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Exeter Livestock Market EX2 8FD

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AUTUMN 2020 NEWSLETTER – 11.11.2020

The future landscape for agriculture has not changed fundamentally since our January newsletter. We are still waiting for the full outcome of Brexit and the detail that will follow the Agriculture Bill's Royal Assent. Neither have dominated the front pages as they did prior to COVID-19. One could not have imagined at the start of 2020 a greater amount of uncertainty than we already had with Brexit. One way or the other however the structural and market changes we have expected since 2016 will soon become clear. This will provide some much-needed certainty going forward as we continue to cope with the pandemic.

Moving with these changing times we have been busy rebranding our UK-wide trading service to "TCS Brokerage". Our brokerage house now includes the trading of Carbon Credits and Water Abstraction Licences (our team includes ex-Environment Agency officers) as well as BPS entitlements (see 16 below for our 2020 UK TCS Brokerage Market Report). We expect these increasingly important markets to be joined shortly by Biodiversity and Nitrate Offset (see 13.3 & 13.4).

The accumulating financial benefits of planting new woodland are another significant trend (see 2.4). This now offers the financial benefit of not only being able to continue to claim BPS payments (on land that was claimed on in 2008 for Single Farm Payment and is included in one of the various planting grant schemes) but also selling the carbon credits. Some new woodlands can provide a net profit in the first year of over £1,000 per acre excluding the BPS payments.

With our growing forestry team we can now provide "a one-stop shop" for everything you need from choosing a site, designing the planting, handling grants and verification processes to selling the carbon credits.

Another emerging market we are looking forward to is the recognition of carbon sequestration on farmland and the trading of the carbon credits if not restricted to ELMS. It would be an important step if the UN were to allow investment in developed countries such as the UK to generate offsets usable in international emissions trading systems. This is currently only possible through projects in the developing world. Likewise, inclusion of local offsets in the UK system would further improve their desirability (see 2).

BPS entitlement trading for 2021 is looking positive. Demand was so high in the last week prior to the 15th May this year that we ran out of 2020 English Non-SDA BPS entitlements which was without precedent in the 34 years I have been trading. Prices hit £160 per hectare and ended on the last day at £200. (See 16).

Also of note was a significant revival of Naked Acre letting, not seen since 2014, with rents of £60 per acre. This was due to the de-linkage option the Government is reserving from 2022; future BPS payments may be based on the entitlements held and claimed from a (as

yet unannounced) historic reference year (see 16 our 2020 TCS Brokerage UK Market Report).

However our core day-to-day work continues to be our land sales, professional advice, and managements as land agents maintaining our expertise, and allowing us to offer a wide range of services. This is essential to provide balanced, up-to-date and detailed advice across the agricultural sector when making strategic decisions and enabling our clients to get the most out of new opportunities in these fast-changing times.

Thank you for your continued business. We look forward to continuing to work with you whether as a landowner, farmer or fellow agent.

I hope you will find this news update useful.



Hugh Townsend
FRICS. FCIArb. FAAV.

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1. Agriculture Bill

1.1 UK

On the 9th November, the Agriculture Bill completed its “ping pong” between the Houses of Commons and Lords. This follows a protracted difference between the Houses on agricultural imports and the Bill’s role in their regulation. The legislation now awaits Royal Assent, which it will hopefully receive soon to finally allow some much-needed clarity on the future of agricultural support schemes.

1.2 Scotland, Wales & Northern Ireland

New support schemes prepared in the Agriculture Bill will mainly apply to England. The latest version of the Bill allows Northern Ireland to prepare replacement schemes. Whilst

there are provisions involving Wales these are intended to be temporary, the Welsh Assembly means to introduce a Wales (Agriculture) Bill shortly. The Scottish Government has introduced a Scottish Agriculture Bill which was passed into law on 1st October 2020. The Bill creates powers that enable Scottish Ministers to ensure the Common Agricultural Policy (CAP) can continue beyond this year. They also retain the ability to make improvements to the scheme following Brexit. Farm support is expected to largely remain the same in Scotland until at least 2024.



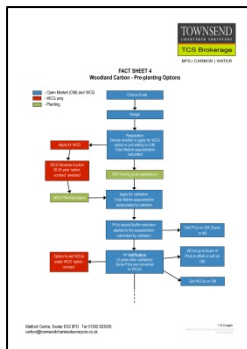
2. Carbon Trading

2.1 Woodland Carbon Guarantee and emissions trading

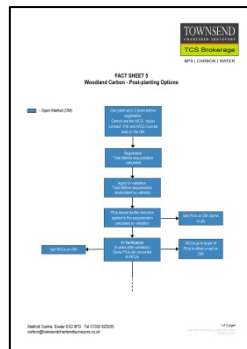
The UK is set to launch its own Emissions Trading System (ETS) from 1st January 2021 as it leaves the European ETS. Whilst this will initially focus solely on the trading of emission allowances, the Government has suggested that they may later include carbon offsetting as a means of decarbonising the economy. This would open the market further for those in carbon capturing schemes such as the Woodland Carbon Guarantee, creating a larger purchaser base in the open market to complement their Government contracts. As the old framework for emissions trading under the Kyoto Protocol nears the end of its lifespan, large companies are keeping a close eye on what will replace it. Currently the Paris Agreement allows nations to set 'Nationally Determined Contributions'. These are targets for emissions reductions that each country sets for itself. It is up to the individual country to decide how reductions are to be achieved and whether to make use of emissions trading and offsetting.

2.2 Woodland Carbon Code and Woodland Carbon Units

The Woodland Carbon Code and its Woodland Carbon Units are a recognised means for companies to account for their carbon use if they are among those required to report their total emissions to the Government. As such the Woodland Carbon Code may be used by a company in reporting its UK based emissions but not currently for international offsetting. They are, however, still an excellent tool for use as part of voluntary standards such as ISO 14001 or for companies looking to present themselves as 'Green' and carbon neutral. Read more about trading "Carbon trading after Covid19" as it was at the end of August 2020 [here](#) and for the most current update on "Carbon capture and trading" see our website [here](#).



Fact sheet 4 – Woodland Carbon – Pre-planting option



Fact sheet 5 – Woodland Carbon – Post-planting option



Fact sheet 6 – Woodland Carbon Code – Guidance notes

2.3 Future of the carbon offsetting market

Mark Carney, green finance advisor to Boris Johnson, has established a task force to promote the carbon offsetting market. This has two key objectives; firstly, to expand the market and secondly to ‘legitimise’ the market by establishing a framework to regulate and standardise the price and quality of carbon units across projects.

This is a key development for the UK carbon market. The Government has so far been slow to embrace offsetting as a tool to reach carbon neutrality, understandably focusing on reducing emissions in the first instance. For certain industries, however, there will always be a level of emissions produced out of necessity. Once a company has made all possible reductions then offsetting is the only means to achieve “net zero” emissions.

International projects have in the past been found to achieve less carbon sequestration than expected. Cases like illegal mining causing deforestation in Madagascan forests used for carbon capture has undermined the reputation of international offsetting projects. There is a perceived lack of transparency and quality assurance; when the project is halfway across the world, how does one know it is delivering what was promised to a purchaser of captured carbon? By contrast, UK standards such as the Woodland Carbon Code have both immediate, local visibility and a rigorous ongoing validation and verification process by independent bodies. These provide a high-quality carbon unit for the purchaser and this excellence should be promoted.

Mr Carney’s task force aims to unify the various UK carbon capture schemes and promote them to a wider market with a focus on project quality and confidence. This would provide a huge boost to a market primed for expansion. As companies large and small increasingly pledge carbon neutrality, farmers and landowners should consider a range of carbon capture schemes from woodland creation to peatland and soil management to prepare for this demand and alleviate the upcoming loss of BPS direct payments.

2.4 Woodland establishment for carbon trading and claiming BPS as well

From the Government’s perspective, woodland carbon trading is just one of a suite of measures to make woodland planting more attractive. Income from carbon unit sales can be combined with one of several valuable capital grants such as the Countryside Stewardship Woodland Creation Grant or the Woodland Carbon Fund. If a government capital grant for woodland creation is claimed on land that was used for the Single Farm Payment in 2008, the woodland may also remain eligible for the BPS for a number of years after establishment.

3. Coronavirus

3.1 Insurance pay-outs

A recent High Court judgement, *Financial Conduct Authority v Arch and others*, has given hope that policy holders may be able to make claims due to Covid-related business interruptions. This could potentially affect 370,000 businesses that previously had claims rejected.

3.2 Residential evictions - six-month notice period now applies until March 2021

On the 25th March, the Coronavirus Act extended the notice period to six months for most Assured Shorthold Tenancy possession proceedings. This extension will now cover notices served before the 31st March 2021 at the earliest. Note the extension does not apply to “serious antisocial behaviour” or tenants who have been in rent arrears for more than six months.

3.3 Cumbria Growth Hub grants

The latest series of coronavirus related grants include the Cumbria Growth Hub offering between £1,000-5,000 to small and medium-sized businesses to address their immediate needs in relation to the coronavirus. Farmers in Cumbria must show that coronavirus caused a 40% reduction in income between March and June compared to this period last year.

3.4 2nd National lockdown grant funding

While the lockdown should not directly affect conventional farming activity, many common diversifications will be forced to close, including campsites, shoots and holiday lets, and rural tourism activities in general may reduce to the government’s discouragement of travelling. Affected diversifications may be eligible for support funding. The Local Restrictions Grant is a likely funding source, which generally provides up to £2,100 per 28 days of closure, although this varies by local authority. If a diversified business is run as a sole trader or partnership, its owners may also be eligible for the Self-Employment Income Support Scheme, which is split into two six months payments. The first of these is worth up to £5,160 for each self-employed person, which could include each partner in a partnership.

3.5 Covid and the Rural Payments Agency

The RPA will still carry out inspections through the lockdown, albeit with social distancing restrictions, and their helplines remain open. Documents can be submitted by post and email, but not directly at the RPA’s offices. Due to its emphasis on new business ventures, including those related directly to tourism, the RDPE growth programme has been particularly affected by the virus. This has led to extensions to both claim deadlines and application periods for the programme, as well as deadlines for obtaining planning consent.

4. Other Grants and Funding

4.1 Countryside Stewardship update

New guidance has been issued for transfers of agreements, allowing buyers of land to more easily take on and continue to manage agreements on the land they are leasing. It allows for existing agreements to be given up under some circumstances without a reclaim of payments already received. These circumstances are relatively wide ranging, including deaths or other changes to business structure, sale or tenancy where the new occupant does not wish to continue with the agreement, and “force majeure or exceptional circumstances”.

Also, in August, a one-year extension was announced for the completion of certain capital items including those under hedgerow and boundary, woodland creation and water capital grants for existing agreements beginning between the 1st April 2018 and 31st December 2019.

4.2 Temporary Annual Investment Allowance increase to end

From the 1st January 2021, the deductible amount permitted by the Annual Investment Allowance, which allows capital investments such as new machinery to be offset against profits, is set to fall back to £200,000. This allowance was temporarily increased to £1 million for 2019 and 2020.

4.3 Regional flood grants

The Government has extended its Property Flood Resilience (PFR) scheme by a further 9 months. Farmers and rural businesses affected by flooding in November 2019 and storms in February 2020 can claim up to £5,000 to make homes and businesses more resistant to flooding. The deadline is now 31st December 2021 for November 2019 floods and 1st July 2022 for those affected in February 2020.

5. Release of Gamebirds

DEFRA have announced a licensing system for limiting the release of gamebirds around European Protected Sites. This will include controlling the release of pheasant and red-legged partridge within 500 metres of Special Protection Areas (SPA) and Special Areas of Conservation (SAC). SPAs and SACs form a network of protected sites across the EU to safeguard the habitats of migratory birds and certain threatened birds. Pheasants and partridges are to be classified as a peril to native wildlife and from 2021 the rules of the new licence must be followed to release the non-native birds near these sites.

This does not mean a ban, as widely reported, just that certain conservation sites and 500m around them (the ones designated by the EU) will need to comply with the terms of a new General Licence to release gamebirds. Only SSSIs that fall under SPA and SACs will be affected by the new rules; other SSSIs will continue to be regulated by Natural England as before. You will not need to apply for a licence but must simply follow the rules (to be published online) if you fall within a designated site.



6. Removal of Greening Requirement in England, Scotland and Northern Ireland

DEFRA and DAERA have announced that for 2021 all previous 'Greening measures' will not be required. This includes removal of the three-crop rule, Ecological Focus Areas and the Greening requirement to reinstate Permanent Pasture in certain circumstances. The minimum standards, however, for environment, animal and plant health and animal welfare, including hedges and buffer strips are still required. SGRPID has removed the three-crop rule, however unlike the other two has kept EFA and Permanent Pasture protections. At the time of writing RPW has yet to confirm its position although they are expected to follow suit.

7. Planning

7.1 Class Q

When granted a 'Class Q consent' to convert agricultural buildings into residential use, due to some recent legal challenges there may be scope to 'upgrade' the permission to a better, more valuable planning scheme. Cases like *Mansell v Tonbridge & Malling BC* have shown that a case can be made that better designed, more visually pleasing, buildings may be approved by an authority when the alternative is an obtrusive, unsightly building which may result from an agricultural conversion. A local authority could be swayed that a new house is a preferable option to an alternative conversion that would happen anyway.

7.2 Permitted Development expansion

On 31st August 2020 the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 came into force. This has introduced new permitted development rights for the demolition and reconstruction of buildings in brownfield sites and the addition of up to two extra stories to qualifying houses, or up to three for qualifying blocks of flats. It also introduced a new "commercial business and service" use

class to allow changes between retail, restaurant, professional and financial service, gym, research facility and office uses without a permission.

8. Residential Property

8.1 Tenant Fees Act

Landlords should note that as from June this year the Tenant Fees Act now applies to all residential tenancies. The grace period for tenancies that started before the Act was instigated in 2019 is over, so the amount of deposit is restricted along with prohibiting certain fees. Any term in the tenancy agreement requiring one of the prohibited payments is void. Breaching the Act prevents the serving of a section 21 notice and potentially incurs a £5,000 fine.

8.2 Minimum energy efficiency standards consultation

In April 2020 regulations were introduced to prevent new rentals of properties with an Energy Efficiency Performance Certificate rating of worse than “E” without an exemption. The Government is now consulting on raising this minimum requirement to “C” or greater. The consultation began on the 28th September and will last until the 30th December, with any resulting regulatory changes set to be enacted “before 2030”.

9. Leases under the Electronic Communications Code

As the 5G rollout continues to intensify, so too will the numbers of farmers and landowners with telecommunications masts on their holdings. This means that the laws governing leases for this kind of equipment will only become more important.

Like agricultural tenancies, telecoms leases are governed by their own specific legislation. This is known as the Electronic Communications Code (the Code), which is now contained within the Digital Economy Act of 2017. The Code has several key characteristics, including that:

The Tribunal can impose an agreement

The Code in its current incarnation was created to aid the spread of faster internet across the country. This includes ensuring telecoms companies (or “operators”, as the Code calls them) can access the sites they need. Therefore, if a would-be Landlord does not wish to let a site out to an operator, the operator can demand that the Upper Tribunal (Lands Chamber) imposes an agreement on the landowner. Note there are some limitations to this. The Tribunal cannot impose an agreement if it believes that the harm to the landowner outweighs the public benefit of having a mast in that location, for example.

Rental values do not naturally favour the landlord

The payment received under a Code lease is split into “compensation” and “consideration” by operators. While what falls into which category is a distinction of some consequence for the operator and may have ramifications for valuation of rents going forward, it is mere

semantics to the individual landowner. The total payment should, in theory, be at a market level. However, the Code states this rate must ignore the telecoms use of the site. This means operators have tried in the past to demand rents based purely on the agricultural value of the site, as a proportion of the whole farm if it were let under a Farm Business Tenancy. As sites are usually very small, this has in the past led to annual payments as low as £600 per year. This approach has been challenged in court from various angles, and there are several cases currently at various stages in the appeal process. There are several ways such low rents can be contested, often focusing on the disruption that letting out even a small site can cause to a farming operation.

Agreement renewals on existing sites are currently a grey area

Some early leases are still effectively traditional commercial tenancies under the Landlord and Tenant Act 1954, which gives a higher rent than the Code. As these leases expire, when operators request renewal, they are likely to also demand a reduced rent and a new tenancy under the Code, which is likely to be more favourable to them. However, factors such as the date when the original tenancy expires and whether or not the tenant “contracted out” of security of tenure can affect the operator’s chances of success. To what extent remains to be seen until the ongoing test cases are decided.

These three points are just a small taste of the Code’s intricacies. In practice a Code negotiation can cover a wide array of detailed issues. Therefore, this is both currently an area of considerable specialisation, but also set to affect many more farms across the UK. Watch out for the “knock on the door” for a new site or tenancy renewal, not necessarily a welcome approach but one needing specialised advice to protect the land and maximise the rental offer.



10. 2021 English BPS Entitlement Prices and 2020 Payment Rates

10.1 Prediction for English entitlement prices for this coming season

With the Agriculture Bill yet to fully pass through Parliament there is still a lack of clarity regarding the phasing out of entitlements. Direct Payments will continue until 2027 however there is uncertainty as to if, how and when these payments might be de-linked from land. Will annual claims or other requirements be needed, and which reference year will be used for the claim? The payments will have a reduction applied each year, the bands of which are dependent on the total value of the claim. The bands for 2021, although not yet confirmed, are believed to be:

Up to £30,000 = 5%
£30,000-50,000 = 10%
£50,000-150,000 = 20%
£150,000 or more = 25%

These reduction rates are expected to be amended each year with the reduction increasing until BPS is phased out.

There was an extraordinary end to last year's trading in England of Non-SDA entitlements where there were none to sell which has for all types of quota/subsidy not happened before (see 16 our 2020 TCS Brokerage UK Market Report). The 2020 season started at £155-160 plus VAT and we expect prices to start at a similar figure for 2021. SDA entitlements are expected to start trading at £200, whilst Moorland is expected to trade at £35.

10.2 2020 English BPS entitlement payment rates

The 2020 BPS entitlement values and greening rates were announced on the 3rd November. Farmers are set to see a slight increase in their payments this year, following the removal of the Financial Discipline Mechanism, which was previously used to support the EU crisis fund.

2020 BPS ENTITLEMENT PAYMENT					
	BPS VALUE €	GREENING VALUE €	TOTAL VALUE €	Exchange rate €1 = £0.89092	TOTAL VALUE £
ENGLISH NON SDA	182.70	79.07	261.66		233.22
ENGLISH SDA	181.34	78.58	259.92		231.57
ENGLISH SDA MOORLAND	49.76	22.02	71.78		63.95

The BPS payments for England are set in Euros and then converted into sterling. The exchange rate for 2020 is the same as 2019 at €1 = £0.89092. Other regions are yet to confirm their payment rates for 2020. DAERA has announced that all BPS payments in Northern Ireland will have an increase of 4.3% applied to the value. This is due to the increasing difference between the allocated budget and the actual amount paid out as entitlements go unclaimed and are 'lost' to the pool.

11. Farm Agency

Brexit, COVID-19 and agricultural policy have been the major factors influencing the market, however land values have remained firm. Lockdown in the Spring brought the open market to a standstill, however gradually the market revived from July. UK average values remain at £6,700 per acre with prime arable at £8,700, Grade 2 arable at £7,300 per acre and Grade 3 grassland at £5,400.

Country residential and amenity farmland are in demand as urban-based buyers seek more green space. Also there is increased demand for greenfield land with forestry planting potential making use of the Woodland Carbon Code scheme and the added value of being able to sell the woodland's carbon units.

Many commercial farmers remain cautious however, wanting more clarity for the future before making major investment decisions by waiting on the Agriculture Bill, UK environmental policy, and Brexit.

We have a ring-fenced block of bare land (250 acres) Grade I & II for sale coming soon to the market in Herefordshire. For further details please email asquires@townsendcharteredurveyors.co.uk



12. Legal Cases

12.1 Kirby & Ors v N Baker and Metson Ltd

The High Court has clarified that prior approval for permitted development, (i.e. permitted development rights), compared with the grant of planning permission, is not sufficient for evicting a tenant under the Agricultural Holdings Act 1986 Schedule 2 Case B.

12.2 EE Ltd/Hutchinson 3G Ltd v Duncan and Others 2020

The Scottish Lands Tribunal decided in relation to the Electronic Communications Code that the desirability of new code agreements for operators is not enough reason to replace an existing agreement. The operator must show that the existing agreement is “unduly onerous or restrictive” for a new one to be imposed.

13. Other Matters

13.1 Farm input restrictions

On the 18th September, DEFRA confirmed that the sale and application of metaldehyde, commonly used for slug control, will be prohibited from the 31st March 2022. On the 3rd November, DEFRA opened a consultation on the restriction of solid urea fertilisers, which considers options including an outright ban. This consultation will close on the 26th January.

13.2 Brexit

The EU’s Geographical Indicator Scheme (GIS) will be replaced in the UK with a local scheme from 1st January 2021. The schemes protect the names of traditional local products, preventing similar items produced elsewhere from using the same names. Local specialities in Great Britain whose names are currently protected by the EU scheme, such as West Country Cheddar cheese, Welsh lamb and Harris tweed, will automatically be transferred to the UK scheme. The situation is more complicated in Ireland as some names, such as Irish whiskey, may be used either side of the Irish border.

It is now confirmed that after Brexit due diligence checks will be required on timber moving from Great Britain to Northern Ireland and from Great Britain to the EU, but not from Northern Ireland to the EU.

13.3 Environment Bill

This has now reached the Committee stage in the House of Commons. It is not specifically focused on agriculture but contains a number of relevant provisions. A new planning requirement for “biodiversity gain” is to be introduced which could see farmers gain a new income stream. This would take the form of tradeable “biodiversity offset” credits, whereby a farmer or landowner would get paid by developers for a quantified improvement to the biodiversity on their land to offset ecological harm from the development. We foresee that these would be tradeable on the open market and could command significant value as they will be required for some very high value developments to go ahead.

Other key provisions include that from 2028 the Environment Agency will be able to reduce

water abstraction licences for environmental reasons without compensating the owner, and that those found guilty of unlicensed tree felling in England may be subject to an unlimited fine and a “restocking order” compelling the replacement of the illegally felled trees.

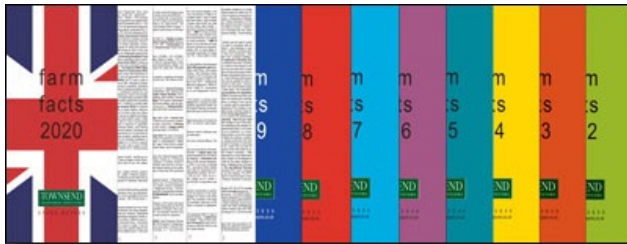
13.4 Nitrate offset

The Government announced a pilot scheme on the 11th September to enable development on the Solent in Hampshire. This had stalled because of nitrate pollution to the River Solent.

To resolve this problem, the Government is creating an online auction service for landowners to list potential environmental improvements to nitrate buffer sites in the area. Developers will bid to use these improvements to offset nitrate contamination from their developments. Landowners listing improvements will receive a payment from the highest bidding developers to put them into place. The developers can then use them to help attain planning permission.

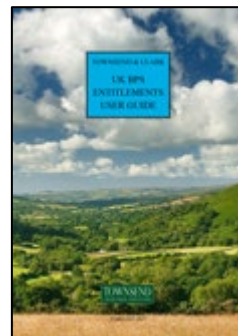
Although this is currently a pilot scheme to be limited to one particular area, the Government has suggested it may be expanded into other areas facing similar issues.

14. Farm Facts 2020



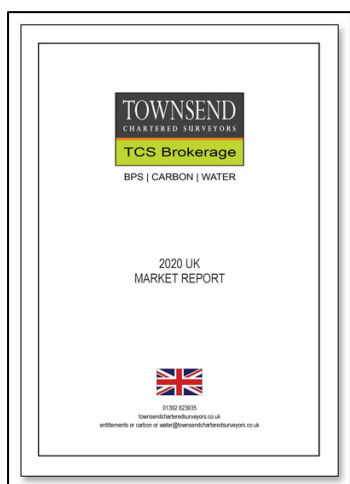
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15. UK BPS Entitlements User Guide

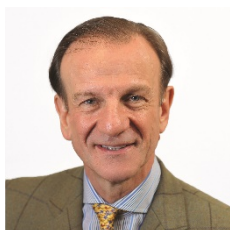


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16. 2020 UK TCS Brokerage Market Report



Our UK-wide 2020 market report now includes Carbon Credit and Water Abstraction Licence trading with BPS entitlement trading, which can be downloaded or viewed [here](#).



Hugh Townsend
FRICS. FCI Arb. FAAV.



Mark Burton
BA (Hons). MSc.



Alasdair Squires
BA (Hons).



Paul Bradford
MSc. MCIWEM C.WEM



Michael Steed
MICFor. MCIEEM. MArborA.



Julia Clark
BA (Hons).



Kathy Dean



Matford Centre, Matford Park Road, Exeter EX2 8FD
Tel: 01392 823935
www.townsendcharteredurveyors.co.uk

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H McC TOWNSEND FRICS. FCI Arb. FAAV. *Office Manager* MRS J CLARK BA(Hons) *Administrator* MRS K DEAN
Senior Assistant Land Agent MARK BURTON BA(Hons). MSc. *Assistant Land Agent* ALASDAIR SQUIRES BA(Hons).
Consultant PAUL BRADFORD MSc. MCIWEM C.WEM *Consultant* MICHAEL J. STEED BA MICFor. MCIEEM. MArborA.

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