentivise and provide advice on how landlords and tenants can collaborate to develop and enter mutually beneficial agreements that cover public and private schemes.*** The CLA and TFA joint guidance should be the starting point for any collaborative venture or incentives that government develops.

Standards of behaviour: A Code of Practice for landlords, tenants, and professionals

Security of tenure, information on landlord objectives, and advanced sight of any agreement renewal or alteration before an existing agreement terminates are key to business continuity, business planning, and the mental health of all concerned.

Security of tenure is addressed in the following section on Landlord-Tenant Agreements, and we have previously addressed why landlords should share their estate vision with tenants.

On advanced sight of agreement alterations, one stakeholder highlighted that although notice periods from landlords are 12 months, meaningful discussions on agreements can be left until late, sometimes a few weeks before renewal. We have heard several similar examples, where landlords and agents have not been in communication with tenants for significant periods of time and wait until only a few weeks before a tenancy is due to expire before providing confirmation that it will either renew, roll over, or be extended.

This is particularly disruptive to tenant farmers whose businesses operate on long timescales with immobile capital. Providing adequate time and notice for any changes to

¹⁴ Written evidence from MOD DIO

agreements opens the space for early dialogue between parties and early action where necessary. It also mitigates one aspect of uncertainty that tenants are facing.

The burden this kind of behaviour places on the mental health of tenant farmers cannot be understated. Especially where families and livelihoods depend on agreement renewal or who require ample time to find other opportunities should the landlord not want to renew.

It is important to highlight that this behaviour is not necessarily the norm and gives other landlords and agents a bad reputation. It is therefore in the interest of the industry to call out and address these bad examples, potentially through industry led regulation.

Looking at the roles and behaviour of those who work in the tenanted sector, we can look to private sector organisations who often rely on social licenses to operate. These rest on expectations to behave in a socially responsible way. This can range from charitable donations to working with grassroots organisations and other forms of community support.

In a similar vein, owning and occupying land in England should come with socially responsible obligations to the rural economy, communities, and the future of England's land. Those that own, occupy, and manage land should therefore be held to high standards of social responsibility, being held to account where they do not meet those standards.

Recognising that tenant farmers are core to the economy in rural areas, **Defra should commission a piece of work to produce a Code of Practice on how landlords, occupiers, and agents can be expected to behave in a way that is socially responsible.** In commissioning this piece of work, Defra should convene industry bodies such as the TFA, CLA, National Farmers Union (NFU), Royal Institution of Chartered Surveyors (RICS), Central Association of Agricultural Valuers (CAAV), and others to lead on the development of the code. The industry should also converge on what socially responsible policy should look like for trusts and charities to ensure due regard for their tenants and the wider communities they are part of.

As a starting point and at the very least, this review recommends that this should build on the guidance from the CLA and TFA that was published earlier in 2022 as well as the TRIG 'Code of Good Practice' from 2021¹⁵. These outline how landlords and tenants should approach collaborating to enter new schemes.

However, the landlord-tenant relationship needs to move towards a positive footing before collaboration can be achieved. We have provided some areas to consider in this chapter.

The Code of Practice would form the basis of how parties to a tenancy agreement are expected to behave. It could also be the basis of a tenancy charter that, as an addendum to a tenancy agreement, is signed up to by landlords, agents, and tenants.

We would expect the below list to act as a starting point for a Code of Practice that should be developed.

- principles of socially responsible behaviour for all parties involved in land management when competing demands exist on the land such as rental property income, natural capital, public schemes, and others
- defining how agents and professionals should employ collaborative mediation processes before moving to more adversarial arbitration
- setting timelines for discussions on the future of tenancies to minimise reactive engagement and impacts on mental health

¹⁵ TRIG Code of Good Practice, published by RICS, 22 July 2021

- best practice for having a tenant voice on governance boards for trusts and institutional landowners
- best practice for providing notice of agreement renewal and alterations to tenants
- best practice for sharing a vision, improving communication, and holding dialogue between landlords, tenants, and their agents

The role of land agents

Quote:

“There is a need to protect tenants against the worst excesses of landlords and agents”

Roundtable participant

The introduction of agents into the landlord-tenant relationship was regularly quoted as a source of tension. In multiple roundtables it was stated that “*agents are a wedge in the relationship*” and that “*introducing a third party brings in the anxiety and is driven by financial targets*”.

In one instance we heard of an agent putting a farm holding up for let without the tenant nor landlord being aware. The tenant found out their holding was put online and directly contacted the landlord to ask about it. It was taken down once the landlord spoke to the agent. Not only does this demonstrate poor agent behaviour, it also undermined the trust the tenant had in the landlord and agent.

The use of agents is understandable to manage an estate or to represent the views of the landlord or tenant, but from all we have heard land agents from external firms are often seen as playing an adversarial role as opposed to in house agents.

We have also heard cases of agents using unsavoury tactics and leveraging the power dynamics present in the landlord-tenant relationship to pressure tenants into accepting unfair terms.

It should be common practice that agents facilitate and mediate the relationship between landlords and tenants. For example, where a tenant has requested communication with their landlord it should not be unreasonably refused or blocked by the land agent. Especially since poor communication is the root of a strained landlord-tenant relation.

Land agents are not a licensed operator. However, given the finite nature of land in England and the role of agents in the landlord-tenant relationship, as well as how they work with other professionals, it is too important a profession to not be one of strict oversight and potentially regulated. ***Defra must examine ways to improve the oversight and potentially regulate land agents so their performance and behaviour can then be appropriately scrutinised and held to account.***

The recent Bichard Review into the governance of RICS and clauses in the Levelling Up Bill indicate that there is a widespread recognition that RICS needs reforming. If the industry is unwilling or unable to govern itself appropriately, we recommend that ***Defra take an active role in working with the Department for Levelling Up, Housing, and Communities (DLUHC) on the reform of RICS including the review of its Royal Charter to better ensure that the organisation is providing public benefit. Central to this must be demonstrable improvement in the performance of land agents.*** In addition, Defra must take active steps towards establishing a Tenant Farmer Commissioner or central ombudsman in England (see Legislative section).

Similar to how property estate agents are regulated by a property ombudsman who provides an independent source of support and arbitration for tenants, *Defra should examine the appointment of a Tenant Farmer Commissioner or central ombudsman for the agricultural tenanted sector. The position should have the responsibility of ensuring government policy is tenant proof and to ensure fairness within the tenanted sector. They should also have the remit to examine and strengthen the dispute resolution processes.*

One area that the Tenant Farmer Commissioner would focus on is examining instances where the Code of Practice detailed above is not adhered to.

Case Study: Example of a sub-par institutional landlord

Recent articles in Farmers Weekly have shone a light on examples of poor landlord behaviour.

One farming family who had been on the land for 14 years took a proposal to the landlord who only then told them that they had plans to create a nature reserve and extensify the grazing using annual licenses.

The security of tenure was immediately reduced, the security of income disappeared as the landlord would be taking the payments, and the tenant was left with no recognition of what they had done to benefit the land.

Arguably, if the plan had been shared earlier, the tenant could have either changed their proposal or come to a collaborative arrangement to benefit both parties.

Summary of Farmers Weekly article, 27 July 2022

Where we want to get to

- Tenants, landlords, and agents have clear obligations and guidance for best practice with official recourse for those who do not adhere to good behaviour.
- Tenants and landlords have clear pathways to collaborate and enter positive dialogue.
- A status quo relationship of trust, collaboration, and alignment between landlords and tenants.
- Equip the sector with the tools to deliver a thriving tenanted sector ready to respond to the challenges and opportunities of the future.

Recommendations

- Recommendation 1. Defra should examine how it can incentivise and provide advice on how landlords and tenants can collaborate to develop and enter mutually beneficial agreements that cover public and private schemes.*
- Recommendation 2. Defra should commission a piece of work to produce a Code of Practice on how landlords, occupiers, and agents can be expected to behave in a way that is socially responsible.*
- Recommendation 3. Defra must examine ways to improve the oversight and potentially regulate land agents so their performance and behaviour can then be appropriately scrutinised and held to account.*
- Recommendation 4. Defra should take an active role in working with the Department for Levelling Up, Housing, and Communities (DLUHC) on the reform of RICS including the review of its Royal Charter to better ensure that the organisation is providing public benefit. Central to this must be demonstrable improvement in the performance of land agents.*
- Recommendation 5. Defra should examine the appointment of a Tenant Farmer Commissioner or central ombudsman for the agricultural tenanted sector. The position should have the responsibility of ensuring government policy is tenant proof and to ensure fairness within the tenanted sector. They should also have the remit to examine and strengthen the dispute resolution processes.*

Landlord - Tenant Agreements

We believe

- Agreements should allow tenants to do what is best for the land and their business including diversification, investing in productivity, accessing public funding, improving the environment and, where there is no conflict with the landlord's interest, entering private markets.
- For scheme applications, agreements that have already had more than one historic renewal can be assumed to renew for a further term. For example, three 5-year FBTs should be considered a 15-year FBT and FBTs of more than two years that roll over annually should be considered as a continued agreement.
- Short-term agreements, even if assumed to renew, are an insecure source of income and discourage investment.

What we found and what should change

This chapter touches on each of the aspects outlined by evidence from written submissions and from roundtables indicating that *"the FBT sector is characterised by lack of security, restrictive clauses, and high levels of rent."* Taken together, these can be detrimental to sustainability, resilience, productivity, and environmental outcomes delivered by tenant farmers.

Quote:

"...because there's no real incentive to offer a longer term (FBTs), we are now in the position where we are being given notice to quit every year, and then it being extended again with a fresh notice the following year."

Correspondence from a tenant farmer, Sussex

Restrictive Clauses and Diversification

Our literature review found that for both types of tenancies, restrictive clauses written many years ago in a different context may now be presenting a barrier to participation in new environmental land management schemes¹⁶.

We recognise that government schemes cannot overwrite a legal contract between landlords and tenants. We also recognise that FBTs were designed to have clauses added and amended to suit the nuances of any situation. However, we have heard time and again how standard FBT agreements are used as 'off the shelf' products with minimal changes to clauses or opportunity to negotiate.

Case Study: Letter to tenant

With regards to a new FBT agreement, a letter to the tenant stated that

"there will be no negotiations on the terms of the agreement. If you seek amendments, then the agreement will be withdrawn and the land offered elsewhere. If you wish to take advice on this then that is up to you but given the simple nature of the agreement I will require return and payment within seven working days of the issue of the agreement"

Correspondence, Anonymous

¹⁶ Defra (2019) Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England

One restriction is the ability of tenants to diversify their businesses into areas that may be deemed as non-agricultural such as the LNR and LR schemes. In these cases, the tenant would require permission from the landlord to carry out such activities. Overall, this means tenant farmers' diversification opportunities can be restricted by their landlords who may prevent these activities or carry out the activities themselves, thereby diminishing the resilience and viability of the tenant's business¹⁷.

Tensions may arise where landlords can use resources on tenanted land for alternative purposes, such as trees or peat for biodiversity net gain or carbon credits. The rights for landlords to use these resources can be provided for in tenancy agreements and legislation¹⁸. Where this is the case, the terms of a tenancy agreement may exclude tenants from carrying out, and receiving income from, actions that involve land use change to deliver environmental benefits, such as increasing soil carbon and biodiversity¹⁹.

Where landlords have recognised that a thriving tenanted business is in their best interests, it follows that it is also in their interest that the tenant business has diversified income streams. This creates a resilient and thriving business that benefits both the landlord and tenant in the long run. However, we know that tenants are not easily allowed to diversify their businesses within the confines of the tenancy agreements.

To that end, **Defra should examine legislative changes to open up the ability for tenants to diversify their businesses without the landlord unreasonably refusing consent. In defining the tests for unreasonableness, consideration will need to be given for how the diversification impacts the landlords tax status, land value, and estate management plans.** This could build on the existing code of good practice developed by TRIG in 2021²⁰.

Agreement Length

Quote:

'Longer periods (10 years plus) are required to encourage farmers to invest in long term care and enhancement of the land soil and general environment'

Survey respondent, Southwest farmer

'Landlords are not willing to commit to longer tenancies in case things change. Tenants need longer tenancies to be able to commit to long-term policies and investments.'

Roundtable participants

Since the early 2000s, the sector has witnessed the impacts of the 1995 legislation that has led to shorter agreement lengths and increased land rent. Earlier chapters touch on tensions in the landlord-tenant relationship and Figure 1 shows the changes in land entering the let sector due to changing legislation. Around half of England's tenant farmers now have FBT agreements, lasting on average under 4 years²¹. Table 3 shows new FBT lengths for the last decade.

¹⁷ Defra (2019) Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England, and Defra (2013) Future of farming review report

¹⁸ Woodland Trust – Trees for your farm

¹⁹ Green Alliance (2022) Natural capital – the battle for control

²⁰ TRIG Code of Good Practice, published by RICS, 22 July 2021

²¹ House of Commons – Environment, Food and Rural Affairs Committee (2022) Tree Planting: Third Report of Session 21-22

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
All FBTs	3.89	4.12	3.17	3.53	3.83	4.48	3.97	2.90	3.21	3.24
FBTs > 1 yr term	5.44	5.54	4.65	4.93	5.31	5.94	4.98	4.14	4.75	4.83

Table 3 Average length in years of new FBTs granted (From CAAV survey data)

We understand that there are a number of legitimate reasons for short term lets. Some of these are for new entrants who could present a higher risk to landowners, and those engaged in high value rotational cropping. However, outside of these exceptions, short term tenancies have lower tenure security and drive short term behaviour, hindering productivity improvements and land and soil health.

Farming is a long-term endeavour, requiring significant capital investment, patience, good soil management and the ability to balance the profitable years against the bad. This is best supported by long-term FBTs.²² Respondents to the CLA survey recognise that long agreements gave flexibility to the tenant and can help to provide a return on a tenant's investment.²³

We heard from multiple stakeholders that landlords are not willing to commit to longer tenancies due to uncertainty in the Agricultural Transition Plan and "*in case things change*". While we understand this reaction, we would argue that it is the wrong direction for landlords to take to hedge against uncertainty.

If we accept that a thriving tenanted sector is beneficial, then surely long-term tenancy security during times of uncertainty is in the interest of all parties. We heard from many tenants that by having longer security they would be able to "*support investment*", take innovative approaches to growing their business, sign up to public schemes, and plan for their business beyond a 5-year horizon.

Furthermore, many respondents reported that the short-term nature of FBTs drove a feeling of insecurity and cautiousness to not upset the landlord when approaching the renewal point which could be every 2-3 years on short FBTs. Not upsetting the landlord is key to a good landlord tenant relationship but in these cases, it becomes a hindrance to the ability of the tenant to be more innovative and ambitious with how they develop and grow their land-based business.

Landlords and tenants share an interest in the health of the land and soil they farm and own. Landlords have a long-term interest in the health of their land. Tenants have a shorter-term interest in operating a business to meet rent and livelihood requirements, but they also have dependency on the health of the land. If we are to unlock the potential for tenants to support our food security as well as improve our natural capital, we need adequate incentives for tenants to focus on land health and for landlords to let for longer.

As reported by the National Trust, "*Landlords should be encouraged to grant new tenancies of sufficient length that give tenants the confidence and security to enter into some of the schemes on offer.*"²⁴ We would add that scheme rules should also work for tenants on short agreements where they align to the objectives of the scheme. Such changes have already been made to the SFI scheme.

Recommendations have been made to Defra in the past on the landlord's incentive to let for longer. Evidence from existing literature on this topic, written submissions, and roundtable

²² Written evidence from TFA

²³ CLA 2022 survey

²⁴ Written evidence from National Trust

discussions with tenants, landlords, and agents held by this review indicate that the tax regime is the largest driver of landlord behaviour, specifically inheritance tax for landlords who are not institutions.²⁵ This is dealt with in the chapter on Tax.

Agreement Terms

As noted above, some argue that FBTs are based on freedom of contract and that they provide flexibility to insert, edit, and remove clauses upon discussion and consent from parties. We heard that any shortcomings of FBT agreements were a shortcoming in the ability of parties to come to agreement, but as we have seen in the previous chapter on landlord-tenant collaboration, there are indeed many shortcomings in the relationship.

However, we also noted that this is not common. Given the demand dynamics for land and the precarious and vulnerable nature that tenants find themselves in, we have heard many instances of FBTs being used off the shelf in a “take it or leave it” manner.

In a market where land supply into the let sector is low, it is not surprising that many applicants exist for a single holding. This allows the landlord to decide on the best offer for their land either on the highest rent or on the most favourable clauses. In these situations, the expectation that tenants have of their FBT being negotiable or tailored to their specific situation is not met by reality. This re-emphasises the need for responsible behaviour and that the onus of a collaborative discussion rests with the landlord and agent.

We are already seeing evidence of clauses being inserted in FBTs to prevent tenants from unilaterally entering environmental land management schemes or private markets even if it should be within their rights and they meet scheme eligibility. These clauses are a further constraint on the freedom that tenants assume they have to operate their own business and the common law “covenant of quiet enjoyment”²⁶ on the land they rent.

By sharing the vision of the estate, the tenant can decide if and how to adjust their business and enter schemes that align to the landlord’s long-term vision. Without these discussions and awareness, the tenant cannot be blamed for operating their business in a way that may not align to the landlord’s vision.

Using the flexibility that was the intention of FBTs to ensure tenants are in the best possible position to take advantage of new business opportunities and government schemes is in the interest of all parties and should be the base understanding from which tenants and landlords negotiate new or existing agreements.

Case Study: New FBT clause

One instance of a new FBT clause restricting the rights of a tenant to access schemes was seen by the review. In summary, the clause stated that

- The tenant must have landlord consent to enter any land into a conservation, ELM, or private market scheme such as carbon credits.
- The landlord could not unreasonably withhold consent
- Any schemes applied for would not be able to impact on agricultural operations.

Suggestions, and blanket preventions, of a tenant accessing value from public or private schemes for conservation, environmental offsets, environmental land management, or

²⁵ Inheritance tax is not a consideration for institutional landowners

²⁶ This is an implied term, or covenant, which has been expressed or implied in conveyances and leases of English land for centuries.

stewardship runs counter to the idea that when the landlord enters an FBT agreement, they surrender certain rights.

Tenancy agreements often retain certain rights for the landlord such as sporting, woodland and other rights. Although this review does not seek to interfere with contracts that reserve rights to landlords, it is concerned about the intensity with which these rights are used over tenanted land. These types of clauses change the balance of how tenanted land can be used through the tenancy agreement and can limit the options for tenant farmers who wish to enter environmental schemes²⁷.

This makes it even more important that public schemes provide clarity and certainty around how and when tenants are within their rights to enter schemes and access payments. This is explored more in the chapters on Schemes.

Case Study: New FBT clause

“If during the Term the Secretary of State exercises the powers given to provide the option for the payment of a Lump Sum in lieu of Direct Payments:

- The Tenant agrees not to apply for any such Lump Sum either during or following termination of the Term;
- The Tenant agrees to co-operate with the Landlord in completing all necessary documentation and in taking all necessary steps to enable the Landlord to apply for and receive a Lump Sum for [the Holding]”

New clause in a new FBT

A time for new agreements

Two of the formative legislative acts for the tenanted sector came roughly 10 years apart, at a time when the demands on land use were relatively stable.

It has been 27 years since the last legislative act that radically changed the tenanted sector and yet, as the introduction made clear, the demands on land are higher than ever.

Many tenants at roundtables argued that the FBTs legislated for in the 1995 act are no longer fit for purpose.

Quote:

“Landlords have all the power in these relationships, and we just have to agree and hope that we don't upset them. We are entirely relying on the goodwill of our landlords and have very little legal security.”

Tenant farmer, Sussex

Many have argued that the situation the industry finds itself in is a call for industry and government to look again at contractual relationships in the tenanted sector. The industry should be proactive on this issue and begin looking at how to balance landlord and tenant interests while fairly sharing risks and rewards.

The Defra consultation in 2019 was narrow in scope with only some of the recommendations incorporated into the Agriculture Act 2020. It is clear from this review that problems still exist. Tenants are often in insecure, vulnerable positions in these agreements, and changes need to be made to cope with future policies. **The government should address the state of**

²⁷ Written evidence from Natural England

tenancy agreements head on with a broad consultation on tenancy reform in 2023. Part of the consultation should address why FBT agreements are not making use of the flexibility available within the ATA 1995. This, combined with other recommendations on legislative reviews, will allow legislative changes to be made in alignment with the roll out of ELM schemes planned for 2024/25 and can pave the way for a rejuvenated tenanted sector as we reach the end of the Agricultural Transition Plan. In the course of any tenancy reform Defra will have to work closely with the industry to mitigate any risks that land is lost from the let sector.

The 2020 Agriculture Act extended arbitration and restricted the ability of landlords to unreasonably refuse tenants access to new schemes. However this was limited to AHA tenants. A recent survey from CAAV stated that only 68% of AHA tenancies which ended with no successor were re-let, under the new legislation, as FBTs. As the number of AHAs diminish and FBTs increase, this underlines the importance of extending protections to FBTs. Defra data has also shown that the number of holdings under AHA tenancies is steadily reducing and as these long-term tenancies come to an end, FBT agreements will dominate the sector.

To redress the power dynamics between the tenant and landlord, and to prepare for a majority of tenancies being FBT in the coming years, we recommend that ***some of the existing AHA protections such as “no unreasonable refusal of scheme entry” and “access to arbitration” should be extended to FBT tenants.*** This would provide FBT tenants with more security in discussing scheme entry with landlords and potentially increase uptake.

We recognise that there is a risk landlords may not let land with these new protections however given that the protections would not impinge on the landlord’s ability to give notice or take back land, this risk is deemed to be low and in-line with the middle path that we are trying to reach between benefits to the landlord and tenant.

Arbitration

Where collaboration between the tenant and landlord breaks down, the legislation provides recourse for arbitration. However, the arbitration process can be lengthy, costly to both parties with high fees, and the results kept confidential.

Often there is an imbalance in the ability of the tenant and/or the landlord to bear the costs, from both the financial and time perspectives when going through arbitration or negotiation processes such as rent reviews.

To many tenants these costs can be a barrier to accessing professional support to argue their case. It is also an incredibly stressful process which puts many tenants off tackling what might be unfair demands.

One area where a Tenant Farmer Commissioner could add value would be in reviewing the costs of dispute resolution through arbitration. These costs can be a barrier to parties accessing justice. The Arbitration Act 1996 already provides a framework to limit arbitration costs. A review by interested organisations into this provision and how it can be better used by the landlord-tenant system would build confidence and increase its use. In addition, the Commissioner or ombudsman could provide practical assistance towards the greater use of the simplified arbitration procedures developed by the Royal Institution of Chartered Surveyors (RICS).

In a country where legal decisions are based on legislation and precedent, removing this body of decisions from scrutiny starves the sector of precedent that parties can rely on and can develop over time. This, in turn, means that each arbitrator has to reach their own conclusion in circumstances where their personal approach to the specific facts of individual cases leads to unpredictability as to potential outcomes. *Defra must look at the legal paths to ensure that arbitration outcomes for AHA tenants, and FBT tenants when extended, can be scrutinised by an appointed Tenant Farmer Commissioner as nominated by the Defra Secretary of State.* This recognises that there are benefits to keeping arbitration confidential as well as the broader implications of removing arbitration confidentiality across the legal system, but also recognises the need to provide some form of oversight and scrutiny on the behaviour of parties and the proportionality of decisions.

By having oversight of arbitration outcomes and the behaviour of parties, the outcomes may be different to current ones whilst confidentiality is assured. We recognise that there may be resistance to this, however it should be made clear that we are not advocating judicial intervention. We are saying that there should be some oversight and an ability to take a ‘common law’ approach to this body of decisions; this would also allow the law to keep pace with the changing demands on land.

Institutional landowners

Many landowners in England are institutions rather than private landlords. The National Trust, United Utilities, and the Church Commissioners are just a few of the larger landowning institutions in England.

Where institutions or trusts own the estate, the boards are bound by fiduciary responsibilities that give primacy to financial returns. This gives cover to trusts to pursue profits and their mission, where one exists, over the well-being and resilience of their tenants.

There have been cases where environmental and social concerns have been framed as a fiduciary concern²⁸ and while these are one-off cases, they show that there may be some room for trusts and institutions to support agreements that provide lower but more resilient financial returns through a greater focus on environmental and social concerns.

²⁸ Fiduciary used here to mean the responsibility of a trustee to manage and protect property or money for the beneficiary

Case Study: Ruling on fiduciary concerns - Charitable trusts can prioritise climate change outcomes

“A landmark High Court ruling has confirmed that trustees of charitable trusts are allowed to prioritise the climate change outcomes of their investments even if it risks reducing financial returns. Mr Justice Michael Green approved the investment policies of the Ashden Trust and the Mark Leonard Trust, affirming that charity trustees can align their investments with the goals of the Paris Agreement on climate change even where this involves financial risk by excluding large parts of the market. Bates Wells acted for the claimants and said that the decision reinterprets the principles established in the 1992 Bishop of Oxford case, which did not consider climate change but concluded at the time that charity trustees should maximise return on their investments and ought not to take into account moral considerations that could cause financial detriment to the charity – except in supposedly ‘rare’ circumstances where an investment directly conflicts with the charity’s purpose or indirectly conflicts with its work. The new ruling redefines the fiduciary duty of charity trustees in a way that is in line with broader socio-political objectives of the 21st century, and could have a very significant impact as charities in England and Wales hold over £150 billion in long term investments.”

The review was further encouraged to hear that there are trusts and institutions who already include the voice of a tenant farmer from a different estate on the management committee and decision-making boards of the estate. This mitigates conflicts of interest whilst also making sure that the trustees and governing boards are aware of the impact their decisions may have on their tenants. We recommend that the industry include such a principle in any Code of Practice that is developed with Defra’s support.

Rent

The process of reviewing rent differs between AHA tenants and FBT tenants.

Participants in roundtables agreed that the AHA rent formula had kept rents relatively stable. However, participants agreed that FBT rents, set under the open market, were exposed to volatile supply and demand dynamics, speculative investment, and were not tied to the productive capacity of the land.

It is worth noting that in the process of the review, almost all participants at roundtables indicated that rents were increasing.

Case study:

"We have been served with a 139% rent review on the AHA and a 50% on the FBT.

We are not the only ones on our estate there are a further 10 farms all with similar circumstances and without exception we are all contesting the review. Some will end up at Arbitration and fortunately we have the backing of the NFU.

Why are we subjected to these bullying tactics in such an uncertain world? The cost implications and mental stress that this is causing is immeasurable.

Our rent has been reviewed by in-house agents every 3 years for the last 64 years so it can't be so far away from the actual market rents subject to the AHA,

My main points, after highlighting the current situation, is we need cooperation between landlord and tenants not confrontational relationships.

Correspondence from Tenant Farmer

Defra's data on agricultural rents shows that there has been a decline, in real terms, since 2015²⁹. Defra is also of the opinion that as we move through the Agricultural Transition, the reduction in BPS will naturally lead to rent reductions, however this is not what we heard from any of the roundtables with tenant farmers.

The Defra view on rent reduction in the long-term rests on two key assumptions, 1) that the BPS payment is folded into rent calculations, and 2) that the BPS payment is the defining factor in setting rents.

The first point is something that most participants agreed on and was supported by written evidence the review received as well as by analysis from Defra³⁰. However, Defra's own evidence on this shows that there is a range of how much of the BPS payment is capitalised in rents. If the level of pass through is high for BPS and if it remains high with ELM payments, as framed by the RSPB, "*it would be a significant issue given that the margin on ELM payments is likely to be less than the margin farmers make on BPS.*"

On the second assumption, demand for land as a safe investment during market volatility, for inheritance tax reliefs, from speculation around private markets, or for any of the demands given in the introduction, all drive up the demand for land.

The increased demand for owning land for non-agricultural use³¹ would reduce the amount of land in the let sector. This would increase the competition for agricultural tenancies and increase rent for FBTs. While this may force out unsuccessful agricultural businesses, it will also put a strain on many good tenant farmers whose profitability is supported by BPS payments, which are being phased out.

On an open market, farmers are price takers and are uniquely exposed to market and weather volatility. As weather volatility increases due to climate change and markets remain volatile due to geopolitical factors, additional protections will be needed for the more vulnerable and precarious – namely FBT tenants. If tenants cannot access the new schemes, their risk profile increases. Protections that focus on rent should balance the extremes of the AHA and FBT rents.

²⁹ Defra statistics, Farm Rents – England 2020, [Farm rents - England 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/farm-rents-england-2020)

³⁰ Written evidence from RSPB – "It is well known that BPS payments are often capitalised into rents."

³¹ Cases of this are already being reported across the four nations as companies and investors buy land for carbon offsetting

Historically, government has legislated for certain contractual protections. It is an ideological argument whether it is or is not for government to mandate how tenants and landlords structure their agreements. However, some legal protections, similar to those provided in the Agriculture Act 2020, may warrant review if landlords and tenants are unable to come to mutually beneficial and fair agreements. *Defra should maintain a close watch on how tenants are being treated with regards to rent and should examine options for what rent protections should be extended to FBT agreements and how to best do that.*

If the government wants to support domestic food security, energy security, and much needed environmental improvements, it needs a clearer understanding and position on the dynamics of land prices and rent that landlords and tenants face. This issue has knock on impacts for new entrants trying to get a foot in the tenanted sector and is explored in a later chapter.

Where we want to get to

- Agreements that allow tenants to diversify and access multiple sources of funding without impacting the landlord's interests, so that both the landlord and tenant benefit.
- Increased length of average FBT agreements to beyond 8 years.
- Increased landlord and tenant investment leading to a wide range of improvements across productive capacity, biodiversity, soil health and other natural capital, and long-term land management strategies.
- Tenants recognised for their work to improve natural capital as well as productivity and infrastructure.

Recommendations

- Recommendation 6.** *Defra should examine legislative changes to open up the ability for tenants to diversify their businesses without the landlord unreasonably refusing consent. In defining the tests for unreasonableness, consideration will need to be given for how the diversification impacts the landlords tax status, land value, and estate management plans.*
- Recommendation 7.** *The government should address the state of tenancy agreements head on with a broad consultation on tenancy reform in 2023. Part of the consultation should address why FBT agreements are not making use of the flexibility available within the ATA 1995.*
- Recommendation 8.** *Some of the existing AHA protections such as “no unreasonable refusal of scheme entry” and “access to arbitration” should be extended to FBT tenants.*
- Recommendation 9.** *Defra must look at the legal paths to ensure that arbitration outcomes for AHA tenants, and FBT tenants when extended, can be scrutinised by an appointed Tenant Farmer Commissioner as nominated by the Defra Secretary of State.*
- Recommendation 10.** *Defra should maintain a close watch on how tenants are being treated with regards to rent and should examine options for what rent protections should be extended to FBT agreements and how to best do that.*

Schemes – Environmental Land Management

What we believe

- Without full access to the new Environmental Land Management schemes, tenant farmers will struggle to remain viable
- Tenant farmers can be best placed to be the land managers who deliver on scheme agreements
- The three Environmental Land Management schemes must be designed to be open and accessible to tenants
- The schemes and scheme options must be tested with tenants explicitly in their design process and made tenant proof
- The schemes should not penalise tenants who exit agreements through no fault of their own

What we found and What should change

Quote:

'We are not going to be able to change the tenancy agreements. It is the scheme rules that need to change to ensure the person who is conducting the day-to-day farming of the livestock or crops is able to make the claim.'

Survey respondent, West Midlands

Early in the review process, several recommendations were provided to Defra from the TWG. One of these related to the narrative of the funding allocation to the three schemes. Initially it was proposed to be one third of the budget to each scheme however this was driving a perception amongst tenant farmers that they would be locked out of at least one third of the funding due to the long-term nature of Landscape Recovery (LR) agreements.

Defra took this recommendation and has already adjusted their narrative in two ways. The first was to update the narrative on funding so that less than 1% would be spent on Landscape Recovery and the rest on the Sustainable Farming Incentive (SFI) and Local Nature Recovery (LNR). The second was a welcome reframing of the schemes being about food production in tandem with environmental improvement rather than environment over food production.

The recommendations in this chapter should be applied to any schemes looking to support actions that may be seen as non-agricultural or requiring long-term commitments. This is especially important as Defra develops more detail on LNR and future schemes to deliver environmental outcomes.

Landlords are also concerned about tenants access to schemes. The CLA survey highlights that if tenants are unable to enter schemes it will impact their viability, their ability to pay the rent, further losses of biodiversity and degrade land quality

Food Security as a public good

The Environment Act 2021 enshrined environmental objectives for the government as statutory however there is no similar requirement on food security. In an increasingly volatile and uncertain geopolitical situation and with record numbers of families accessing food banks the government would be well advised to declare food security as a public good.

Defra should define food security as a public good alongside other environmental objectives such as clean air, clean water, lower carbon emissions, and improving biodiversity.

Defining food security this way would allow the government to provide funding and support in achieving this aim at both farm and retail points in the food system.

Scheme design principles for tenant farmers

Sustainable farming and environmental land management should not prevent a tenanted farm from having a viable income. They need to be compatible for the tenanted sector to thrive.

Schemes that support these aims need to be structured for land managers to make a living and invest in their holdings. We heard from many tenants at roundtables that where schemes do not support a viable tenanted business, tenant farmers “*are probably not going to do it and [are] likely to intensify production*” and that they would “... *completely stop all environmental measures to ensure profitability*”.

Evidence provided to the review indicated that schemes requiring long term agreements or land use change may be unavailable to agricultural tenants, particularly those on FBTs, and that landowners may instead look to take land back in hand in an attempt to access the scheme payments themselves as owner-occupiers.³²

The Sustainable Farming Incentive (SFI)

Defra has confirmed that the SFI will be fully open to tenant farmers. The ambition to keep this scheme open to tenants must remain and must not change.

The current standards in the SFI allow a farmer to enter the scheme and take actions alongside farming. Actions require less permanent land use change and do not necessarily need the long-time commitment of more complex environmental actions. Recent changes made to SFI around agreement length and no penalty exits have made the scheme more open to tenant farmers.

Future SFI standards may involve non-agricultural land use and permanent land use change. We do not know the details of these options, but if they are looking at creation of new environmental features then it is likely that tenants will struggle to take on these options, access the funding, and provide the associated environmental benefits. Defra must continue to design the future SFI standards so that they are open to tenant farmers.

As the complexity and ambition increase in LNR and LR, the landlords' grounds for objection increase. This is due to the impact of land use change, changes in tax liability, and scheme delivery liability. There are two aspects of tenancy agreements that scheme designers need to consider. These are the length of the tenancy agreement and the clauses in the tenancy agreement

As a principle, ***Defra must make sure that all Environmental Land Management schemes and Productivity schemes are accessible and open to tenant farmers.*** Where the scheme delivery needs to be continued beyond the end of a tenancy agreement which is terminated, Defra will need to consider where liabilities lie to deliver the scheme and how it can incentivise that land to remain in the let sector and within any existing public sector agreements.

³² Written evidence from Natural England

Furthermore, to enable the range of tenants to enter the schemes and access the benefits, *schemes and agreements need to be simple to understand, transferrable, and flexible.*

To that end, *as a basic scheme principle, tenants should not need landlord consent to enter tenanted land into schemes and landlords should not be allowed to enter tenanted land into schemes unilaterally.* This is already part of the guidance for the SFI scheme and should be carried forward to the other schemes.

Defra should also use the following scheme eligibility to ensure tenants are able to enter schemes

- *Where there is alignment between scheme length and the length and terms of the tenancy agreement, the tenant can unilaterally enter tenanted land into schemes without landlord consent.*
- *Where schemes require actions to deliver outcomes that are longer than the tenancy agreement, tenants who have had more than one historic renewal or who are on a rolling annual tenancy and self-assess that they will have sufficient management control to enter schemes should be able to unilaterally enter tenanted land into schemes.* Where tenants do not self-assess that they have sufficient management control, they should seek landlord's consent as is currently the case with Countryside Stewardship.
- *Landlords can only enter tenanted land into scheme options that require permanent land use change jointly with the tenant and then only with consent of the tenant. The consent of the tenant should be entered into separately and subsequently to a signed tenancy agreement.* This ensures the tenant gives their consent as and when the landlord wants to enter schemes jointly. It is important that the tenant has not been required to give their consent as part of their tenancy agreement as this removes the opportunity for dialogue and collaboration on entering schemes.
- *This must be met with adequate protections to stop land being taken back in hand and subsequently entered into schemes by landlords where tenants could have carried out the action, unless the tenant has not objected.*
- *Tenants with AHA agreements should be considered to have sufficient security of tenure and management control to enter multi-annual schemes.*

Similar to statements made in the SFI guidance, other schemes such as LNR should clearly state that that *tenant farmers who have multiple occupation agreements should be able to enter part of the farm business into ELM schemes.*

Flexibility in schemes is key. Not all land will respond to the same actions in the same way. Therefore, *the schemes need flexibility to add or remove land so that tenants can carry out the right activity on the right parcels of land to deliver the desired outcome, flexible start dates to allow for tenancies with different start and end dates to enter agreements when it works for them, and flexibility to transition from existing and legacy scheme agreements into new schemes without penalty.*

As part of this flexibility, Defra should examine how to adjust scheme rules so that where a tenant goes through a change in circumstance in their tenancy agreement that prevents them from delivering on their agreement with a public scheme, it should not be taken as a change in intent with a penalty.

Defra should approach the task of any enforcement through self-declarations in the application process being built and by trusting the applicant themselves. It would be excessive to expect Defra to check all applicants have met the criteria we are recommending, but by taking a reasoned approach to the application process, Defra can deliver the recommendations above while also building their understanding of how land is managed in England. The latter is crucially important for being able to say how successful or not the schemes have been at engaging tenant farmers; something that we are unable to say about Countryside Stewardship as it does not capture information on tenants or tenanted land.

Local Nature Recovery Confusion

The LNR scheme has not had much detail or guidance published since the start of the agricultural transition. Recognising this, Defra delivered an extension to Countryside Stewardship (CS) and Higher Level Environmental Stewardship (HLS) agreements. Farmers can roll forward existing agreements that last until 2026, and for Countryside Stewardship agreements, Defra has recently increased payment rates.

However, little is known about what LNR will require of tenants or farmers more widely. The lack of detail of a new scheme with new options for capital and revenue items is concerning. From what was shown to the TWG, some of what LNR will offer is aligned to the existing CS offer. However, there will also be new standards that would not be accessible to tenant farmers.

The naming of the scheme also presents issues that we have heard consistently in roundtables.

One issue is the potential for confusion with Local Nature Recovery Strategies that are mandated in the Environment Act 2021. Yet there is no defined functional link or delivery relationship between the two.

A second issue is that the word “Recovery” makes farmers feel that their actions have been destructive and that the scheme is not connected to the concept of stewardship.

When asked in the survey about their perceptions of Local Nature Recovery, only 13% of respondents said that they expect to apply to the Local Nature Recovery scheme in the next three years, with 49% saying they were unsure if they would apply.

Reasons given for low expectations to apply were centred around additional effort to apply, that tenants would need advice on what was best for their tenancy agreement, and tenants were unaware of what was on offer. These findings reflect the lack of detail, the uncertainty, and the perception that LNR is not for tenant farmers – all issues echoed at roundtables, with participants commenting on the “*lack of clarity on how different schemes interrelate and work together*”, and organisations saying that the landscape of schemes in the ATP is “*complex*”.

Early on in our conversations with Defra, we recommended that the aims of LNR could be delivered through an evolution of the existing Countryside Stewardship (CS) scheme.

Many tenant farmers agreed that this would be a better path to follow than creating a new scheme. Tenant farmers felt that they were comfortable and familiar with CS. By building on CS Defra could adhere to the phrase that the Agricultural Transition is about evolution and not revolution. This should remain a consideration for Defra.

However, if LNR is to be kept as a new scheme, the issues highlighted can be remedied painlessly through *improved communications around scheme details such as how SFI and LNR can be stacked on top of each other, how LNR relates to Local Nature Recovery Strategies, and adjusting the scheme name of LNR* respectively.

Transferability and self-assessment for scheme entry

The review proposes that the ELM schemes incorporate three conditions that should apply before a tenant is deemed able to enter an agreement longer than their tenancy. These are

1. where the action can be carried out by the tenant as checked through self-assessment of the tenancy agreement,
2. where there is evidence of one or more historic renewals or annual roll overs of the tenancy agreement,
3. no notice to quit has been served on the tenant.

The last two points are critical. As informed by the Country Land and Business Association (CLA), most tenancies roll over or renew and so the nominal length of the tenancy should not be a limiting factor so long as no notice to quit has been issued, but rather custom and practice. The recent CLA survey of their members indicates that the average agreement length of a single-term FBT is 8 years³³.

Where the three described conditions are met, the scheme agreement should be transferrable or assignable to an incoming tenant or the landlord and incoming tenant jointly to take on responsibility for delivering the scheme.

This will allow tenants to enter schemes and begin delivery where the tenancy length does not match the scheme length but where the action is compliant with the terms of the tenancy. It also recognises that first time tenancy agreements have some merit for being shorter in length as landlords may want to verify that a tenant is aligned to their estate vision.

This requires an assumption that the landlord would take on the residual liability of scheme delivery or pass it on to a subsequent tenant. Where the landlord has served a notice to quit and the tenant is already in the scheme, the landlord should take on the responsibility to deliver the remainder of the term of the scheme. Additionally, schemes should include a no-fault no-penalty exit clause for tenants. *In line with the recommendation on agreements being transferrable, where the landlord takes on the scheme agreement from the outgoing tenant, they should be allowed to receive the payment for up to one year with the requirement to comply with the terms before having to re-let the land or the payments stop.*

Delivery of the agreement for the subsequent tenant should form an addendum to their tenancy agreement so that the new tenant knows what they need to deliver, and it should be clear that they, as the active farmer, will receive the payments from that agreement.

Where a notice to quit has been served prior to entering the scheme, the tenant should not be able to enter the scheme as it is clear they will not have management control of the land for the duration of the agreement.

Land being lost from the sector

We heard significant concern and many cases about land being taken back in hand by landlords for the sole purpose of entering public, and some private, schemes and so claim

³³ This is down from a previous survey carried out by the CLA in 2015 which indicated that the average agreement length was 11 years.

payments. This undermines what the ATP and ELM schemes are seeking to achieve. Many options will need someone who knows the land well and can deliver and manage that land for environmental and food production purposes. Landlords will need land managers in some form to participate in and deliver successful scheme outcomes.

Whether driven by the uncertainty of future schemes or the speculation of greater income from private markets, actions to take land back in hand reduce the land in the let sector. This impacts the supply-demand dynamics of let land and affects the viability of tenanted businesses who lose this land.

Defra schemes can mitigate and disincentivise this aspect of landlord behaviour through their scheme eligibility criteria. We were encouraged to hear that The Woodland Trust and the woodland policy teams in Defra recognise this issue and have supported efforts to prevent landlords entering schemes for public money where they have terminated tenancies despite the tenant complying with all the terms of the tenancy.

The TWG's strong preference is that landlords and tenants collaboratively work together where needed within the ELM schemes. Defra should ensure scheme rules facilitate and promote such joint applications. In contrast *where Landlords have achieved possession by means other than natural causes, scheme rules should impose a quarantine period with former rented land not being eligible for entry into public agreements for a minimum of 12 months.*

New environmental land management schemes should look at how this quarantine period, or something similar, can be integrated into the scheme eligibility to stop landlords taking land back in hand outside of natural causes, and to collaborate with their tenants to enter schemes. This could be verified through scheme applications asking applicants to declare that the land they are entering into government schemes has not been unreasonably resumed from a tenant in the past 12 months and that the tenant has not objected. A barrier to this is that Defra does not hold or require data on whether a scheme applicant is a tenant or landlord. The chapter on Embedding the Tenanted Sector in Defra addresses this point.

The use of a quarantine period acts to give pause in the process of a landlord applying to a scheme and will encourage them to consider if the scheme could be better entered in collaboration with the tenant. The role of the natural causes recognises situations where land naturally comes back in hand to the landlord such as the end or surrender of a tenancy, a tenant in breach of their agreement, or the death of a tenant. Landlords should not be constrained on entering schemes where land has come back in hand for these, and similar, reasons.

If evidence exists that the previous tenant unreasonably resisted entry to schemes after discussion with the landlord or a third party, then the quarantine should be nullified with the landlord permitted entry.

There is a risk that by implementing this quarantine period, landlords will incorporate the quarantine period into their planning and take schemes back in hand now to be in control and in a more secure tenure position for when the schemes are fully rolled out in 2024.

There is also a risk that cursory conversations will be held and seen as sufficient evidence. To prevent this, there needs to be clear definitions around what is counted as sufficient evidence of unreasonable refusal.

Tenant consent

Quote:

“They [landlords] should show how their tenants will benefit from the project, and ensure that tenant farmers are able to play a role in and benefit from these future policies.”

Defra Secretary of State, Farmers Weekly, 5th August 2022

Where a landlord applies to enter a scheme or an option on land that is occupied by a tenant or where there is a proposed change in land use on tenanted land, the eligibility criteria and the application must require demonstration of how the landlord is working in partnership with the tenant and that the landlord has secured consent from tenants whose interests in the holdings are impacted by the agreement. This could be because land is being taken out of the tenancy, or that the landlord wants to use part of the land for a different purpose.

To ensure that the tenant does not have an ability to wield their consent as leverage over the landlord ***the tenant cannot unreasonably refuse consent. Acceptable reasons for withholding consent would need to be developed*** such as uncompensated business impact or a “significance test”, where the land being entered into the option would negatively impact on the tenants’ interests in the rented holding. Recent guidance from TRIG provides a starting point for this³⁴. The level of impact would need to be defined and validated with appropriate evidence to support. Landlords could decide to compensate the tenant as part of this agreement which could contribute to any test of what is deemed “unreasonable refusal”. The common law ‘covenant of quiet enjoyment’ should be a factor in determining if the tenant is withholding consent unreasonably.

This recommendation aims to balance the existing situation where landlords need to provide, and not unreasonably withhold, consent for actions AHA tenants may want to undertake.

There is a risk that landlords withhold investment or other support to the tenant in return for consent. There is also a risk that landlords take land back in hand from tenants and claim it is owner-occupied before entering the scheme. These risks are mitigated by other recommendations in this review.

Schemes need to be explicit about the level of management control required at the option level

Written evidence highlighted the possibility that landlords will take land back to access longer-term land-use change components of schemes.

Schemes such as LNR contain options for land managers to select. Policy teams must be explicit about what levels of management control are needed for each option broken down into the expected amount of time to deliver the desired benefit and the associated level of land use change.

This will allow tenants and landlords to be clear about their ability to take on any options and self-assess their ability to enter and deliver on agreements.

This also recognises the principle that tenants have management control and the covenant of quiet enjoyment of the land, but landlords have a long-term interest in the land as their asset. Each party needs to be clear about which options are available to them within revised scheme eligibility rules that incorporate earlier recommendations.

³⁴ TRIG Code of Good Practice, published by RICS, 22 July 2021

One written submission highlighted that some management prescriptions in the schemes may constitute a breach of existing terms of a tenancy and result in a claim for dilapidations at the end of the tenancy.³⁵ Schemes need to be cognisant of these risks to tenant farmers and make it clear on the application that this is a risk to consider.

It was felt by some stakeholders that landlords are unlikely to accept long term conservation covenants or liabilities on their land as they are seen as “*too restrictive and could have a significant impact on land values*”.

We also heard from a majority of stakeholders and respondents that schemes with long term commitments mean that tenants cannot go into them.

Quote:

‘Our neighbours have been farming the land for 28 years latterly under an FBT which ends next March. He has had his rent increased by over 40% which has pushed him out. The landlord wants the land back for environmental schemes.’

Communication with tenant farmer

Information provision in Local Nature Recovery

LNR must be specific about which options are annual, can be carried out in the short term (less than 5 years) and are not classed as permanent land use change. For example, is the option asking for a change in land cover, change in agriculture type, non-permanent land use change, or permanent land use change.

This will provide clarity for where the landlord has a reversionary interest and therefore may need to give consent versus other levels of change that do not need landlord consent as they are reversible and within the remit of what a tenant can do within their agreement.

LNR Structure of “Create” Options

Some of the longer term and more ambitious options supported by schemes will be beyond the ability of tenants to access. Stakeholders and roundtables have pointed out that shorter agreements that automatically roll over would be more supportive of tenant access. ***In LNR, “create” options for permanent land use change should be structured as a short up-front create agreement followed by maintenance agreements that are either annually renewing unless otherwise instructed or long-term with no-penalty exit clauses.*** This should be made clear on the application and could allow for the landlord to take on the create agreement that involves permanent land use change and the tenant to take on the maintenance payment.

By indicating which LNR options can deliver environmental benefit in a shorter timeframe and by allowing them to roll on with automatic renewal or roll from creation into maintenance, they become open to tenant farmers to enter within their FBT agreements and for minimal administrative burden.

For example, a wetland can be created within 1-2 years and then the maintenance and improvement of that is a set of annual actions. There is a need to ensure that the feature remains in place for several years to develop, mature, and provide value for money. Therefore, the scheme needs to be designed to incentivise that. Furthermore, having maintenance options as a separate agreement allows tenants who already manage their land well to access support to continue doing so. If existing good practice is not rewarded

³⁵ Written evidence from RICS

the risk is that land managers degrade land to then enter schemes and access payments for creation of something that was already in place.

The expectation of FBT renewals or the rolling over of annual agreements, as evidenced by the CLA, means that the risk of agreements being broken by the tenant farmer are low. This, combined with a no fault no penalty exit for tenants would remove several of the potential barriers for tenants entering LNR.

Break clauses in agreements with no penalty for no fault exit

Where a tenant has entered a scheme agreement under the assumption that they will retain occupation of the land they are farming either under an existing or subsequent tenancy and where that tenancy is ended due to no fault of the tenant such as notices to quit for development or end of tenancy agreements where a continuing agreement was expected, then no penalties should be levied against the agreement holder.

This would reduce the fear of penalties, support the uptake of scheme agreements that have a longer term than most tenancies, and introduce the flexibility that many tenants look for when entering such agreements.

We recognise that by having break clauses in agreements, Defra will need to balance the increase in uptake and the provision of flexibility with the risk of agreements not being followed through and the need to safeguard public payments for actions that may be reversed when the tenancy ends.

It is important here to remember that a change in the circumstances of the tenant farmer does not mean that their intent to deliver the agreement has changed.

Landscape Recovery Criterion

Given the large-scale changes that Landscape Recovery is looking to deliver and the important role that tenant farmers have in the rural economy and the community, the scheme should have an explicit criterion that looks to balance the social and environmental outcomes of the projects.

The risk is that landowners take land back from tenants to enter the scheme and collect payments while using a skeleton level of contracted employment to extensively manage the land with potentially large impacts on the rural economy and communities.

To safeguard against this *Landscape Recovery must have an explicit policy objective to deliver landscape scale change while minimising the risk that tenants are adversely affected. The presumption must be that land will not be allowed into Landscape Recovery if it has been previously tenanted in the last 12 months.*

This could take the form where applicants are required to provide a statement of community involvement. It could be a requirement for applicants to set out the current tenure of land and impacts for those with land occupation in the project area. It could also include a scoring benefit for projects that clearly demonstrate how they will work with and benefit tenant farmers through the project.

Where we want to get to

- Schemes with options that are simple and clear about accessibility for tenants
- Options that have been tested with tenant farmers to make sure they are compatible with constraints facing tenants and are tenant proof

- Scheme agreement lengths that are flexible in terms of tenant exit and changing the amount of land in the agreement
- Trust between Defra and tenants that the appropriate actions will be carried out by tenants to deliver the desired outcomes

Recommendations

- Recommendation 11.** *Defra should define food security as a public good alongside other environmental objectives such as clean air, clean water, lower carbon emissions, and improving biodiversity.*
- Recommendation 12.** *Defra must make sure that all Environmental Land Management schemes and Productivity schemes are accessible and open to tenant farmers.*
- Recommendation 13.** *Schemes and agreements need to be simple to understand, transferrable, and flexible.*
- Recommendation 14.** *As a basic scheme principle, tenants should not need landlord consent to enter tenanted land into schemes and landlords should not be allowed to enter tenanted land into schemes unilaterally.*

Where there is alignment between scheme length and the length and terms of the tenancy agreement, the tenant can unilaterally enter tenanted land into schemes without landlord consent.

Where schemes require actions to deliver outcomes that are longer than the tenancy agreement, tenants who have had more than one historic renewal or who are on a rolling annual tenancy, and self-assess that they will have sufficient management control to enter schemes should be able to unilaterally enter tenanted land into schemes.

Landlords can only enter tenanted land into scheme options that require permanent land use change jointly with the tenant and then only with consent of the tenant. The consent of the tenant should be entered into separately and subsequently to a signed tenancy agreement.

This must be met with adequate protections to stop land being taken back in hand and subsequently entered into schemes by landlords where tenants could have carried out the action unless the tenant has not objected.

Tenants with AHA agreements should be considered to have sufficient security of tenure and management control to enter multi-annual schemes.

- Recommendation 15.** *Tenant farmers who have multiple occupation agreements should be able to enter part of the farm business into ELM schemes*

- Recommendation 16.** *The schemes need flexibility to add or remove land so that tenants can carry out the right activity on the right parcels of land to deliver the desired outcome, flexible start dates to allow for tenancies with different start and end dates to enter agreements when it works for them, and flexibility to transition from existing and legacy scheme agreements into new schemes without penalty.*
- Recommendation 17.** *Improved communications around scheme details such as how SFI and LNR can be stacked on top of each other, how LNR relates to Local Nature Recovery Strategies, and adjusting the scheme name of LNR.*
- Recommendation 18.** *Where the three described conditions are met, the scheme agreement should be transferrable or assignable to an incoming tenant or the landlord and incoming tenant jointly to take on responsibility for delivering the scheme.*
- Recommendation 19.** *In line with the recommendation on agreements being transferrable, where the landlord takes on the scheme agreement from the outgoing tenant, they should be allowed to receive the payment for up to one year with the requirement to comply with the terms before having to re-let the land or the payments stop.*
- Recommendation 20.** *Where landlords have achieved possession by means other than natural causes, scheme rules should impose a quarantine period with former rented land not being eligible for entry into public agreements for a minimum of 12 months.*
- Recommendation 21.** *New environmental land management schemes should look at how this quarantine period, or something similar, can be integrated into the scheme eligibility to stop landlords taking land back in hand outside of natural causes, and to collaborate with their tenants to enter schemes.*
- Recommendation 22.** *Where a landlord applies to enter a scheme or an option on land that is occupied by a tenant or where there is a proposed change in land use on tenanted land, the eligibility criteria and the application must require demonstration of how the landlord is working in partnership with the tenant and that the landlord has secured consent from tenants whose interests in the holdings are impacted by the agreement. The tenant cannot unreasonably refuse consent. Acceptable reasons for withholding consent would need to be developed*

- Recommendation 23.** *LNR must be specific about which options are annual, can be carried out in the short term (less than 5 years) and are not classed as permanent land use change.*
- Recommendation 24.** *In LNR, “create” options for permanent land use change should be structured as a short up-front create agreement followed by maintenance agreements that are either annually renewing unless otherwise instructed or long-term with no-penalty exit clauses.*
- Recommendation 25.** *Where a tenant has entered a scheme agreement under the assumption that they will retain occupation of the land they are farming either under an existing or subsequent tenancy and where that tenancy is ended due to no fault of the tenant such as notices to quit for development or end of tenancy agreements where a continuing agreement was expected, then no penalties should be levied against the agreement holder.*
- Recommendation 26.** *Landscape Recovery must have an explicit policy objective to deliver landscape scale change while minimising the risk that tenants are adversely affected. The presumption must be that land will not be allowed into Landscape Recovery if it has been previously tenanted in the last 12 months.*

Schemes – Productivity and Investment

We believe

- Tenant farmers on short-term FBTs are unlikely to make long-term investments in their land or productivity due to low levels of collateral assets and short-term agreements
- Landlords and tenant farmers need to invest together in their land and buildings to meet the multiple challenges agriculture and horticulture face
- Productivity schemes must be designed to be open and accessible to tenant farmers

What we found and what should change

Tenant farmers with short-term agreements are seen by lenders to have low security of a future revenue stream to the point that we heard of national banks not lending to tenants. Equally, landowners are reluctant to invest in let farms where this represents a poor return on capital due to low rental returns. When taking a loan to invest in improving the land or in machinery, lenders need to know that the borrower either has a stable future revenue stream or collateral, in effect – land. Roundtable participants noted that without the protections of the AHA agreements, there would have been considerably less investment in tenant farms over the past decades.

Tenants' financial insecurity is further exacerbated when considering the planned reductions in BPS. When asked, 39% of tenants from the survey said they faced barriers accessing finance for upfront investments.

To ensure that the tenanted sector remains vibrant, ongoing investment is needed; not just into new equipment but into fixed assets that the tenant uses as a core part of the business.

Without further investment, stimulated by incentivising and opening up pathways for tenants and landowners to invest in let farms, many agricultural businesses and their assets will enter into a state of managed decline.

Incentivise investment in foundational on-farm assets

Foundational and regulatory infrastructure are core pillars of an agricultural business. Investment into this infrastructure does not often lead to direct value added for the farm business nor have a clear return on investment, however, should it fail it would undermine an entire business.

Tenants with short security and volatile cashflow dynamics struggle to secure finance and borrow from banks. Existing reliefs of 3% per year for buildings and structures are inadequate to incentivise the scale of investment needed in this infrastructure. Landlords are, understandably, also unwilling to invest in these assets due to the lower return they would see but they should be seen as critical to the resilience of the business.

The last period of significant government-led investment in the agricultural sector was in the 1970s and 1980s. Underinvestment since then has meant that many foundational assets are in a state of managed decline. These assets will fail slowly and then all at once.

Defra needs to examine ways to incentivise investment into renewing and upgrading foundational farm infrastructure.

The scale of the investments needed, the preference for government to reimburse expenses in arrears, and the tenant's inability to raise cash at scale, mean that ***Defra and HMT***

should create appropriate incentives throughout the agricultural transition period to bring tenanted holdings into an improved state.

This could take the form of capital allowances for landlords' and tenants' investments into the basic infrastructure on holdings and would need the appropriate due diligence by Defra and the Treasury department (HMT) to understand the wider implications of such an allowance.

Another way to achieve this would be for the government to provide grant payments direct to trusted contractors who carry out work on these assets. This would require an appropriate level of due diligence to minimise fraud risks and could potentially inflate costs. The first risk is within Defra's ability to manage. From Defra's own work it has been shown that providing equipment grants does not inflate retail costs by the same amount of the grant thereby partly mitigating the second risk.

Defra has already set a precedent in trusting farmers to select the investments that most suit their businesses through the Farming in Protected Landscapes fund (FiPL). It has also provided for local bodies to judge applications. This trust and use of local knowledge should be carried over to other schemes and balanced with an appropriate level of due diligence so that Defra can maintain commitments to minimise fraud and administrative costs.

Enabling joint applications for investment

Landlords have long term interests in the land and the assets within their estates. By the nature of temporary agreements, the tenant has a shorter-term interest in the land and assets for production, but both parties depend on them and benefit when they are in good health.

Defra has recognised the need for investment and has developed schemes that provide grant funding for productivity investments.

There is also a role for supply chain actors here to share risks and support investments through longer term supply contracts that provide income stability to tenant farmers.

Defra's productivity schemes have learnt from previous schemes by reducing their lower threshold of spending to £25k and providing a 50% match. However, what this really means for the tenant farmer, where access to capital can be more challenging, is that they must provide £50k upfront with £25k being reimbursed later. We know that tenant farmers work on a cashflow basis and have an extra outgoing of rent when compared to owner occupiers. This means that £50k of cash is a considerably large sum to find, especially for smaller businesses.

Furthermore, we have heard how the current productivity schemes are seen as restrictive where they only allow for new equipment to be purchased. Public funds would go further if they were also applicable to second-hand equipment. We understand that there may be safety concerns where second-hand equipment is bought, however there are appropriate ways to manage this concern through safety checks and certification as is done in the automotive and other sectors. **Defra should consider expanding the existing productivity schemes to encompass second-hand equipment.**

Difficulty for the tenant to secure capital combined with understandably hesitant landlords, leads to a stalemate.

This stalemate is not supportive of the productivity increases that Defra expects to see taking place on farms throughout the agricultural transition. Defra should be looking at ways to bring together the long-term interest and ownership of the landlord with the shorter-term

entrepreneurial mindset of the tenant. **Defra needs to allow joint applications to productivity schemes from both landlord and tenant for fixed equipment.** Without this investment, tenant farms will struggle to make the productivity investments that Defra expects them to as part of the agricultural transition and landlords will be faced with tenants unable to innovate and develop their farm business and pay rent.

County council estates with tenant farmers

Productivity schemes are currently not open to applications from county councils who have land assets with tenant farmers.

In some cases, there are investments that would benefit all tenant farmers on a public estate but no one single tenant farmer is able to provide the upfront cash to deliver the key asset. The tenant farmers may find it hard to coordinate and collaborate on an investment at scale.

All the tenants on a county council estate have one thing in common, the public landlord. Therefore, **it should be made possible for public landlords, such as county councils, to make an application for an investment jointly with their tenants.** The public landlord has the long-term security over the land, a balance sheet against which to make upfront investments, and are best placed to provide critical assets that benefit all tenants on an estate. This is even more important when public landlords, such as county councils, use their land for new entrants who are just starting out in their business and are even less financially secure.

Case Study: County Council Investment for Water Storage

One county council we spoke to at a roundtable in a water stressed region of England noted that they wanted to provide water storage infrastructure to support the productivity of all their tenants.

The individual tenants could not make joint applications and no individual tenant could provide, or be expected to provide, the capital upfront before being paid in arrears by the grant.

All tenants now have to forego the investment and suffer through a historic period of drought and heat in England with subsequent impacts on crops and soil health.

If schemes were open to joint applications with the landlord being the single entity for the purpose of the application and the tenants providing their written approval for the investment, this would go some way to unlocking the potential of the tenanted sector through improved shared infrastructure.

Roundtable discussion

Where we want to get to

- Government schemes for productivity that support investment with both tenant and landlord involved in a collaborative approach
- Infrastructure and productivity schemes that are open to tenants and include second hand or used machinery as long as it complies with usability criteria and is deemed safe
- Tenants able to improve productivity and farm infrastructure without requiring vast sums of upfront capital
- Landlords able and incentivised to invest in the capital infrastructure of let farms for the benefit of tenants

Recommendations

- Recommendation 27. Defra needs to examine ways to incentivise investment into renewing and upgrading foundational farm infrastructure. Defra and HMT should create appropriate incentives throughout the agricultural transition period to bring tenanted holdings into an improved state.*
- Recommendation 28. Defra needs to allow joint applications to productivity schemes from both landlord and tenant for fixed equipment.*
- Recommendation 29. It should be made possible for a public landlord, such as county councils, to make an application for an investment jointly with their tenants.*

Schemes – Tree Planting and Net-zero

We believe

- Landlords have a long-term interest in the health and changes in land use on their land including all forms of tree planting and management
- As a nation, we will struggle to meet tree planting targets or a net-zero ambition in agriculture without the tenanted sector being able to plant and manage trees
- Small scale tree planting and hedgerows that serve an on-farm purpose should be viewed as being within the remit of the tenant's actions
- Tree planting is not an end but a means to deliver multiple environmental outcomes such as carbon sequestration and increased biodiversity.

What we found and what needs to change

Case Study: Institutional landowner

At an event hosted by a land agent, an institutional landowner spoke about an agreement they had come to with a tenant farmer for woodland carbon.

The landlord would receive the upfront capital payment for planting trees in a woodland and the tenant would receive the annual maintenance payments for managing the woodland and keeping it in good health.

This balance of capital payments to the landlord and revenue or maintenance payments to the tenant recognises the interests of both parties in the agreement and rewards them fairly for their efforts.

Tenant farmers face challenges engaging in tree planting schemes due to the legal framework under which tenancy agreements operate. Commonly, tree planting is excluded from tenancy agreements with many including 'blanket clauses' that prohibit tree planting as land use would no longer be classified as agricultural. Moreover, the long-term commitment of tree planting is an example of an activity that is likely to be incompatible with short term FBTs³⁶. Any trees that do exist, or are planted, are usually reserved to the landlord given the long-term impact that woodland has on land values.³⁷ It has also been reported that new FBT agreements are increasingly containing clauses which reserve carbon (and biodiversity) credits to the landlord.

This all acts to both discourage tenants from taking an active interest in tree planting on their holding and encourage landlords to take land back in hand for tree planting.

Our survey supported the idea that many tenants do not see any benefit from planting trees. When asked about barriers to planting trees on their rented land, 53% of respondents selected that it was "Not in my interest to plant trees as a tenant – there is no benefit to me". Respondents also raised issues of tenancy clauses prohibiting tree planting and taking land out of production as barriers to tree planting.

³⁶ CAAV (2020) Introduction to the CAAV Agricultural Land Occupation Surveys 2020

³⁷ Written evidence from Woodland Trust

An analysis of Woodland Trust grant schemes indicates that very few tenants apply. Only 5% of the 240,000 trees planted through one scheme have been delivered on solely tenanted farms indicating that tenancy is a barrier to access.³⁸

The country needs trees to be planted but if tenants remain unable to plant trees or be involved in the establishment and management of them, the concern is that a large proportion of land in England will not be used to meet government targets.

The Tenancy Reform Industry Group (TRIG) is working with Defra to develop guidance for how tenants can enter tree planting and woodland schemes such as the England Woodland Creation Offer (EWCO).

To ensure flexibility, accessibility, and simplicity for tree planting schemes, **Defra should bring together all schemes that support tree and woodland planting into a central location under one government body with one application portal.** This would remove the complexity of navigating different schemes offering different funds for different parts of tree planting projects. We would suggest that TRIG be asked to look at how this can be implemented.

Defining specific tree planting that is available to tenants

Woodland is currently defined as areas where the planting is more than 0.5Ha with a minimum width of 20m and where that planting has “a canopy cover of at least 20% or having the potential to achieve this, including integral open space, and including felled areas that are awaiting restocking.”³⁹ Below these thresholds, the planting would be classed as trees outside of woodlands. Using this definition **scheme options must be designed and framed to support tree planting options as ancillary to agriculture.**

This would allow tenant farmers to contribute to national and local tree planting targets while remaining within the definition of agriculture and therefore not reducing the landlords’ inheritance tax reliefs.

Woodland options in Defra schemes need to be framed in a way that allows tenants to plant small numbers of trees or shrubs on areas of land less than 0.5Ha (for example hedges, verges, for screening and shelter belts). The schemes should clearly frame the option so that it does not cross the thresholds into ‘non-agricultural’ land use and is therefore ancillary to agriculture. This would bring tree planting within the tenants’ rights and within the legal definition of agriculture.

As the legislations stands, the definition of agriculture allows for tree planting if its “use is ancillary to the farming of land for other agricultural purposes”. It is worth noting that the tax definition is different to the forestry definition above. However, Section 31 of the 1986 Agricultural Holdings Act gives the landlord the right to serve a notice to quit on the tenant for “the planting of trees” with no definitions or limitations. This misalignment needs to be addressed if we are to open tree planting to tenants; the section on legislation covers this recommendation.

This becomes even more important as we see the proliferation of supply chains wanting to move towards a net-zero and nature positive status through obligations in producer contracts. Without the ability to plant trees tenants would potentially need landlord consent to sign up to a contract to sell their produce.

³⁸ Written evidence from Woodland Trust

³⁹ <https://www.forestresearch.gov.uk/tools-and-resources/statistics/forestry-statistics/forestry-statistics-2018/glossary/>

The above recommendations would allow tenants to plant trees for purposes such as shade, shelter belts, and around slurry pits that help with farm productivity⁴⁰. Looking to the future of low carbon supply chains, it also provides tenants with an ability to meet purchaser requirements.

We recognise the risk that landlords may not want trees dotted around their landscape however, it is also likely that the tenant would not want sporadic trees that interfere with farming operations. We would therefore expect tenants not to abuse this allowance.

We also see this recommendation as something that could lead to a more collaborative discussion between the landlord and tenant.

Care needs to be taken to understand the legal implications and limitations of any government scheme framing an action as ancillary when it applies to a contractual tenancy agreement. We recognise that just because government defines something as ancillary does not override any contractual agreement that reserves trees to the landlord. By framing scheme options in this way, the government is acknowledging that a level of tree planting is within the remit of tenants.

Preventing woodland being placed on good agricultural land

The EWCO planting grant does not prevent woodland from being planted on good agricultural land. The argument for this relies on the economics of planting woodland for timber and carbon being worth less than having the land in agricultural production.

However, as climate change impacts on agricultural yield, inputs costs stay high, and the value of carbon increases, this economic rationale could change and could lead to productive agricultural land being planted for trees.

This directly impacts tenants as they are unable to plant trees and so could lead to agricultural land being taken back from tenants at scale to plant trees.

To mitigate this risk, *the EWCO grants should have a screening criterion that prevents high grade agricultural land receiving planting grants.*

As the government provides grants for planting trees and the carbon markets become more developed, there is a risk that large businesses with minimal interest in the social fabric of rural communities buy large swathes of land to plant trees, claim government payments, offset their emissions, and trade carbon for profit. *Government schemes such as EWCO, natural capital markets, and the forthcoming land use framework need to consider how they work together to mitigate this risk, provide adequate protection to tenants who could manage woodland, and prevent woodland from being placed on good agricultural land for the long term to offset annual emissions from large companies.*

To counteract the incentive for landlords to take land out of a tenancy to plant trees, *Defra should consider ways to prevent landlords entering schemes for at least 12 months where they have resumed land from a tenant farmer for the purpose of tree planting.* This is similar to the recommendation made for the environmental land management schemes, but it is important that this is applied to woodland schemes as supported by the Woodland Trust in their submission.

This has the same risks, but also the same potential benefits of encouraging better collaboration and dialogue between the landlord and tenant.

⁴⁰ Supported by written evidence from the Woodland Trust

Landlords entering tenanted land into woodland schemes such as EWCO should be required to demonstrate tenant consent and how they are working with the tenant. A tenant should have the ability to not unreasonably refuse the landlord's entry to a woodland scheme on tenanted land in the same way that they should be able to do so for ELM schemes.

One scheme option that needs careful development is agroforestry. We recognise that agroforestry can deliver benefits to both landlords (enhanced soil health) and tenants (enhanced productivity). However, where agreements are long term, they may exclude tenants with short tenancy agreements. In this situation, landlords have an opportunity to encourage tenants to enhance existing wood assets such as hedgerows and shelter belts and to expand tree cover within silvoarable and silvopastoral systems across a holding without taking land out of food production. This can be done whilst delivering public benefits such as slowing water runoff within a catchment.⁴¹

To prevent landlords from taking back land to place it into woodland, Defra needs to consider solutions that incentivise landlords to add an addendum to existing agreements with their tenants but also to penalise those landlords that remove tenants for publicly funded woodland schemes. ***Defra should also class agroforestry planting as non-permanent land use change so that the tenant is not forced to seek landlord consent to begin practicing this new way of farming.***

There are already tax and commercial incentives for woodland planting and the EWCO scheme defrays much of the cost. ***Defra should examine how joint applications to woodland schemes can be used to incentivise landlords to discuss woodland planting with their tenants so that both can benefit from any agreement.***

Case Study: Agroforestry Agreement

The Woodland Trust gave an example of a County Council who supported a tenant to develop an agroforestry scheme on their farm by agreeing to extend the FBT across the whole farm.

The scheme has been successful and led to the Council engaging the Woodland Trust to deliver wider woodland creation work in Norfolk including on several tenanted farms.

Other ideas being discussed to further incentivise tenant uptake are a reduction in rent for the planted ground and a change in agreement so there is no additional charge on land use change at the end of the term.

Woodland Trust

Where we want to get to

- Both tenants and landlords understand where they can, and cannot plant trees without the consent of the other party, for mutual benefit
- A single body in Defra that is responsible for setting the rules and providing the grants for tree planting and woodland

⁴¹ Written evidence from Woodland Trust

Recommendations

- Recommendation 30. Defra should bring together all schemes that support tree and woodland planting into a central location under one government body with one application portal.*
- Recommendation 31. Scheme options must be designed and framed to support tree planting options as ancillary to agriculture.*
- Recommendation 32. Woodland options in Defra schemes need to be framed in a way that allows tenants to plant small numbers of trees or shrubs on areas of land less than 0.5Ha (for example hedges, verges, for screening and shelter belts).*
- Recommendation 33. The EWCO grants should have a screening criterion that prevents high grade agricultural land receiving planting grants.*
- Recommendation 34. Government schemes such as EWCO, natural capital markets, and the forthcoming land use framework need to consider how they work together to mitigate this risk, provide adequate protection to tenants who could manage woodland, and prevent woodland from being placed on good agricultural land for the long term to offset annual emissions from large companies.*
- Recommendation 35. Defra should consider ways to prevent landlords entering schemes where they have resumed land from a tenant farmer for the purpose of tree planting.*
- Recommendation 36. Landlords entering tenanted land into woodland schemes such as EWCO should be required to demonstrate tenant consent and how they are working with the tenant. A tenant should have the ability to not unreasonably refuse the landlord's entry to a woodland scheme on tenanted land in the same way that they should be able to do so for ELM schemes.*
- Recommendation 37. Defra should also class agroforestry planting as non-permanent land use change so that the tenant is not forced to seek landlord consent to begin practicing this new way of farming.*
- Recommendation 38. Defra should examine how joint applications to woodland schemes can be used to incentivise landlords to discuss woodland planting with their tenants so that both can benefit from any agreement.*

New Entrants

We believe

- New entrants often bring new ideas, new energy, new ways of doing things, and an adaptability that is needed in the farming and land management sector.
- Access to tenancies is vital for new entrants, especially those with no background or experience in farming, to start land-based businesses, but new entrants struggle to meet the upfront business start-up costs and high rents to compete in the land market.
- Supporting new entrants relies on four pillars of advice, experience, access to finance, and access to land.
- There are three broad categories of new entrants to agriculture that require different levels of support across the four pillars.
- The industry itself has a large role to play in making space for and supporting new entrants and progression opportunities from starter farms to full time tenancies.

What we found and what should change

A recent government blog⁴² highlighted the key issues facing new entrants such as

- The long-term nature of building a land-based business
- The lack of available council farms
- The inability to take on loans due to no track record, no security, and no land/assets
- Variability in support
- Being seen as a risk to landlords and therefore not able to progress/grow their farm

These are the same issues that the TWG has heard about through written submissions and roundtables. We also heard that for most individuals from outside the sector wanting to start a farming business, agricultural tenancies are one of the very few viable routes for them.⁴³

Whilst we are aware that other routes into the agricultural sector do exist, such as share farming, contracting, or joint ventures, the remit of this review is to examine the tenanted sector and specifically for this section, new entrants to tenancies.

While the blog showed that Defra recognises the issues facing the sector, the current Defra plans do not go far enough to address them. Furthermore, there is no clear Defra policy or vision for what it wants the new entrant sector to look like or the desired impact of its New Entrant scheme over the coming years.

Without a clear policy on why Defra wants to support or interact with New Entrants and what success would look like, appropriate schemes will remain difficult to develop. **Defra needs to develop a comprehensive and long-term new entrant policy that has clarity of vision with success criteria.**

The level of support that a new entrant would need in each of these areas depends on how we classify them. There are at least three categories of new entrants that we have defined in in Figure 2.

⁴² "A fresh start for New Entrants", June 2022, [A fresh start for new entrants - Future Farming \(blog.gov.uk\)](https://www.blog.gov.uk/2022/06/01/a-fresh-start-for-new-entrants/)

⁴³ Written evidence from TFA



Figure 2 The three types of new entrant to the agricultural tenanted sector

Defra New Entrant policy

In the set of early recommendations to Defra from the Tenancy Working Group, the New Entrants policy team was asked to respond to the recommendations of the Fursdon Report. The report made recommendations but only a few of them were implemented and some remain outstanding. It is hoped that a number of positive steps will be undertaken by The Institute for Agriculture and Horticulture (TIAH) which may have a role educating and informing new entrants and providing support for tenants generally. It was recommended that the team once again review the Fursdon Report and publicise this more as part of their ongoing work.

The New Entrants scheme focuses on “incubators” to be delivered by private organisations that *“will provide tactical support to young businesses through the early stages of development...to further develop a business idea and foster innovation and growth”*. It is unfortunate that the New Entrant scheme only addresses the advice pillar.

One of the roundtable participants put it succinctly when they said that the current plan will *“lead to upskilled people being disappointed – it is a lack of opportunity that is an issue”*.

Other nations recognised the needs of young farmers and have taken more concrete action to support them. Ireland provided an uplift in the grant aid for new and young entrants to 60% instead of the standard 40%. In 2014, Scotland awarded over £2m for two years of funding for business support. Under EU rules, national authorities had to set aside 2% of their total allocation for income support to Young Farmer Payments.

County Council farms

CPRE, The Countryside Charity, reported in 2019 that the acreage of County Farms across England has plummeted from 426,695 acres in 1977 to just 208,000 acres in 2018. From 2010 to 2018 the amount has declined by over 15,000 acres (7%)⁴⁴.

The largest sales between 2010 and 2018 were in

- Herefordshire	4,177 acres sold	(89% decline)
- Somerset	2,897 acres sold	(46% decline)
- North Yorkshire	1,312 acres sold	(26% decline)
- Cheshire West & Chester	1,228 acres sold	(30% decline)

⁴⁴ CPRE, Reviving County farms, December 2019

County council farms, where they still exist, provide a low-risk, low-cost entry pathway for young farmers or new entrants who do not necessarily have the capital to begin their farming career. It is also clear that Defra recognises the value of county farms to new entrants and progressive tenants as well as the ability of those farms to deliver wider public benefits⁴⁵.

In 2020, according to the Central Association of Agricultural Valuers (CAAV) Agricultural Land Occupation Survey, around 60% of all fully equipped holdings, that tend to have longer length FBTs, were on county council land.⁴⁶

Unfortunately, as council budgets became stretched and councils have started to make net-zero carbon commitments, the objectives for retaining land have changed. Councils are seeing land assets as something that can be sold for short-term income or used to meet their own climate commitments. What this means is that the council land bank, and therefore the land available to new entrants, has shrunk significantly. Many rural councils no longer have starter farms.

The government must do more to support County Councils to maintain their land assets for new entrants and the long-term security of the tenanted sector.

One aspect that came out of the roundtables was that the industry itself has a role to play here. New entrants can struggle to pay a similar level of rent as an established farmer, nor can they spread the risks across other holdings. Therefore, they struggle to compete on rent when applying for farms. Some roundtable participants who were existing tenant farmers, admitted to bidding on new county council land when it came up which, in effect, prevented a new entrant from starting a new rural business. The passion of new entrants is not enough to get in the door.

Farming is a unique business, not only in its role in producing food, fibre, and fuel, but also in how resource intensive it is to start a new rural agricultural business. County council land assets have been, and deserve to be, retained as strategically important for the agricultural sector as a key resource for maintaining a pipeline of new entrants to the sector.

To ensure that these strategic assets do not continue to be sold off, the government has a role to play supporting councils to not sell their land to fill budget gaps nor take on farmers who pay the highest rent, as this will often be more established farmers than new entrants.

Councils need to be supported to integrate net zero and biodiversity targets into their land use plans and work with tenants to deliver on environmental targets and aims to level up the rural economy. Councils should also be supported to access relevant expertise and make investments in council farm infrastructure.

From a purely economic standpoint, this may look like a sub-optimal return from an asset however, when including the value to the future of the farming sector, the increase in rural opportunities and green jobs, and the potential impact on the rural economy, the return on these assets is in their long-term value to our nation's food and environmental security.

Progression and the role of private landlords

Starter farms are one aspect of the career progression. However, if farmers start and remain on county council land for their entire career, land will continue to be locked away from new entrants.

⁴⁵ Seventieth Annual Report to Parliament on Local Authority Smallholdings in England, February 2021

⁴⁶ 2020 CAAV Survey

To mitigate this, the sector needs to consider how it can deliver progression pathways for successful new entrants to take farmers out of county farms and into the private rented sector. Effectively this takes 'next generation' or 'first generation' farmers towards the 'highly experienced' new entrant category. These progression farms should be supported by private, charitable, and institutional landowners and could be supported by public incentives.

The county farm acts to de-risk the new entrant by allowing them to build up experience and prove their ability to farm successfully. A private, charitable, or institutional estate should then have the confidence in the new entrant to offer a portion of their estate to these developing or aspirational farmers who want to grow their businesses.

We have heard evidence of first-time tenants being offered new FBT's with clauses that engage them as land managers on a self-employed rate with all the risk and little opportunity to expand. This type of agreement starts to turn tenant farming into something that resembles a gig economy. While this may suit some, given the long-term nature of farming, it is unlikely to be suitable for tenants and the tenanted sector in the long-term.

Defra should consider ways in which it can best use public funds to incentivise and support private and institutional landlords to play their part in safeguarding the future of the tenanted sector and progression of new entrants.

A specific "Help to Farm" fund to support access to capital for new entrants

The pillars of advice and experience can be accessed through the proposed incubators as well as on farm experience with families, entry jobs, or contracting.

Land can be accessed through contract farming or mobile grazing flocks/herds or entry farms where they exist. County council farms also play a key role here as can private estates.

Access to finance is, however, almost inaccessible without assets or proven future revenue. We have spoken to retail banks who expressed their hesitation to lend to new entrants for the same reason that new entrants often have shorter FBTs, and landlords hesitate to take them on. They are seen as high risk with high start-up costs and low collateral. The Food, Farming and Countryside Commission (FFCC) are looking at making loans available for those wanting to develop agroecological or regenerative farming businesses which will couple a loan with some training and support.

The government provides low cost, underwritten loans to students at university and early-stage businesses, it also helps first time buyers to get on the property ladder using similar loan mechanisms with certain conditions. ***The loan facility should be replicated for new entrant farmers and could come with conditions such as the tenant has to remain on the farm that the loan is being used on for at least 8 years and must have a business plan. It could also be tied to the incubators to increase uptake of this initiative.***

Access to experience

Two of the pillars are access to land and experience. First generation new entrants can have little or no experience in agriculture and therefore even less of a chance to enter the sector.

Older farmers in the sector are well placed to play a key role in passing on their knowledge and experience to these first-generation new entrants. ***Defra should look at incentives for how they can ensure that retiring farm businesses are accessible to new entrants.***

By incentivising older tenant farmers to take on a new entrant farmer, with some skills, the sector can open up opportunities to a wide range of new entrants not just those with an agricultural background. The government has an apprenticeship levy that is used to support businesses who take on apprentices. This could be a similar scheme given that it is in the interest of the whole industry to have new farmers coming through.

One example of this could be where a retiring farmer is winding down their career, the younger farmer can increase their range of operations on the farm eventually working their way up to buying out the existing farmer year by year and negotiate with the landlord based on an existing relationship. This could also be a route for owner-occupiers to bring land into the let sector as well as bring new entrants into the sector.

For landlords who support this, they would hold minimal levels of risk while getting to test a new tenant. Where this arrangement takes place, the retiring tenant would need to be granted security of tenure to the end of their career and the new tenant assured a medium term (8-year) FBT when they take over to have security for business planning.

The issue of this arrangement working with existing FBT tenancies was highlighted by roundtables where tenants noted that they may want “*to take on a new entrant and be a mentor but with FBT renewal coming up they wouldn’t do something risky*”. **Defra needs to consider how it can best de-risk arrangements where an existing tenant takes on a new entrant to ensure new entrants can access the experience needed to create new agricultural tenanted businesses.** The government should examine incentives to both the landlord and to the existing tenant farmer, for example through wage support for the apprentice.

New Entrant \ Needs	First Generation	Next Generation	Highly Experienced
Experience	High Need	Mid-Need	Low Need
Advice	High Need	Mid-Need	Low Need
Finance	High Need	High Need	Mid-Need
Land	High Need	High Need	High Need

Key: High Need Mid-Need Low Need

Figure 3 Summary of the needs of different types of new entrants across the different pillars of support

New Entrants on AHA Land

Quote:

“Farming has changed so significantly recently there are many tenanted farms that find themselves in similar circumstances where the [child] son wants to follow [parent] father but until retirement/death have little chance of being able to fulfil the requirements for succession...many good willing capable young farmers may be lost to the industry if some changes are not made to the requirements for succession”

E-mail from tenant farmer in Yorkshire

Currently, one of the requirements to be an AHA tenancy successor is that the “principal source of livelihood” must come from the farm for 5 out of the past 7 years. In the face of reducing BPS, and to some extent before that, farmers have been encouraged by government policy to diversify into off-farm income to support the farming business. This can involve the successor having to work for free on the farm where it struggles to support two full time employees. What this adds up to is a difficulty to meet the livelihood test for succession.

Where no eligible successor is present, there are no provisions to pass the agreement to a third party. This was considered as part of the 2019 tenancy reform consultation but, in the end, Defra decided not to introduce new legislative provisions into the Agriculture Act 2020.

In these cases, tenants can find themselves ‘stuck’ on a holding, particularly where the farmhouse is their home, they have limited financial resources to retire, and cannot afford to move elsewhere. It is estimated that this currently affects between 1,000 and 1,700 older tenants with no successor⁴⁷.

To help this situation, *Defra should look at legislative options to ensure that where there is no next of kin even by the newer expanded definition, and the AHA has one or more generation of succession left, the outgoing tenant should be able to nominate a new entrant farmer to be in receipt of a long term FBT with some of the AHA protections subject to the landlord’s approval and being able to buy out the life interest of the retiring tenant.*

This recognises that the landlord may want to take the land back, but where they do not, they may not want it to be given away for another generation. The FBT on offer to the new tenant should be at least 8 years with a minimum set of protections carried over from the AHA. Any agreement should be agreed with the landlord who has a chance to buy the AHA tenant out of their agreement before this happens.

Recognising issues of tenants getting stuck on their holding, Defra launched the Lump Sum Exit Scheme (LSES), which pays an amount equivalent to the tenant’s remaining BPS payment with a £100,000 ceiling. However, we have heard from numerous tenants that the taxable amount on offer is not attractive to encourage a tenant to exit farming. This is especially the case where the tenant can stay on the holding, continue farming, and claim the same annual payments for the coming years.

We heard from roundtables that if some tenant farmers left the industry, they would struggle to buy a home in a nearby village or town for their retirement, even with the LSES. In some of these cases, we have heard fantastic examples of landlords doing what they can to support their tenants by buying out their interest in the tenancy or providing alternative affordable retirement housing after the tenant has taken the LSES. However, not all landlords have the means or motivation to do this.

Where there was no successor, around 68% (12,376⁴⁸) of AHA tenancies were re-let as FBTs⁴⁹. While this is encouraging to see over two thirds of tenancies remaining tenanted, it is worrying to see that one-third of tenancies were ended. This has impacts on the demand-supply dynamics of land and rent prices, and the ability for next generation and highly experienced new entrants to gain a foothold.

Where we want to get to

- A clear public policy on new entrants to the agricultural sector.
- Retirement from active farming and agricultural business management is normalised.
- A geographically diverse collection of county council starter farms accessible to new tenant farmers with connections to progression farms in the private let sector

⁴⁷ Defra (2019) Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England

⁴⁸ Extrapolated from the data contained in Defra (2019) Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England

⁴⁹ CAAV (2020) Introduction to the CAAV Agricultural Land Occupation Surveys 2020

- Holistic government support covering advice, finance, experience, and access to land exists to provide opportunities for both new and progressing tenant farmers.
- Landlords supported to provide business progression opportunities for new entrants.

Recommendations

- Recommendation 39.** *Defra needs to develop a comprehensive and long-term new entrant policy that has clarity of vision with success criteria.*
- Recommendation 40.** *The government must do more to support County Councils to maintain their land assets for new entrants and the long-term security of the tenanted sector.*
- Recommendation 41.** *Defra should consider ways in which it can best use public funds to incentivise and support private and institutional landlords to play their part in safeguarding the future of the tenanted sector and progression of new entrants.*
- Recommendation 42.** *The loan facility should be replicated for new entrant farmers and could come with conditions such as the tenant has to remain on the farm that the loan is being used on for at least 8 years and must have a business plan. It could also be tied to the incubators to increase uptake of this initiative.*
- Recommendation 43.** *Defra should look at incentives for how they can ensure that retiring farm businesses are accessible to new entrants.*
- Recommendation 44.** *Defra needs to consider how it can best de-risk arrangements where an existing tenant takes on a new entrant to ensure new entrants can access the experience needed to create new agricultural tenanted businesses.*
- Recommendation 45.** *Defra should look at legislative options to ensure that where there is no next of kin even by the newer expanded definition, and the AHA has one or more generation of succession left, the outgoing tenant should be able to nominate a new entrant farmer to be in receipt of a long term FBT with some of the AHA protections subject to the landlord's approval and being able to buy out the life interest of the retiring tenant.*

Private Markets and Natural Capital

We believe

- Private markets for environmental outcomes will be part of the future farm revenue and cashflow. Income from these markets may compete with agricultural rent in the future.
- Agricultural tenancy legislation was largely written before the term ecosystem service markets was developed.
- These markets are currently characterised by uncertainty and lack of clarity. Specifically on issues such as what to measure, who owns natural capital, how payments should be structured to reward both the landlord and tenant, and what the role of government is.
- Land use change is a secure way to deliver environmental outcomes if it is managed appropriately.
- Landowners will look to their land to deliver environmental targets such as net-zero.
- New investors are being attracted to landownership for potential offsetting and environmental impact and should be incentivised to adopt tenanted models.

What we found and what needs to change

Quote:

“If the value of natural capital outcomes increases, and tenants are not able to take part in the market, landowners may choose to stop renting their land for agriculture and instead cash in on natural capital”

Roundtable participant

The state of private markets for ecosystem services, such as carbon sequestration, are uncertain. The government has made it clear through multiple publications that it wants to see these markets scale up and for them to be a core part of rural and land-based businesses in the future, but it has not provided any clarity on how it intends to do that and what role it will play in the development of these markets.

The 2021 Spending Review set ambitious targets for government to deliver at least £500m per year by 2027 and more than £1bn per year by 2030 of private investment into nature recovery. The government and specifically Defra will be central to the development of these markets and directing investment.

From our survey, 80% of tenants had at least some awareness about private environmental markets. However, when asked if they would enter a contract with the private sector, the most common answer was ‘Unsure’. When asked about the factors preventing them from entering private schemes, more than 40% of respondents selected the following three reasons, 1) need for advice, 2) need for landlord consent, and 3) uncertainty of new markets. This supports findings from roundtables that whilst the awareness of markets is high, the confidence in them and how they work for tenants is low.

Tenancy agreements pose significant challenges to tenants who want to engage with preserving or restoring natural capital. As discussed in earlier chapters, most tenancy agreements restrict the use of a holding to agricultural purposes which means that natural capital improvement can only be achieved within an agricultural context such as through increasing soil carbon content.

Creating habitats for biodiversity may be made difficult by the interpretation of the Rules of Good Husbandry⁵⁰. For example, some consider that this requires permanent pasture to be mown or grazed and hedgerows to be maintained. If taken literally, tenant farmers are likely to be prevented from more ambitious natural capital schemes and limited to improvements that can be carried out alongside agricultural activity rather than those that can be delivered through land use change.⁵¹

Agreements for these private schemes may require the farmer to commit to a land use practice for a minimum period of time, such as 5, 10 or even 30 years. Tenants with short-term tenures will not be able to sign-up to these agreements unless they do so in collaboration with their landlord.

The review is aware of several ongoing workstreams in Defra to develop policy on private environmental markets, however the private market is moving quickly, and farmers are looking to the government for guidance.

That void is being filled by a proliferation of companies using different methods to measure and verify outcomes, different payment rates, different payment structures, different rules, and different tools. Many in the sector are now referring to this as “the wild west” given the lack of coherence. The risk is that farmers enter private schemes or agreements to sell environmental outcomes now that restrict their ability to act in the future.

There is some merit to taking a broad and varied market-led approach to market development. Letting competition whittle down the players through a last person standing approach allows the market and government to understand what works and what the preferred set up is. However, this approach comes with risks to the tenant farmers, especially when dealing with offsetting environmental harms on a finite land bank over the long term.

These risks and the correlating hesitation from both landlords and tenants have been articulated in both roundtables and written submissions. **Government needs to outline, at the very least, what it sees as its role, a roadmap, and broad principles or guidelines for the development of private ecosystem markets alongside basic expectations for demand and supply side actors to adhere to.** These guidelines, be they market codes or other principles, they need to be developed and published at pace if we are to achieve the desired growth in this area. Within those constraints and guidelines, the private market can then have the freedom to operate with the government iteratively tightening the constraints through a range of incentives and regulation until a functioning market is achieved.

Measurement, Valuation, and Improvements

At local, national, and international levels we are seeing agriculture, energy, development, biodiversity, and combatting climate change looking to land for solutions. The system governing land use in England has not kept up with this.

Take for example the definition of a tenant’s improvement. A holding with improved natural capital is of more value to the landlord’s land asset and can deliver greater amounts of ecosystem services as well as resilience from a climate and productivity perspective. A tenant can also, if the FBT is structured to allow it, benefit from improved land health.

Currently there is no framework to measure or value the health of the land nor value any improvements or degradations to it. Improvements in natural capital measures of a holding

⁵⁰ The Agriculture Act 1947 Part II s.11

⁵¹ Written evidence from The Green Alliance

are not deemed a compensatable improvement.⁵² This disincentivises a tenant who may otherwise maintain and improve natural capital during their tenancy. We have already discussed how short-term FBT agreements drive short-term extractive behaviour that degrades natural capital.

To bring the long-term interest in land health into shorter-term horizon of an agricultural business; for example, for those on a short-term FBT, we recommend that **Defra examine the various ways to enable tenants to be rewarded for their improvements to the natural capital on the holding.** In looking at this, it is important to consider how markets can reward tenants for maintenance actions or for government to support these actions where the private markets do not.

A critical change will be to expand the definition of a tenants' improvement to include an improvement in natural capital on a holding. To provide balance, any degradation in natural capital could be treated as a dilapidation which a landlord could seek payments for.

To enable this to happen, Defra needs to clarify what natural capital improvements mean for the tenant, how they should be measured, and how the tenant can realise financial opportunities from the environment they create on their holdings.⁵³ To prevent further proliferation of methods in the market it will also be important that **Defra lead on providing tenants and landlords with a consistent way to measure the environmental state of a holding as well as access to that data so that improvements or otherwise can be assessed.**⁵⁴ Defra has made good progress on this already with the Enabling a Natural Capital Approach (ENCA) and the Biodiversity Metric. These need to be brought together to provide a farm level measurement methodology and a consistent approach across the four home nations.

Case Study: Natural capital degradations as a dilapidation

One estate we spoke to is looking to class degradation of natural capital as a dilapidation. However, it has not yet figured out how to value the degradation of different natural capital.

When we spoke to them, they were not looking at the other side of this, namely incentivising and compensating improvements in natural capital by the tenant using the same valuation formula.

If degradations are being classed as dilapidations, then we must also see improvements as compensatable. Care is needed when looking at how changes to natural capital are measured and valued by the landlord and tenant, including fair and equitable incentives.

Discussion with an estate

Recognising the complexity of natural capital and the difficulties of measuring its improvement and decline, it is important that ways to value changes are developed and consistent for different natural capital components. For example, measuring biodiversity needs a different method to nutrient impact. It is also important to recognise natural fluctuations in natural capital that may be outside the control of the tenant and so a tolerance in improvements / degradations should be allowed without reward / penalty respectively.

The current valuation methods of land do not need to change for this but expanding them will enable tenants to be rewarded for making positive changes to natural capital and to encourage greater landlord/tenant collaboration about how conservation and sustainable farming are crops in themselves.

⁵² Written evidence from The Green Alliance

⁵³ Written evidence from National Trust

⁵⁴ Written evidence from Woodland Trust

Clarity on the roles, ownership, obligations, and benefits for tenants

Natural capital and ecosystem services address two parts of a farm holding. The natural capital is like the principal bank balance; it is the base suite of assets on a holding comprising, for example trees, soil, and water resources that both landlords and tenants can improve.

The ecosystem services are the tangible benefits that flow from the assets similar to interest payments on the principal in a bank account or dividends on a share. The greater the health of the underlying asset, the greater the flows. Flows can range from improved biodiversity, increased carbon sequestration, improved air quality, increased soil moisture holding capability, improved natural flood management and nutrient benefits, and others.

Where the private sector is interested in these flows, we are seeing a proliferation of third-party measurement and verification techniques, calculators, tools, and prices paid for the ecosystem services.

Due to the perceived value of natural capital markets, we are now seeing tenancy agreements with additional clauses that reserve the right to enter private schemes and the ownership of natural capital to the landlord. This bars the tenant farmer from entering and benefitting from private schemes. It also has the potential to create significant tension between landlord and tenant, especially when there are competing objectives in terms of what the tenant can deliver through farming and what the landlord wants from a private scheme. As demand for land increases driven partly by speculation on future payments for ecosystem service payments, for example from carbon sequestered and biodiversity, the ability for tenant farmers to provide competitive levels of rent diminishes.

In some cases, one-off biodiversity payments have been reported to be in the range of tens of thousands of pounds per hectare for a 30-year agreement. This presents several issues for tenants. In addition to the basic issue that they cannot enter 30-year agreements due to tenure insecurity, the attraction for a one-off upfront payment skews the economic incentives when compared to lower annual rent payments that a tenant would provide. This scale of one-off payment is hard for a tenant to compete with. Even when converted to annual payments, the per hectare amount can be more than a tenant could offer based on current returns from farming. Many tenants spoke about how BPS underwrote the risks of agricultural production and with that being reduced, private agreements incentivise landlords to remove tenants and enter private schemes that offer more certainty than farming in hand or letting land. By annualising the payments to the landlord as well as highlighting the creation and annual maintenance costs, a landlord will be better able to see how it compares to a rental income from a tenant farmer.

Worked example: One off payment versus annual payments

If we take agricultural rent from a tenant worth £300/ha and capitalise it over 30 years at a 3% discount rate, that leads to an upfront value of £5,800/ha for those 30 years.

This is less than a single biodiversity net gain unit in some cases. However, the BNG agreement will have to fund 30-years of management with no further income from the developer while rent from a tenant can be reviewed regularly and often comes with investment in time and finance from the tenant to maintain and potentially improve the land.

As Defra supports these markets to coalesce around single standards, tools, and rules, there will be one outstanding question: who owns the stocks (natural capital), the flows (ecosystem services) and who should receive payments for providing these?

Private schemes should do more to improve the social impact of their agreements by working with landowners to understand how land use change can be achieved through collaboration with a tenant, such as the landowner receiving the capital sum for creation, and the tenant being paid to maintain the habitat for the duration of the scheme.

In developing its thinking on market structures and development, *Defra needs to set out clear guidelines to ensure that tenants are rewarded and not disadvantaged for their work in maintaining and improving the natural capital asset and managing the associated flow of ecosystem services.* This should be done alongside the other recommendations in this review to ensure that non-traditional landowning investors are supported to keep land in the tenanted sector.

We recommend that the natural capital is owned by the landlord which aligns to their ownership of the land, however the trade and income that come from that land via the management of the land, specifically ecosystem services, should belong to the tenants. This is how agreements focussed on agriculture already work - the land is owned by the landlord and the tenant rents it to run their business. These rules should apply across all markets and will need to be further developed where one-off up-front payments constrain land management actions for the long term such as with 30-year BNG agreements or 80-year nutrient neutrality agreements, especially when the average FBT is less than 4 years. Private sector agreements that cover multiple generations should require the landlord to either enter with the tenant in a joint format, or for the landlord to evidence how the tenant will benefit from the agreement through some kind of revenue sharing mechanism or through a management payment to the tenant.

In all cases clarity is essential.

Looking beyond tree planting and peatland for net-zero and biodiversity

There are two government approved codes for trading land-based carbon. The first is the Woodland Carbon Code and the second the Peatland Code. Both require long-term land use change to be made to generate carbon units for sale. However, most tenants are unable to plant trees on their holding or re-wet peatland as these actions are seen as land use change and reserved to the landlord. However, there are other aspects of achieving net-zero and improving biodiversity that tenants can positively contribute to and should be rewarded for. The most significant of which is the management of soil or features such as hedgerows, which they work with on a day-to-day basis.

If we understand tree planting as a means and not an end, then Defra should look at other ways to encourage land use as a carbon sink and a biodiversity haven.

For example, evidence of carbon sequestration in soils, hedges, grassland, salt-marshes, and sea grasses is improving. These processes can be carried out alongside food production or in a different area in the case of intertidal and shallow marine spaces. Healthy soil and the nursery benefits of sea grasses can have large impacts on biodiversity which the government is also looking to support.

Recognising these two points, *Defra should focus, as a policy priority, on supporting the development of private market codes and associated payments for soil and other forms of on farm carbon and biodiversity gain to ensure they are accessible to tenant farmers.*

A key aspect of any soil or farm carbon code should be clarity that the farmer should first look to have met an internal carbon balance and a surplus of carbon sequestration beyond that. This internal carbon balance may not necessarily be a net-zero position.

There is currently no position from Defra on how agriculture should decarbonise over the coming years or if it will be included in the UK Emissions Trading Scheme (ETS)⁵⁵. Without public decisions on these issues, it remains difficult for farmers to understand what carbon balance they should be aiming for in their business before selling surplus carbon on the markets. This will stifle the supply side of the market.

The government cannot overwrite private contractual agreements between landlords and tenants, but they can be explicit about the impact on tenants of private market development including what protections should be incorporated into market codes, rules, and behaviour of market actors.

Tax status of environmental outcomes

Where environmental outcomes can be traded, such as carbon, biodiversity net gain, or water quality units there is no clarity on how these, or the income from trading these, are seen by the tax system.

As indicated by the CLA, the current income and capital tax regime creates a disincentive for both landlords and tenants to enter into many of the ecosystem services or environmental schemes.⁵⁶

Defra needs to work with HMT to clearly define how it sees the production and trade of ecosystem service units with regards to taxation.

This becomes more of an issue with Inheritance Tax as Agricultural Property Relief (APR) applies only to the agricultural value of land and maximising the delivery of environmental outcomes is often achieved through non-agricultural land use.

Where we want to get to

- A clear route and guidance for landlords and tenants that ensures equitable benefits from private markets including payments.
- Market rules that require tenant participation or have protections against unilateral tenant removal.
- Private market income is an income stream for tenant farmers in addition to government scheme support

⁵⁵ The UK Emissions Trading Scheme aims to promote cost-effective decarbonisation, allowing businesses to cut carbon emissions where it is cheapest to do so by trading carbon emissions and offsets.

⁵⁶ Written evidence from CLA

Recommendations

- Recommendation 46.** *Government needs to outline, at the very least, what it sees as its role, a roadmap, and broad principles or guidelines for the development of private ecosystem markets alongside basic expectations for demand and supply side actors to adhere to.*
- Recommendation 47.** *Defra should examine the various ways to enable tenants to be rewarded for their improvements to the natural capital on the holding*
- Recommendation 48.** *A critical change will be to expand the definition of a tenant's improvement to include an improvement in natural capital on a holding.*
- Recommendation 49.** *Defra to lead on providing tenants and landlords with a consistent way to measure the environmental state of a holding as well as access to that data so that improvements or otherwise can be assessed.*
- Recommendation 50.** *Defra needs to set out clear guidelines to ensure that tenants are rewarded and not disadvantaged for their work in maintaining and improving the natural capital asset and managing the associated flow of ecosystem services.*
- We recommend that the natural capital is owned by the landlord which aligns to their ownership of the land, however the trade and income that come from that land via the management of the land, specifically ecosystem services, should belong to the tenants.*
- Recommendation 51.** *Defra should focus, as a policy priority, on supporting the development of private market codes and associated payments for soil and other forms of on farm carbon and biodiversity gain to ensure they are accessible to tenant farmers.*
- Recommendation 52.** *Defra needs to work with HMT to clearly define how it sees the production and trade of ecosystem service units with regards to taxation.*

Tax

We believe

- Tax is a key driver of landlord behaviour in the private let sector when deciding how to manage their estate portfolio, including the length of tenancies. This was supported by almost every roundtable discussion with landlords, agents, and tenants, as well as our written submissions.

What we found and what needs to change

Prior to the 1995 legislation Agricultural Property Relief (APR) was available on let land at 50% of the agricultural value. When FBTs were introduced in 1995, an amendment was made to Inheritance Tax to provide 100% APR on the agricultural value of let land on tenancies granted after 1995. This brought one aspect of let land in line with inheritance tax reliefs provided to owner occupied land^{57,58,59}.

Without relief, Inheritance Tax would take up 40% of the farmland's agricultural value⁶⁰ which, on the death of the landowner, could be detrimental to the viability of the estate and any businesses that are based on that land, especially when considering that market value of land tends to be above its agricultural income potential⁶¹. We have heard from landlords and agents that APR is the cornerstone of estate planning.

Over the last 5 years, there has been a stark change in the context in which the agricultural sector operates. The announcement of the Agricultural Transition Plan and the replacement of BPS payments with new payments for environmental outcomes means that some of the tax levers that may have been put to one side before, are now more necessary than ever.

As government asks more of tenant farmers to increase productivity alongside delivering environmental outcomes the tax system can be a valuable lever to deliver these. Delivering these changes requires a long-term commitment however we know that many tenant farmers have short-term tenancy agreements. Therefore, we think that now is the right time to examine the tax levers that incentivise longer tenancy agreements.

We recognise that changes to the tax system require a robust analysis beyond the remit of this review and that changes to the tax system may have wider consequences beyond the desired impact. Therefore, the review recommends that **Defra and HMT carry out a robust analysis on a strategic package of proposed recommendations made in the tax chapter to incentivise landlords to let land for longer.**

Ensuring equitable benefit from sales of tenanted land

Housing developments and other long-term land use changes that take land away from agriculture such as Biodiversity Net Gain and solar panels have immediate benefits for landlords in the shape of large and often upfront payments.

⁵⁷ For tenancies granted before 1995 the 50% tax rate remains

⁵⁸ Defra (2019) Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England

⁵⁹ The other aspect is length of ownership. It takes seven years of ownership of let land to earn 100% APR, but only two years of ownership for owner occupied land to receive the same relief.

⁶⁰ Agricultural value differs from the market value of land which may also include development opportunity or other non-agricultural elements

⁶¹ Lancashire Wildlife Trust (2022) A review of some impediments to farmers entering environmental land management agreement commitments.

However, these land use changes can have an immediate and substantial impact on the business viability of tenants who hold agreements on that land holding.

To ensure that the tenanted sector does not lose out entirely when these deals take place, we recommend that *when landlords have gained an upfront investment, and where they have had to take land back from a tenant to do this, Defra and HMT should incentivise landlords to reinvest that income back into other areas of their estate, specifically into holdings that are already let.*

Expanding existing Capital Gains Tax roll over reliefs for landlords could be a source of this incentive. Roll over relief is currently provided where trading assets are sold and reinvested in. This should be expanded to include landlords selling previously let holdings to ensure that reinvestment improves the quality of other let holdings as land is removed from the tenanted sector.

Furthermore, where a tenancy is brought to an end that will vastly increase the value of the land for non-agricultural use, the current statutory compensation for AHA tenants is set at six times the annual rent. This level of compensation does not cover the future revenue that the tenant is forgoing. Coupling this with the difficulty to rent new land in the market means that *the compensation framework for AHA tenant when a notice to quit has been given, needs to be re-examined to provide a fair outgoing payment to the tenant based on their real loss.* It is important that this is reviewed because if the tenant is losing out from these kinds of land sales that benefit the landlord, then the tenant should be proportionately compensated for the loss of their future income.

Participation in government schemes

Overall, the current tax rules are perceived by many to act as a barrier to changing land use as many landlords are cautious about giving consent to environmental scheme participation due to fears about losing tax relief.

Many landlords we spoke to raised concerns about whether their land will be eligible for APR if it is used for environmental purposes that may fall outside of the 'agriculture' definition in taxation legislation and therefore impact on their tax liabilities⁶². This was also raised in many of the written submissions. If land were to no longer be classified as having agricultural use and therefore no longer be eligible for APR, landlords would not want tenants entering the schemes or hesitate to provide consent to their land being put into environmental schemes.

Concerns were also raised about practices that may breach the Rules of Good Husbandry set out in the Agriculture Act 1947. These concerns have not been tested, but with uncertainty in how public schemes are treated by taxation and tenancy legislation, tenants that carry out certain environmental actions at scale could be at risk of breaching their tenancy agreement.

We have also heard there is confusion over whether land under new Defra ELM schemes will be classified as 'agricultural' or 'environmental'. In 1997, an amendment was made to the Inheritance Act 1984 that included habitats schemes in the definition of agriculture, but the Act has not been amended since to include activities under subsequent agri-environment schemes or new ELM schemes⁶³.

⁶² Eftic (2021) BNG Market Analysis Tenanted Land Extension

⁶³ CLA (2021) Tax Implications of Changing Land Use

We are aware that government are actively looking into this. As we are also looking to encourage longer-term tenancy agreements that facilitate tenants delivering environmental outcomes, our recommendations in this chapter are complimentary and supportive of the ongoing review into APR.

Given the many places in legislation that define agriculture, there should be a consistent update to definitions across both tenancy and taxation legislation. This is addressed in the chapter on legislation.

Longer-term Tenancy Agreements

Agriculture is a long-term endeavour with environmental improvement and productivity gains taking years and in some cases decades. A majority of written submissions indicate that tax incentives for longer term FBTs are needed to shift the average length of land let in England.

As indicated in earlier chapters, FBT agreements on bare land and with equipment tend towards the shorter term, often less than 4 years⁶⁴. These agreements also may come with restrictive clauses that prevent tenants taking actions such as creating wetlands and more recently preventing tenants putting land into environmental management schemes or private schemes.

The structure of the current taxation environment does not encourage landlords to grant long term tenancy agreements, it does not encourage tenants to enter long term environmental agreements, and it does not encourage landlords and tenants to invest in productivity gains.

The following proposed changes to taxation with regards to agricultural tenancies must be looked at as a package that would incentivise landlords and tenants to enter longer term tenancy agreements allowing tenants to manage and invest in land for the long term, to deliver much needed environmental and productivity improvements.

Restrict 100% IHT APR to farm business tenancies under the Agricultural Tenancies Act 1995 of at least 8 or more years and secure agreements under the Agricultural Holdings Act 1986. Where this is done, landlords should not be allowed to use break clauses that in effect reduce the length of tenure security. Landlords should be allowed to lock in their capital taxation position on day one of any lease for the duration of that lease to be given the assurance that, whatever changes are introduced later, they will not impact upon the landowner. The 8 years should be the length of the original let not the amount of time remaining on any existing let.

This will drive confidence in letting for longer terms and will not impact many of the lettings in place on land, equipment, and housing which tend to be around the 10-year mark. This also takes advantage of the opportunity facing the sector to deliver an increase in the length of lettings from below 4 years, where they have remained for the last 27 years since the 1995 act.

There is a risk that this may not increase the number of lettings in the marketplace, but we consider this risk to be low given many landlords need tenants to manage their estate. Those tenancy agreements that do move to longer terms will improve the quality of lettings and provide a better basis upon which productivity growth and environmental net gain can be achieved. It will also act to assist tenants in securing capital to invest in their holdings.

We are aware that Defra is already engaging with HMT on discussing if and how environmental land management actions are classified under APR. With this relief

⁶⁴ The Central Association of Agricultural Valuers 2021 survey

already being reviewed by Defra and HMT, and with the assumption that this is seen as a sufficient lever for behaviour change (otherwise why look at it), we recommend that this is the right opportunity and time to incorporate our recommendations on a letting threshold for applying APR.

We recognise that there are instances where having shorter tenancy agreement is in the interest of both landlords and tenants such as for land used on a rotational basis to accommodate high-value specialist crops and horticulture.

The recent CLA survey highlights that there are some reasons for shorter tenancies, such as where they are agreed by negotiation, provide flexibility on both sides, plan for future development, and/or scheme and market uncertainty. Some of these instances can be clearly defined and could therefore be excluded from the need to show an 8-year lease to secure APR.

In addition to amending APR, we recommend that the government incentivise longer lets through **allowing FBTs granted for more than 8 years to claim Business Property Relief (BPR) on land value that falls outside of APR**. In effect, this provides for any element of the let property not qualifying for full APR to be covered by BPR. Acknowledging the risk of changing the APR structure, but also acknowledging the need to incentivise longer term lets, government could allow BPR to be claimed on non-APR land value where the let is more than 8 years. However, we understand that, from a practical perspective, this would be difficult to implement and could impact on other sectors that qualify for BPR.

Further incentives to let for more than 8-years should be explored by HMT and Defra such as **allowing landlords who let for at least 8 years or more to declare income as trading income**.

Similar to the recommendation above, this provides an incentive rather than a penalty for letting land for longer durations. This reflects the successful arrangements employed within the Republic of Ireland to incentivise the letting of land which has, in essence, created an agricultural landlord-tenant system where one did not previously exist.

Setting the bar at 8 years reflects the findings of the CLA survey that their members' tenancies are on average 8 years⁶⁵. Almost half (47%) of tenancies from the CLA survey were for a length of 11 years or more. It also reflects the fact that unlike the case in Ireland, England already has a landlord tenant system where the quality and length of lettings needs to improve.

Deeming environmental land management as a trade. The status of land managed for environment under ELM or private markets, such as biodiversity net gain agreements, is unclear for BPR. If it is not a trading asset, then where land is entered into schemes it may mean that the whole business does not qualify for BPR. This could lead to landowners taking land back in hand to manage it themselves, however when combined with recommendations on the eligibility of public schemes, this risk can be minimised. We understand that Defra is currently working with HMT to clarify if and how environmental land management can be covered by APR. If that were not viable this option should be examined.

Productivity allowances to be granted for investments made to improve the agricultural or environmental productivity (i.e., natural capital) of farms. Environmental improvements, such as improving the natural capital assets on a farm, take time and investment to manifest. They deliver not only public benefits but can also improve production

⁶⁵ The 2015 survey from the CLA had the average length of lets at 11 years

for example by improving the health of the soil. Investments in natural capital would help the government deliver on its ambitious targets and making productivity allowances for these investments would incentivise the tenant and landlord to undertake the necessary investment. One such allowance would be capital allowances.

Reform capital gains rollover relief to cover investments made to fixed equipment on tenanted holdings. Investment into fixed equipment on let land is key to productivity improvements in the sector. Under the current system of short term FBTs, tenants often do not have the long-term security of tenure to make long-term investments but would directly benefit from them. Expanding rollover relief to landlords who invest in the productivity of existing or newly let holdings which are let for 8 years or more (aligning to previous recommendations on longer term FBTs) would incentivise landlords to make the much-needed longer-term investments.

Reform Stamp Duty Land Tax (SDLT) to end discrimination against longer tenancies. We suggest calculating SDLT assuming a maximum lease of 2 years even where the lease is more than that. The current system calculates the tax due based on the Net Present Value (NPV) of the full rental stream. This leads to higher tax liabilities for longer lets and is a therefore a barrier to longer lets. Assuming all agricultural lets are 2 years reduces the tax liability, removes the barrier to longer lets, and is a tax simplification. This is especially important to progress in tandem with the incentive for landlords to let for longer. An increased letting length would mean greater exposure to SDLT unless it is adjusted as recommended.

Where we want to get to

- A range of tax incentives that encourage longer term lets, tenant entry to schemes, improved tenant and landlord behaviour, and investment in the holding.

Recommendations

- Recommendation 53. Defra and HMT carry out a robust analysis on a strategic package of proposed recommendations made in the tax chapter to incentivise landlords to let land for longer*
- Recommendation 54. When landlords have gained an upfront investment, and where they have had to take land back from a tenant to do this, Defra and HMT should incentivise landlords to reinvest that income back into other areas of their estate, specifically into holdings that are already let*
- Recommendation 55. The compensation framework for AHA tenant when a notice to quit has been given for development, needs to be re-examined to provide a fair outgoing payment to the tenant based on their real loss*
- Recommendation 56. Restrict 100% IHT APR to farm business tenancies under the Agricultural Tenancies Act 1995 of at least 8 or more years and secure agreements under the Agricultural Holdings Act 1986.*
- Recommendation 57. Allow FBTs granted for more than 8 years to claim BPR on land value that falls outside of APR.*
- Recommendation 58. Allow landlords who let for at least 8 years or more to declare income as trading income.*
- Recommendation 59. Deeming environmental land management as a trade.*
- Recommendation 60. Productivity allowances to be granted for investments made to improve the agricultural or environmental productivity (i.e., natural capital) of farms.*
- Recommendation 61. Reform capital gains rollover relief to cover investments made to fixed equipment on tenanted holdings*
- Recommendation 62. Reform SDLT to end discrimination against longer tenancies.*

Legislation

We believe

- The existing legislation for agriculture and the landlord-tenant system needs to be updated to reflect the new demands on land from food, fibre, and fuel production and environmental outcomes
- The policy emphasis on diversification and environmental outcomes can exclude tenants who may be prohibited from doing so by the terms of their tenancies

What we found and what should change

The terms of both FBT and AHA tenancies are affected by the Rules of Good Husbandry and Rules of Good Estate Management.

Definition of Agriculture

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

Agriculture Act 1947

These post-war rules were originally intended to ensure that tenants use the land to increase the production of agricultural commodities.

This could pose serious barriers to scheme entry if they are used against a tenant who reduces the intensity of agricultural production to transition to more environmental management to deliver environmental or biodiversity outcomes⁶⁶.

It is also the case that landlords who consider tenants in breach of their agreement, for example through non-agricultural land use, can serve them with a notice to remedy. If the tenant thought that they had the landlord's consent, this notice can still be served. The tenant is unable to dispute the notice and would have to wait until the landlord serves a notice to quit before having an official opportunity to argue their corner. This dynamic puts the landlord-tenant relationship on a negative tone. It would be easier to collaborate if the tenant could serve a counter notice to the landlord and therefore open up early dialogue.

With all of the issues raised in other chapters, there is a clear need and opportunity for the government to have a serious look at reforming the agricultural tenanted sector to make it fit for the 21st century demands on land use. Therefore, **Defra should launch a consultation on agricultural tenancy reform in 2023.**

Appoint the Law Commission to review existing legislation and propose updates

Defra and other departments must recognise the changing demands on land in England and what the new government payments are encouraging farmers to do. In recognising this, **Defra should look at ways to update the definition of agriculture and rules of good husbandry to encompass actions for environmental benefit.**

⁶⁶ Eftec (2021) BNG Market Analysis Tenanted Land Extension

The definitions of agriculture and good husbandry are laid out in several areas of statute. These definitions were drawn up at a time before the high levels of development pressure, and before the climate and biodiversity crises were recognised.

Many tenancy agreements are restricted by the needs codified in these definitions. Defra must recognise that the demands on land no longer fit into these definitions and that more flexibility is needed for tenant farmers to manage their land to balance competing demands and to remain viable in the longer term.

Redefining these terms may have implications for whether actions keep land within scope of APR which uses the, now antiquated, definition of agriculture. It should be recognised that there are potential ramifications across the many laws that use these definitions.

Given the risks and potential ripple effects across many statutes, we recommend that this scale of reform be included in the remit of a Law Commission study into agricultural tenancies and land use.

Setting the scope for the Law Commission

Many of the issues facing tenancies in England stem from the complex nature and legacy issues involved in agriculture, such as definitions from 1947.

The Law Commission is a body whose remit it is to examine specific areas of the law in the UK in detail and recommend a package of legislative updates to reform and update the law of that area.

Although the agricultural and land use sector has had two legislative events in recent years (Agriculture Act 2020 and Environment Act 2021), there are large areas of tenancy legislation that were not updated.

Defra ministers should actively engage the services of the Law Commission to update legislation pertaining to agriculture, tenancies, and land use in England to bring it into the 21st century and make it fit for the multiple demands being made on land. Where a consultation on significant agricultural tenancy reform is held, this should follow the outcomes of that process.

We recommend that in asking the Law Commission to review the agricultural sector, they include in their scope the following items

- Definition of Agriculture
- Definition of Good Husbandry
- Extending Alternative Dispute Resolution to FBTs and making behaviour and outcomes of ADR and arbitration open to scrutiny (See chapter on Landlord-Tenant Agreements)
- Enabling tenants to diversify their businesses without prejudicing the landlords position, for example tax or land value
- Enforcing requirements that non-agricultural land use such as woodland planting, property development, and solar panels do not take place on Best and Most Versatile Land without proper scrutiny
- Extending the protections in place for AHA tenants to FBT tenants, for example where landlords “unreasonably refuse” tenant entry to schemes
- Clarify and expand on Section 31:2(e) of the 1986 Agriculture Holdings Act that allows landlords to serve a notice to quit for “the planting of trees” so that tenants are not at risk of being given a notice to quit for small scale planting.

- Updating the compensation framework for departing tenants particularly in respect of land removed for non-agricultural use including case B under the AHA 1986, and to encompass natural capital improvements.
- Examining how the recommendations in this review can be codified into existing and secondary legislation
- Examining the legislative options that can establish a central agricultural tenants ombudsman or Tenant Farmer Commissioner and redress system, including allowing the mediator to report on the conduct of the parties.
- Any amendments to the existing legislation proposed by DLUHC as part of the Levelling Up agenda such as requiring data and statistics on land occupation to be collected and published.
- Allowing tenants to serve a counter notice to a landlords notice to remedy purporting that there has been a breach of tenancy terms in relation to use other than for agriculture.

It is important to note that the Law Commission will only take on a project if they are confident that the ministers of the relevant department will enact the proposed changes. Given the timing of this review and the need for long-term stability in the sector, it will be important that any proposal to update the legislation has support from all major parties.

Where we want to get to

- An update to existing legislation that reflects the current and future demands on land and provides clarity for practitioners, landlords and tenants alike.
- Legislation that supports tenant access and ability to benefit from new public and private schemes and initiatives with landlord consent.

Recommendations

- Recommendation 63. Defra should launch a consultation on agricultural tenancy reform in 2023.*
- Recommendation 64. Defra should look at ways to update the definition of agriculture and rules of good husbandry to encompass actions for environmental benefit.*
- Recommendation 65. Defra ministers should actively engage the services of the Law Commission to update legislation pertaining to agriculture, tenancies, and land use in England to bring it into the 21st century and make it fit for the multiple demands being made on land. Where a consultation on significant agricultural tenancy reform is held, this should follow the outcomes of that process.*

Embedding the Tenanted Sector in Defra

We believe

- Defra is starting to consider tenants in scheme and policy design
- Defra needs core training on land occupation and tenure issues that is crucial for staff members to be aware of
- Consistent Defra-wide protocols must be implemented to ensure all schemes and policies are tenant proof

What we found and what needs to change

Information availability

Defra has had a proliferation of schemes over the last two years with more being developed as part of the Agricultural Transition Plan and other initiatives. The roundtables made it clear that there is a feeling of confusion and uncertainty due to a lack of clarity around schemes.

Defra needs to facilitate the development of a streamlined process for applicants to understand what schemes are available, how they interact, and a simple means to check eligibility. The onus should be on Defra to facilitate this rather than expecting all farmers to either employ an agent at their own cost, or to spend hours checking over each scheme to understand if they meet eligibility criteria.

Defra should update the economic impact assessment of all new schemes with both the short-term transition impacts and the longer-term impacts when the sector is more stable after the transition. This should include impact scenarios on landlords, tenants, and owner occupier businesses. It should be published on an annual basis throughout the ATP.

Data collection

One of the issues that we have encountered during this review has been the lack of data on tenants and the tenanted sector that is collected by Defra.

Defra data from the last year has indicated that there was a 3% reduction in the area of land let under FBTs between 2019 and 2020⁶⁷ - the first reported reduction in land let under FBTs since their introduction in 1995. This could be driven by any number of reasons and Defra should monitor this to understand if it is driven by policy uncertainty, a one off, or the start of a trend. It cannot do this without data.

It has not been possible to estimate how many tenants are involved in pilots and existing schemes such as CS using existing data, nor is it possible to access the more granular data such as which options in CS they have engaged with. This is important because it speaks to which options tenants are engaging with which can inform how new schemes need to make certain options more open to tenant farmers. We also do not know how many tenant farmers have entered the SFI standards to date as this data is not currently asked for or captured.

The saying “you cannot manage what you do not measure” is important to bear in mind. To that end, *Defra needs to systematise the measurement, monitoring, and collection of data on tenants and their involvement in schemes.* Without this Defra risks not being able to tell how successful, effective and open its schemes are to tenants.

⁶⁷ Defra Farm Rent statistics, last updated February 2022

Many recommendations in this review require data on the let status of each land parcel. This dataset would need to be built by the Rural Payments Agency (RPA) as an additional layer in their Land Parcel Information Service and shared across government if it does not already exist. We have discussed this with the RPA who has confirmed it is achievable.

Defra training and protocols

Defra must have a mandatory learning and development module on the tenanted sector for policy and other teams to refer to and use to develop their base knowledge around the constraints and nuances of the tenanted sector.

This will allow teams to check, at an initial stage, that all standards and options proposed in schemes are accessible to tenants.

There should also be a process whereby schemes and options are tested with a more expert group on land occupation and tenancies (AHA and FBT). The establishment of the Tenancy Working Group has raised the issue of tenancy to the fore, but *Defra needs a consistent process and protocol that requires development and testing of all schemes and options within schemes with tenant farmers.*

This should be replicated across the Arm's-Length Bodies⁶⁸ who deal directly with farmers and who farmers look to for advice.

Defra to have a KPI on tenants

To systematise, embed, and mirror the importance of tenants to the agricultural sector into the operations of Defra we recommend that *Defra establish a departmental, programme and sub-programme level Key Performance Indicators (KPIs) on tenants.* This could take the form of number of tenants accessing schemes or certain options. It could also take the form of number of tenants accessing more ambitious options.

To oversee this, align with the ministerial portfolio, and ensure accountability *Defra should confirm that it will maintain tenancy in the portfolio of the Farming Minister and explicitly include land occupation as a strategic portfolio item for a Defra Director to ensure that Government takes account of land occupation issues in development of policy, procedures, and practice.*

Tenants and the Land-Use Framework

The review was pleased to hear that Defra would be launching a land use framework for England in 2023. To ensure that tenants are considered as an integral part of this framework we recommend that *Defra carry out and publish an analysis of how the land use framework impacts tenant farmers and their ability to deliver the outcomes in the framework.*

Defra to report annually on the recommendations of this review

Finally, we recognise that some recommendations in this review are easy to implement, and some may be longer term that require the input of other government departments or a large amount of work to drive forwards.

With that in mind, we recommend that *Defra publish an update on their progress against these recommendations every year of the agricultural transition plan. This should be*

⁶⁸ Arm's-Length Bodies of Defra are organisations such as Natural England, Environment Agency, and Forestry Commission. More information can be found at <https://www.gov.uk/government/organisations>

tied to the annual progress update on the agricultural transition plan that is published each year with a specific section on how schemes support tenants, access to schemes and initiatives that support the sector for the long term.

Where we want to get to

- Defra has awareness throughout the department of the issues facing tenants to incorporate into their work on policy and scheme design
- Oversight and responsibility for the tenanted sector established at senior level in Defra.
- Defra regularly reports against a KPI that covers the tenanted sector, and that Defra has appropriate data to support the reporting
- Defra schemes, now and in the future, are tenant proof.

Recommendations

- Recommendation 66.** *Defra needs to facilitate the development of a streamlined process for applicants to understand what schemes are available, how they interact, and a simple means to check eligibility.*
- Recommendation 67.** *Defra should update the economic impact assessment of all new schemes with both the short-term transition impacts and the longer-term impacts when the sector is more stable after the transition. This should include impact scenarios on landlords, tenants, and owner occupier businesses. It should be published on an annual basis throughout the ATP.*
- Recommendation 68.** *Defra needs to systematise the measurement, monitoring, and collection of data on tenants and their involvement in schemes.*
- Recommendation 69.** *Defra must have a mandatory learning and development module on the tenanted sector for policy and other teams to refer to and use to develop their base knowledge around the constraints and nuances of the tenanted sector.*
- Recommendation 70.** *Defra needs a consistent process and protocol that requires development and testing of all schemes and options within schemes with tenant farmers.*
- Recommendation 71.** *Defra to establish a departmental, programme and sub-programme level (Key Performance Indicators) KPIs on tenants.*
- Recommendation 72.** *Defra should confirm that it will maintain tenancy in the portfolio of the Farming Minister and explicitly include land occupation as a strategic portfolio item for a Defra Director to ensure that Government takes account of land occupation issues in development of policy, procedures, and practice.*
- Recommendation 73.** *Defra to carry out and publish an analysis of how the land use framework impacts tenant farmers and their ability to deliver the outcomes in the framework.*
- Recommendation 74.** *Defra must publish an update on their progress against these recommendations every year of the agricultural transition plan. This should be tied to the annual progress update on the agricultural transition plan that is published each year with a specific section on how schemes support tenants, access to schemes and initiatives that support the sector for the long term.*

Conclusion

We hope that this review has provided a deeper and richer understanding of the many challenges facing the tenanted sector. We also hope that it has shown how government, landlords, tenants, and supporting professionals can act to move us towards a resilient and vibrant agricultural tenanted sector.

If you put down this review and take away one message, it should be that collaboration and communication between all parties is the foundation of the way forward.

We have seen how the agricultural tenanted sector is a complex and varied sector. All farms, tenant farmers, landlords, and businesses differ across England. This diversity is a strength and the passion of tenant farmers to deliver on our nation's food security and improve our natural environment has been evident throughout the review.

Historic payments have embedded a level of dependency on government subsidies and as we see these being reduced through the effects of inflation, higher input costs, and government policy, that dependency will need to end. The impacts this will have on livelihoods, rural economies, rural communities, and the wider food system is hard to say with any confidence.

The review supports the need for change in our farming system. We are in a new century with new demands on land and a different reality from the last legislative change to tenancy in England. We have heard from tenants and landlords that changes are welcome, but we have seen and heard many examples demonstrating why more structural adjustments must accompany the policy changes to make it just that little bit easier for those in the tenanted sector to manage whatever the future holds.

Through our recommendations we want to

1. encourage longer term tenancy agreements that provide stability and assurance so tenants can access schemes, make long term business plans, and invest in their holding.
2. allow tenants to access new public and private schemes through flexibility in their tenancy agreement and in scheme design.
3. create incentives for tenants and landlords to invest and improve the knowledge and infrastructure within the tenanted sector.

We have shown that a sustainable, resilient, and thriving tenanted sector is in the interest of the nation and is within our grasp. Our recommendations will take us most of the way to that future.

We look forward to seeing the response from Defra and watching as they take forward the recommendations.

Acknowledgements

The chair would like to thank the members of the Tenancy Working Group who have been so tireless in their work on this review. We are indebted to them all for the thoughtful discussions, insights and collaborative agreement that has led to this review. The members were

Andrew Clark
Charles Cowap
Simon Dixon Smith
George Dunn
Alastair Martin
Matthew Morris
Emily Norton

Janet Hughes, Director of Future Farming and Countryside Programme in Defra also attended.

We would also like to enormously thank all the individuals across England from tenant farmers, landlords, agents, and others involved in the sector who so kindly gave up their time to arrange and attend meetings, complete our survey, provide written evidence submissions, and answer our questions throughout the process.

Special thanks for providing expert and independent review go to:

Our independent reviewers

Andrew Vickery from Old Mill Accountancy

Emily Windsor from Falcon Chambers

We are very grateful to Instinctif Partners who have designed the Review so beautifully.

Thanks go to the past and present Defra ministerial teams, and to the Defra policy teams who shared their thinking with us and were open throughout the review process.

ANNEX 1: Letter from Minister of State for Farming Fisheries and Food on the initial recommendations



Department
for Environment
Food & Rural Affairs

2 Marsham Street
London
SW1P 4DF

T: 03459 335577
helpline@defra.gov.uk
www.gov.uk/defra

Baroness Kate Rock
House of Lords
London
SW1A 0PW

18 August 2022

Dear Kate,

Responding to the Tenancy Working Group's initial recommendations to Defra

Firstly, I would like to thank you and the Tenancy Working Group for your initial recommendations to Defra and for the incredibly valuable work you have all been doing to understand and explore the issues and identify ways to address them.

We welcome your findings and are pleased to say we agree with the thrust of most of your early recommendations, and indeed we have already actioned several of them, including:

- Clarifying that the farming budget will be flexible to respond to demand and provide a range of ways for all farmers to access funding - there is no fixed allocation of the budget to specific schemes.
- Adjusting our core narrative to make it absolutely clear that food production and productivity are critically important, and that we see food production and nature as going hand in hand, not as binary alternatives.
- Making Defra capital grants, such as those available through the Farming Investment Fund, available for both landlords and tenants.
- Including tenancy policy in a Ministerial portfolio – I cover this under my farming remit.
- Engaging with tenant farmers to hear about their experience of the new schemes – which we will continue to do as the schemes develop over time.



We agreed with several more of your recommendations and are planning to take the following action on those recommendations over the coming months:

- The Secretary of State will be publishing an article this summer recognising the importance and huge potential of tenant farmers in delivering food production and environmental benefits.
- We will clearly communicate in future scheme guidance:
 - What the eligibility rules are for delivering Local Nature Recovery options on tenanted land.
 - That as with SFI, applicants to LNR options will be able to enter part of the farm business into an agreement.
 - How SFI standards and LNR options can be stacked on top of each other as straightforwardly and flexibly as possible.
 - That SFI and LNR will pay for the maintenance of existing features, including management, maintenance, and enhancement of existing habitats, not just the creation of new ones.

Your findings and recommendations will helpfully inform the further detailed design and rollout of our new schemes so that we can make them as accessible as possible to all farmers, as well as informing wider policy over the medium to long term.

We very much look forward to seeing your final report later this year.

Yours sincerely,



Victoria Prentis

Minister of State for Farming, Fisheries and Food
Department for Environment, Food and Rural Affairs

ANNEX 2: Rights and Responsibilities of Landlords and Tenants

To best understand the current state and power dynamics at play in the agricultural tenanted sector, it is helpful to understand the benefits and constraints that face each of the key players. The table below provides this overview.

	Agricultural Holdings Act Tenancy	Farm Business Tenancy
Statutory basis	Agricultural Holdings Act 1986	Agricultural Tenancies Act 1995
Security of tenure	<ul style="list-style-type: none"> Technically year-to-year but with provisions on security. Tenancies started prior to 12 July 1984 allow succession to up to 2 generations. Tenancies started after 12 July 1984 are secure for the lifetime of the tenant unless specified that succession provisions apply. Only terminable with tribunal approval or service of incontestable notice on specific grounds Some agreements may allow landlord to resume possession of part of the holding for non-agricultural use. 	<ul style="list-style-type: none"> Tenancy length is enumerated in the contract between the landlord and tenant. Tenancies for a fixed term of two years or less end with the effluxion of time – no notice to quit is required. Tenancies for a fixed term of more than two years can only be terminated on their term date following at least 12 months' notice to quit. Tenancies from year to year can only be terminated on their term date following at least 12 months' notice to quit.
Rent provisions	<ul style="list-style-type: none"> Regulated rent formula taking into consideration all relevant factors including terms of the lease and the productive capacity of the land. Subject to rent formula within the Act. Reviewed every 3 years. Disputes resolved by arbitration. 	<ul style="list-style-type: none"> Although there is freedom of contract, the standard position is that rents are set on an open market basis. Market rent or review in accordance with an agreed formula. Disputes resolved by arbitration or expert determination.
Repairs, maintenance & replacement of fixed equipment	<ul style="list-style-type: none"> Subject to the terms of the tenancy but where the terms of the tenancy are silent then reference is to model repairing Regulations (currently 2015) Generally Model Clauses (landlord broadly responsible for primary structures) or tenant full repairing. 	<ul style="list-style-type: none"> Subject only to the terms of the tenancy. As agreed between the parties, but often houses and buildings are not included in the lease.
Early termination	<ul style="list-style-type: none"> Only where land is required for use other than for agriculture and part resumption is available either due to the terms of the lease or Section 31 of the legislation Limited circumstances without tribunal approval. 	<ul style="list-style-type: none"> Subject only to the terms of the tenancy – can operate either on specified dates or for specified reasons. As set out in the agreement, subject to minimum notice periods.
User clauses	<ul style="list-style-type: none"> Often restricted to agriculture use only – defined in legislation. If not restricted, then non-agricultural activity can take place on the holding so long as it does not detract from the “agricultural character” of the holding. Tenant usually restricted to agriculture only, Landlord may wish to participate in the benefit of any non-agricultural uses. 	<ul style="list-style-type: none"> Often restricted to agriculture use only – defined in legislation If not restricted, then non-agricultural activity can take place alongside farming activity. As set out in the agreement, subject to tenancy remaining primarily agricultural unless s1(4) notice served at commencement of tenancy.

Trees	<ul style="list-style-type: none"> • Most agreements will prevent tenants from planting trees without the consent of the landlord (fruit trees excepting) and will reserve any non-fruit trees to the landlord. • If no bar, tenants have a right to plant trees where they are “ancillary” to the agricultural use of the holding. • The tenant can also apply to the first-tier property chamber Tribunal for the consent to plant trees. • Areas of woodland often excluded from the tenancy. Other timber generally reserved to landlord. Field scale planting likely not considered at commencement. • Potential for landlord to resume possession for tree planting under s31, subject to Tribunal approval. • A tenant planting agricultural land with trees without consent may be subject to a dilapidation claim at the end of the tenancy. 	<ul style="list-style-type: none"> • Most agreements will prevent tenants from planting trees without the consent of the landlord (fruit trees excepting) and will reserve any non-fruit trees to the landlord. • If no bar, tenants have a right to plant trees where they are “ancillary” to the agricultural use of the holding if the holding is let for agricultural purposes only. • If not restricted to agricultural use only, trees may be planted. • Areas of woodland often excluded from the tenancy. Possession can be resumed in accordance with the agreement, or by notice, if landlord wants to plant trees.
Landlords reserved rights	<ul style="list-style-type: none"> • These will be specified in the lease but will cover items such as trees, minerals, sporting, rights of access, wayleaves, easements and use of water. • Landlord generally reserves rights to non-agricultural income (subject to user clause), together with the right to grant interests in or over the land that do not interfere with the primary use. • There are particular rules relating to minerals. 	<ul style="list-style-type: none"> • Same as AHA
Tax position of the landlord	<ul style="list-style-type: none"> • In general, the estate of the landlord can claim 50% relief from inheritance tax on the agricultural value of the land. • However, if there has been a succession of tenancy or a surrender and re-grant after 30 August 1995, 100% relief from inheritance tax on the agricultural value of the land will be available. • Rent receipts will be treated as investment income unless it falls within a wider estate context • No access to capital gains tax roll over or reinvestment relief if investing in the property. • Can opt for value added tax on the non-residential aspect of the holding. 	<ul style="list-style-type: none"> • The estate of the landlord can claim 100% relief from inheritance tax on the agricultural value of the land. • Rent receipts will be treated as investment income unless it falls within a wider estate context • No access to capital gains tax roll over or reinvestment relief if investing in the property. • Can opt for value added tax on the non-residential aspect of the holding
Tax position of the tenant	<ul style="list-style-type: none"> • Stamp duty land tax will be payable on new tenancies created by succession. • 	<ul style="list-style-type: none"> • All new tenancies will be liable to Stamp duty land tax
End of tenancy compensation	<ul style="list-style-type: none"> • Detailed provisions for compensation in respect of physical improvements (such as planning consent) to the holding subject to landlord or tribunal consent and routine improvements. 	<ul style="list-style-type: none"> • Same as AHA

	<ul style="list-style-type: none"> • Landlord will expect any compensation to be reflected in improved capital and/or rental value obtainable. • Value added for non-agricultural uses may reduce landlord's eligibility for IHT relief. • Nat Cap improvements not included in current mechanism for end of tenancy compensation 	
Assignment and subletting	<ul style="list-style-type: none"> • Most tenancy agreements will contain provisions preventing assignment or subletting or parting with possession and in some cases sharing possession (e.g. through forming a partnership) of the holding. • Landowner in possession has the option of a range of agreement types for third party occupation depending on use and term. 	<ul style="list-style-type: none"> • Same as AHA
Dilapidations	<ul style="list-style-type: none"> • Detailed statutory provisions for dealing with dilapidations to the holding. • Landlord has obligations on maintenance of property, subject to the terms of the agreement. 	<ul style="list-style-type: none"> • No statutory provision for dilapidations so relies upon terms of the tenancy. Common law access to a claim of "waste" would also be available in the absence of any contractual terms. • Landlord has obligations on maintenance of property, subject to the terms of the agreement.

Table 4 Overview of the benefits and constraints of different players in the agricultural tenanted sector

ANNEX 3: Membership and Terms of Reference

Members

- Baroness Kate Rock, Chair
- Andrew Clark PhD CMLI (nominated by the National Farmers Union)
- Charles Cowap (Visiting Professor Harper Adams University)
- Simon Dixon Smith MRICS FAAV (nominated by the Country Land and Business Association)
- George Dunn (Tenant Farmers Association)
- Alastair Martin FRICS FAAV
- Matthew Morris FRICS FAAV
- Emily Norton (Savills)
- Janet Hughes (Department for Environment Food and Rural Affairs)

Terms of Reference

Purpose:

To provide independent advice to Defra on ways to maximise participation in and benefits of new Government financial assistance schemes targeting public benefits and productivity improvements for tenant farmers, occupying land primarily but not exclusively under the Agricultural Holdings Act 1986 and The Agricultural Tenancies Act 1995, as part of the Agricultural Transition in England.

The recommendations will aim to encourage Defra to develop policies and schemes that enable viable agricultural businesses through sustainable landlord-tenant relationships.

It is intended that the recommendations of the final review form one part of the relevant information taken into consideration when policy decisions are made in this area.

Objectives:

- To consider how DEFRA could use scheme design to facilitate participation of and benefits to tenant farmers in new Government ELMs and related schemes
- To consider what policy initiatives will:
 - best foster positive and long-term relationships between tenants and landlords
 - secure the long-term sustainability of tenant farming in England
 - support the important role of tenanted land in food production and environmental and climate outcomes
- To provide advice to DEFRA on ways to minimise the potential land lost from the tenanted sector to avoid damaging its resilience
- To consider if and why it might be necessary to look for new legislative or regulatory powers in the future
- To highlight issues which DEFRA may need to raise with other Government departments

Scope:

The scope of the review is to examine the landlord-tenant relationship within the current policy environment. This includes but is not limited to the range of schemes and policy areas below.

- All aspects of ELM schemes (SFI, LNR and LR)
- Woodland creation and management including via the England Woodland Creation Offer

- Productivity schemes and funding
- Lump sum exit scheme
- Farming Investment Fund
- New entrants scheme and funding
- Private finance markets for BNG, water/nutrient management and carbon - ecosystem services
- Regulation and enforcement

[Excluding animal health and welfare as not relevant]

Methods:

- Reporting directly to the Secretary of State
- Dedicated civil servant, who can draft a review
- Secretariat support from Future Farming engagement team, leading on organising meetings at convenient times for the largest number of participants as possible
- Wide range of stakeholder engagement - decide on methods; written submissions and also some informal engagement; online forum with e.g., pilot participants, co-design panel, test and trial farmers;
- Evidence sessions - opportunity to have some sessions to incorporate other people we don't have on the group - maybe 3 – 4 sessions
- Town halls with tenants

ANNEX 4: List of organisations who gave written submissions

Written submissions of evidence were asked for from key stakeholders in the tenanted sector. We received responses from the following organisations.

Agricultural and Horticultural Development Board
Brown & Co
Central Association of Agricultural Valuers
Ceres Rural
Church Commissioners
Country Land and Business Association
Environment Agency
Foundation for Common Land
Green Alliance
JH Agri Consulting
Ministry of Defence
National Trust
Natural England
National Farmers Union
National Federation of Young Farmers' Clubs
Royal Institution of Chartered Surveyors
Royal Society for the Protection of Birds
Tenant Farmers Association
Woodland Trust

The questions asked to all organisations were as below

1. What area of tenancy agreements does your written evidence focus on? (scheme design and access, woodlands, green finance, tenancy agreements, new entrants, etc.)
2. Describe your current role, interest in, and experience of working with landlord and tenant farmers
3. Please provide a summary of what you see as the key issues facing the tenanted sector in the agricultural transition.
4. Please provide a summary of what you see as the key issues facing the tenanted sector in accessing government schemes in the agricultural transition.
5. Where do you see the strengths and opportunities for the tenanted sector in the future? (In what areas can the sector thrive)
6. Please suggest what actions could be taken by Defra or its agencies to strengthen the sector's future
7. Please suggest what actions could be taken by landlords
8. Please suggest what actions could be taken by tenants themselves
9. Please provide any other suggestions or comments which you think are relevant to the work of the Tenancy Working Group.
10. Please provide any published policy or other position statements you or your organisation have made on the sector

ANNEX 5: Face to face engagement locations

The Tenancy Working Group arranged a series of roundtables across England. Our engagement with tenant farmers, landlords, agents, and local council members is mapped below.



ANNEX 6: Key stakeholders engaged throughout the process

Central Association of Agricultural Valuers (CAAV)
Country Land and Business Association (CLA)
Defra Ministers
Defra Policy Teams
Environment Bank
Forestry Commission
Foundation for Common Land (FCL)
Future Land Forum
Green Alliance
Law Commission
Lloyds Bank
National Trust
Natural Capital Research
Natural England
Nature Friendly Farming Group (NFFG)
National Farmers Union (NFU)
Palladium
Rural Payments Agency
Savills
Swinton Estate
Tenant Farmers Association (TFA)
Tenancy Reform Industry Group (TRIG)
Woodland Trust

ANNEX 7: Methodology and survey questions

Literature review methodology

To ensure an informed approach to the collection of evidence for the independent review, a short literature review of existing evidence on the tenanted sector was conducted. This included reviewing research papers and grey literature sources collated by the working group and reviewing internal Defra evidence and official statistics.

Written evidence methodology

The working group commissioned written evidence from key representative stakeholder organisations with specific experience and knowledge of the tenanted sector (including agents, tenants and landlords) to explore Issues facing tenant farmers in accessing the new schemes that are part of the agricultural transition in England. Organisations were encouraged to submit group responses. Stakeholders were invited to summarise what they felt to be threats and weaknesses and strengths and opportunities in the sector and were also asked to come up with actions which could be taken by Defra or its agencies to strengthen the sector.

Written submissions were commissioned at the beginning of April 2022. It was requested that submissions did not exceed 10 pages and stakeholders were asked to return evidence to the working group by first week of May 2022.

Engagement evidence

The working group held a series of group calls with key stakeholders with representatives from organisations and individuals, with specific experience and knowledge of the tenanted sector as well as small meetings and one-to-one meetings. These stakeholders gave varying insights dependent on role and experience. In addition to this, the working group held a series of semi-structured 'roadshow' events across England, meeting with representatives from the tenanted sector (including tenants and landlords). Though engagement explored the issues facing the sector, they were also solutions focussed discussions.

Analysis

Data from the written and engagement findings was qualitative. Content analysis was carried out on the findings. Data was coded and analysed using an inductive approach where the data was used as a basis for the coding framework where findings were organised into emerging themes. Analysis is presented as problem statements and opportunities for Defra, landlords and tenants to improve issues- it should be noted that in some instances opportunities have been clearly allocated to different parties but in other instances this has been interpreted.

We have not attempted to differentiate evidence by source characteristics (individual) or source method (events / interviews) - all is 'weighted' evenly.

The following caveats should be considered regarding all findings in this review. These caveats should also be mentioned in any reports that reference these findings.

This research is qualitative; this means that while it can provide robust and detailed insights into the tenanted sector, it should not be understood to be fully representative of all tenant and landlord experiences.

Analysis was undertaken to bring together and record transparently, evidence from a range of sources into common themes without assessing the robustness or conclusiveness of evidence provided.

Note on terminology: where sources are attributed to stakeholders this is from the written evidence. Where sources are attributed to respondents this is from engagement activities (one-to-one meetings, group calls and roadshow events).

Survey Methodology

Sampling

A purposive sample was recruited; farmers were contacted via newsletters and asked if they would like to take part. Respondents were not incentivised for their time.

Data collection

Questions were written by Defra analysts and reviewed by the independent Tenancy Working Group. The survey was created in the survey host platform Qualtrics. Respondents were provided with information about what the survey was aiming to do and a privacy notice.

Respondents completed the survey between 7th April and 17th June. Farmers were sent reminders via the NFU and TFA newsletters towards the end of the survey period.

Data cleaning and analysis

The data was processed using statistical analysis software (SPSS) to remove ineligible respondents. Data was formatted for analysis and quality assured. Questions with free-text responses in the 'Other' fields were analysed. Responses that were similar to the original options provided were recoded into these options, and themes mentioned five or more times were coded into new response categories.

Qualitative data was coded and analysed using NVivo qualitative analysis software.

Caveats

The following caveats should be considered regarding all findings in this review.

1. Participants were recruited via various avenues including a Defra blog, the National Farmers' Union, the Tenant Farmers Association, Farmers Weekly and contacts of the Tenancy Working Group. A purposive (self-selecting) sample was used, rather than typical research sampling methods. The data does not, therefore, represent the population of tenant farmers. These findings show views that exist in the tenant farmer population, but we cannot say how widely these views are held/how representative these views are.
2. All figures are as a percentage of the respondents who answered the question, not the total number of survey respondents.
3. When interpreting the qualitative data, caution is needed in using the comments provided as those respondents are a self-selecting sub-set and there can be a response bias. Where they relate to a specific issue, they are illustrative but not generalisable to, or robustly represent, the farming population. Generally, with a free text option, respondents with strong views are more likely to comment and this can potentially result in negative comments appearing more prevalent than might be the case i.e. respondents who are relatively content are less likely to provide comments (leading to some non-response bias).

Response rates

Some responses were removed for the following reasons:

- Test cases prior to survey launch
- Respondents who only owned land and did not rent any land

- Respondents who opened the survey but did not answer any questions
- Respondents who did not answer enough questions to meet the criteria for a valid response (a valid response required answers to the first two questions in the survey).

Survey

Start of Block: Introduction

Introduction

The Tenancy Working Group, convened earlier this year and chaired by Baroness Kate Rock, has been working to understand the issues facing tenant farmers in accessing the new schemes that are part of the agricultural transition in England.

The working group has developed this survey on tenanted land so that it can better target the independent recommendations it will make to Defra for how to improve schemes for tenant farmers.

The survey will take about 10 minutes to complete.

Your participation is voluntary, and your responses will be treated in the strictest confidence. We will not collect your name, contact details or any other data that can allow responses to be traced back to individuals. The data will be kept for a maximum of 3 years.

You can refuse to take part in this research by not completing it and you are free to exit the survey at any time.

Please review our [privacy statement](#) for further information on how your personal data will be processed. If you have questions about the study or the procedures, or if you are interested in contributing further, please contact FFCPEngagement@defra.gov.uk.

Starting the survey will be taken as an indication that you give your consent for your responses to be used. It will not be possible to remove your responses from the study at a later stage.

Before you commence, please be sure that:

- You have read the above information.
- You are the principal person involved with the business.
- You voluntarily agree to participate
- You understand that your information will be treated in strict confidence and any written work arising from this study will not identify you.
- You are 18 years of age or older.
- You agree that your responses will be used for the purposes of the research outlined above to be used within Defra.

End of Block: Introduction

Start of Block: Demographics and Background Information

ASK ALL

Agreements

(select all that apply)

What agreements do you have on your farmed land?

- Owner Occupied
- Land rented under Agricultural Holdings Act (AHA)
- Land rented in Farm Business Tenancy (FBT)

- Land rented out on other terms
- Seasonal
- Informal
- Contract Farmed (as contractor)
- Contract Farmed (as farmer)
- Share farmed
- Common land
- Grazing licence
- Cropping licence
- Private sector environmental market
- Other (please state)

ASK IF Agreements = Owner Occupied is selected AND SelectedChoiceCounts = 1

Check

Please continue if 'owner-occupied' is the only tenure type on your land. Otherwise, please go back and select all other options that apply.

[Click to continue]

ASK ALL

Sex

Which of the following best describes your sex?

1. Male
2. Female
3. Non-binary / third gender
4. Prefer not to say

ASK ALL

Age

Which of the following best describes your age?

1. <35
2. 35-44
3. 44-54
4. 55-64
5. 65-74
6. 75+

ASK ALL

Enterprises

(select all that apply)

What enterprises do you have on your farm?

1. Cereals
2. General Cropping
3. Mixed
4. Dairy
5. Lowland Grazing Livestock
6. Less Favoured Areas (LFA) Grazing Livestock
7. Horticulture
8. Specialist Pigs
9. Specialist Poultry
10. Non-farming diversification
11. Other (please state)

ASK ALL

Region

What region is your farm located?

1. North East
2. North West
3. Yorkshire and The Humber
4. East Midlands
5. West Midlands
6. East of England
7. South East (including London)
8. South West

ASK ALL

Main agreement

How would you classify your main Agricultural agreement?

1. Agricultural Holdings Act (AHA)
2. Farm Business Tenancy (FBT)
3. Seasonal grazing
4. Seasonal cropping
5. Informal

ASK IF Main Agreement = Farm Business Tenancy

FBT Length

(select all that apply)

If you have an FBT, what is the length of your Tenancy?

1. Less than 1 year
2. Rolling annual
3. 1 - 2 years
4. 3 - 7 years
5. 8 - 10 years
6. 11 - 24 years
7. 25 - 49 years
8. 50 - 100 years
9. > 100 years

ASK IF Main Agreement = Agricultural Holdings Act

AHA Agreement

If you have an AHA, what is your tenancy agreement?

1. First generation
2. AHA with succession
3. AHA for lifetime
4. AHA until retirement
5. None of the above

ASK ALL

Holding size

What is the size of your holding?

1. <5 hectares
2. 20 > 50 hectares
3. 50 > 100 hectares
4. 100 > 150 hectares
5. 150 > 200 hectares
6. 200+ hectares

ASK ALL

Primary Landlord

What best describes your primary landlord?

1. A private individual or family
2. A charity (e.g., church, diocese, educational body, NGO)
3. A company or financial institution e.g., a pension fund, investment vehicle
4. A landowning public institution (e.g., Duchy, The Crown Estate, MoD, water company)
5. Other [free text]

End of Block: Demographics and Background Information

Start of Block: Scheme Uptake, Participation and Engagement

Scheme Uptake, Participation and Engagement

Sustainable Farming Incentive (SFI)

The Sustainable Farming Incentive scheme is made up from a set of standards. Each standard is based on a feature like hedgerows or grassland, and contains a group of actions you need to do to manage land in an environmentally sustainable way.

You can choose which standards you want to do, and where on your land to apply them.

You'll be paid for doing the actions within the standards you choose. The Sustainable Farming Incentive launches in 2022.

ASK ALL

SFI Expect Apply

Do you expect to apply for the Sustainable Farming Incentive in the next 3 years?

1. Yes
2. No
3. Unsure

ASK IF SFI Expect Apply = No OR SFI Expect Apply = Unsure

SFI Factors

(select all that apply)

Thinking about applying for the SFI, what are the factors you consider?

1. Not aware of what they offer
2. I need advice on what is best for my tenancy agreement and land
3. Landlord is already participating in an existing scheme
4. Landlord is wanting to reserve the right to enter new schemes
5. Complicated application
6. Length of agreement does not match my tenancy
7. Clauses in my tenancy do not allow me to enter environmental schemes
8. It is not cost effective for me
9. Not for me
10. Other [free text]

Local Nature Recovery (LNR)

The Local Nature Recovery scheme will pay for actions that support local nature recovery and meet local environmental priorities.

The scheme will encourage collaboration between farmers, helping them work together to improve their local environment.

The scheme will begin piloting in 2022, and launch in 2024.

ASK ALL

LNR Expect Apply

Do you expect to apply to the Sustainable Farming Incentive in the next 3 years?

1. Yes
2. No
3. Unsure

ASK IF SFI Expect Apply = No OR SFI Expect Apply = Unsure

LNR Factors

(select all that apply)

Thinking about Local Nature Recovery or Landscape Recovery, what are the factors you consider?

1. Not aware of what they offer
2. I need advice on what is best for my tenancy agreement and land
3. Landlord is already participating in an existing scheme
4. Landlord is wanting to reserve the right to enter new schemes
5. Complicated application
6. Length of agreement does not match my tenancy
7. Clauses in my tenancy do not allow me to enter environmental schemes
8. It is not cost effective for me
9. Not for me
10. Other (please state)

ASK ALL

Landlord Discussion

Has there been any discussion with your landlord about entering the schemes?

1. Yes
2. No
3. Further information [free text]

ASK ALL

How able and comfortable do you feel discussing and making changes to your tenancy in agreement with your landlord?

Comfort Discussing Changes

1. Extremely comfortable
2. Somewhat comfortable
3. Neither comfortable nor uncomfortable
4. Somewhat uncomfortable
5. Extremely uncomfortable
6. Not tried

ASK ALL

Changes To Tenancy

What two or three changes to your tenancy agreement would best help enable your business to thrive?

[Free text]

ASK ALL

Comfort Paying Rent

When thinking about the new environmental schemes, withdrawal of BPS, and rent, how able and comfortable do you feel about being able to pay rent in the future?

1. I will be able to pay my rent comfortably
2. I am reasonably confident I will be able to pay my rent
3. I will struggle to pay my rent
4. I will not be able to pay my rent
5. I am looking to renegotiate my rent

ASK ALL

Planting Barriers

What barriers do you face to planting trees on your tenanted land that are not considered woodland? e.g. trees in hedgerows, trees, as shelter belts, or trees around a slurry pit (select all that apply)

1. Clauses in tenancy prohibit tree planting
2. The time to plant trees and benefit from them is longer than my tenancy arrangement
3. Not in my interest to plant trees as a tenant – there is no benefit to me
4. Other [free text]

ASK ALL

Selling Environmental Benefits

How much do you know about selling environmental benefits to the private market, such as carbon, biodiversity, or water quality benefits that you can deliver from your tenanted land?

1. Extremely aware
2. Very aware
3. Moderately aware
4. Slightly aware
5. Not aware at all

ASK ALL

Private sector contract

Would you enter your rented land into a contract with the private sector?

1. Yes
2. No
3. Unsure

ASK ALL

Private environmental factors

(select all that apply)

What factors would prevent you from going into these private environmental schemes?

1. Complicated application
2. I need advice on what is best for my tenancy agreement and land
3. Not aware of what they offer
4. Length of private agreement does not match my tenancy
5. Clauses in my tenancy do not allow me to enter private environmental schemes
6. Cannot sell environmental outcomes without landlord consent
7. Not for me
8. It is not cost effective for me
9. Unsure of tenancy clauses
10. Uncertainty about these new markets
11. Other (please state)

ASK ALL

Landlord Concern

How concerned are you that your landlord may want to take your tenanted land back in hand to access public or private environmental schemes themselves?

1. Extremely concerned
2. Moderately concerned
3. Somewhat concerned
4. Slightly concerned
5. Not at all concerned

6. I have been given notice

ASK ALL

Additional Environmental Standards

Thinking about your main supply chain customers (dealers, traders, or buyers under contract)

Have you been asked to meet additional environmental standards over and above the minimum regulatory requirements (for example a carbon audit, tree planting, soil management plan, cover cropping, additional certifications)?

1. Yes
2. No
3. Not yet, but I expect to

ASK ALL

Farming Investment Fund

Have you applied or considered applying for Farming Investment Fund?

1. Yes
2. No
3. Unsure

ASK IF Farming Investment Fund = No or Unsure

WhyNot

Why not? [Free text]

ASK ALL

Barriers to finance

Have you experienced barriers accessing finance for upfront investments in infrastructure or environmental improvements?

1. Yes
2. No

ASK ALL

Any Further Comments

Thank you for your time to respond to our questions. Please use the comment box below to provide any further comments on tenancy and topics covered by this survey.

[Free text]

ANNEX 8: Reports used in the review

- Andersons (2022) *Andersons Outlook 2022*
- APPG (2022) *Levelling up the rural economy: an inquiry into rural productivity*
- CAAV (2020) *Introduction to the CAAV Agricultural Land Occupation Surveys 2020*
- CAAV (2020) *Introduction to the CAAV Agricultural Land Occupation Surveys 2020*
- Ciaian, P., Kancs, A., and Espinosa, M. (2018) 'The Impact of the 2013 CAP Reform on the Decoupled Payments' Capitalisation into Land Values', *Journal of Agricultural Economics*, 69(2), pp.306–337.
- CLA (2021) *Tax Implications of Changing Land Use*
- CLA and TFA (2022) *Guidance for landlords and tenants on entering public and privately funded environmental agreements in the context of agricultural tenancies*
- CPRE (2019) *Reviving County farms*
- Defra (2013) *Future of farming review report*
- Defra (2019) *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*
- Defra (2021) *Defra Statistics: Agricultural Facts - England Regional Profiles*
- Defra (2021) *Farmer Opinion Tracker October 2021*
- Defra (2021) June Census of Agriculture 2021, you can find more information, the dataset and the methodology
- Defra (2022) *Farm Business Survey (2018-19 to 2020-21)*
- Defra (2022) *Farmer Opinion Tracker April 2022.*
- Defra (N.D) *Agricultural tenancies and taxation – briefing provided by Treasury (January 2021)*
- Defra (N.D) *Environmental Land Management. Test and Trials featuring tenants and landlords.*
- Defra (N.D) *Tackling pollution from slurry project. Tenants and slurry infrastructure grants: a case study.*
- Defra (N.D) *Woodland Trust – Tree planting schemes and tenants*
- Dimbleby, H., et al. (2021). *The National Food Strategy - An independent review for Government*
- Eftec (2021) *BNG Market Analysis Tenanted Land Extension*
- Extrapolated from the data contained in Defra (2019) *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*
- GOV.UK (2022) *Sustainable Farming Incentive: full guidance*
- Green Alliance (2022) *Land of Opportunity*
- Green Alliance (2022) *Natural capital – the battle for control*
- House of Commons – Environment, Food and Rural Affairs Committee (2022) *Tree Planting: Third Report of Session 2021-22*
- House of Lords (2022) *Nature-based solutions: rhetoric or reality?*
- Lancashire Wildlife Trust (2022) *A review of some impediments to farmers entering environmental land management agreement commitments.*
- NFU (2022) *Six simple NFU asks on the Agricultural Transition Plan*
- Olagunju, K. O., Angioloni, S., Wu, Z. (2019) 'Who Really Benefits from Single Payment Scheme (SPS) under Convergence of Payments? Micro evidence from Northern Ireland', *93rd Annual Conference of the Agricultural Economics Society.*
- RICS (2021) *TRIG Code of Good Practice*
- Whitehead, I, et al. (1995) *An Economic Evaluation of the Agricultural Tenancies Act 1995*