

Number: WG37107



Llywodraeth Cymru
Welsh Government

Welsh Government Consultation Document

Agricultural Tenancy Reform

A consultation on tenancy reform and call for evidence on farm business
repossessions and mortgage restrictions over let land

Date of issue: 9 April 2019

Action required: Responses by 2 July 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

Following the recommendations put forward by the Tenancy Reform Industry Group (TRIG), this consultation seeks views on reforming and modernising agricultural tenancy regulations. Whilst this consultation runs concurrently with a very similar Defra consultation there are differences so respondents should ensure they respond to the consultation where relevant holdings are registered.

We are also seeking your views on other topics, which may impede the performance of tenanted farming businesses for us to better understand the views of both tenants and landlords.

How to respond

We appreciate you taking time to read and respond to this consultation.

All consultation questions are optional except for the 'About you' section. This shows us if we have engaged with a diverse and broad range of people. Responses on behalf of organisations will be analysed separately from responses from individuals, so it is important we know in which capacity you are responding.

If you are responding on behalf of an organisation we ask for your name and the organisation's name. However, you have the option to remain anonymous if you wish. Please refer to the Data Protection section for further information about how this is used.

The consultation will run from 9 April to 2 July 2019. Any responses received after this time will not be included in the analysis of the consultation responses.

Tell us what you think. Your views are important to us. They will help us refine and shape our proposals.

The closing date for the consultation 2 July 2019.

You can reply in any of the following ways:

Online

The consultation document can be accessed from the Welsh Government's website at

<https://beta.gov.wales/consultations/>

Write to us:

Legislation Development Team
Agriculture: Sustainable Development Division
Welsh Government
Spa Road East
Llandrindod Wells
Powys LD1 5HA

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Legislation Development Team
Welsh Government
Spa Road East
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SLMenquiries@gov.wales

0300 025 8303

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it;
- to require us to rectify inaccuracies in the data;
- to (in certain circumstances) object to or restrict processing;
- for (in certain circumstances) your data to be 'erased';
- to (in certain circumstances) data portability; and
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:
Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113
Website: <https://ico.org.uk/>

1. Purpose of this consultation and call for evidence

- 1.1 We are seeking views on options for reform of agricultural tenancy law in Wales which could remove perceived barriers to productivity and facilitate structural change in the tenant farming sector. This consultation is being run concurrently with Defra. Where land straddles the border, responses should be made to the consultation where the holding is registered.
- 1.2 We are also calling for evidence and views on two matters which will inform future policy direction for the agricultural tenanted sector;
- whether current restrictions on agricultural mortgages are a barrier to landowners wishing to let land; and
 - whether there is a need to introduce additional measures into repossession proceedings to provide protection for farm business borrowers who are unable to meet finance repayments.

2. Introduction

Background on agricultural tenancies

- 2.1 In Wales around a third of agricultural land is rented through both formal and informal agreements. The opportunity to rent agricultural land offers a means of entry into farming for people with no family connections to land or capital to buy land. It also enables established farmers to grow in a flexible way by adding parcels of rented land to their business. It offers landowners, who may not want to farm all or part of their land themselves, flexible opportunities to rent land to others whilst retaining an income from the land. This flexibility is a part of the agricultural industry's ability to respond to changing circumstances.
- 2.2 The relationship between landlords and tenants of agricultural tenancies is governed partly by the terms of their individual tenancy agreements, and partly by the framework of agricultural tenancy legislation. The two main pieces of legislation governing agricultural tenancies are:
- **The Agricultural Holdings Act 1986** ("the 1986 Act"). Applies to agricultural tenancies entered into before 1 September 1995. These tenancies have lifetime security of tenure and most granted before 12 July 1984 also carry statutory succession rights for up to two generations of eligible close relatives on death or retirement of the incumbent tenant (except for council farm Agricultural Holdings Act (AHA) agreements which do not have statutory succession rights).
 - **The Agricultural Tenancies Act 1995** ("the 1995 Act"). Applies to most tenancies of agricultural land beginning on or after 1 September 1995 and are generally known as **Farm Business Tenancies** ("FBTs").
- 2.3 The Agricultural Tenancy Act 1995 replaced the 1986 Act with a simpler more flexible framework to encourage more agricultural lettings. The number of AHA agreements is in natural decline and on current trends will cease to be a significant part of the tenanted sector by around 2050. Data from the Central Association of

Agricultural Valuers (CAAV) Agricultural Land Occupation survey 2017 indicates the majority (76%) of land (in England and Wales) from ending AHA agreements is re-let as a Farm Business Tenancy. It is worth noting many farmers own land as well as rent land and where they rent land they may have a variety of different agreements in place, as well as seasonal or grazing licenses.

- 2.4 Following Brexit, the Welsh Government is proposing a new Land Management Programme to replace the Common Agricultural Policy (CAP) in its entirety. As set out in Brexit and Our Land (BaOL) a key principle of the new Programme is fair access for all land managers including those in tenancy arrangements. The responses to the consultation on BaOL have highlighted the need to reflect carefully on tenancy law in order to grant equal access to schemes. It also noted concerns that tenant might be unfairly excluded from new schemes due to the length of scheme contracts and that transferable contracts should be considered. It is the Welsh Government's intention to publish the summary of responses to BaOL and the Welsh Government's response in May. The Welsh Government plan to publish a further consultation document in advance of the Royal Welsh Show this year.

Legislation

- 2.5 The Agriculture Bill was introduced to Parliament on 12 September 2018 and provides both the UK Government and the Welsh Government with new powers to ensure continuity and make changes to agricultural support schemes in each of England and Wales (as well as extending some provisions to Northern Ireland).
- 2.6 The Welsh powers are transitional and we intend to bring forward a Wales Agriculture Bill to the National Assembly in due course. We will consider the most appropriate vehicle for making any changes to agriculture tenancies which are necessary following this consultation.

3. Proposals for reforming agricultural tenancy law

What we want to achieve

- 3.1 This consultation considers whether the policy framework for agricultural tenancies is fit for the future, to enable tenant farmers and agricultural landlords to thrive as we move away from the CAP and introduce new agriculture policy. We want to ensure tenancy law does not stand in the way of tenants' and landlords' ability to adapt to change, access new schemes, improve productivity and enable structural change. The need to address any legislative barriers must balance the need to provide fair protection to both parties and continue a flexible approach which maintains confidence in the tenanted sector. We want to hear views and collect evidence on improving Welsh agriculture through changes to tenancy policy, legislation, and industry culture and practice which might be needed to deliver this ambition.

3.2 Our policy goals for agricultural tenancy policy and legislation should:

- Provide an enabling environment for sustainable productivity improvements and investment;
- Facilitate structural change and support new entrants and next generation farmers so the sector has the skills and talent needed to thrive in the future; and
- Enable tenant farmers to access new agricultural and land management schemes.

Why are reforms needed?

3.3 The productivity growth of our farming industry is lagging behind other countries. The current rate of productivity growth across UK agriculture averages only 0.9% a year. By contrast, the rate of growth in France is 2.5%, in the US 3.2%, with the Netherlands achieving 3.5%. Total factor productivity (“productivity”) is a measure of how well inputs (e.g. land, labour, capital, machinery, supplies such as animal feed) are converted into outputs (e.g. crops, livestock, fruit and vegetables) giving an indication of the efficiency and competitiveness of industry.

3.4 A key driver for improving productivity performance is having people with the skills and entrepreneurial drive to implement new ideas in the sector. Barriers to entry and exit in the agriculture sector mean there is very little structural change, resulting in an ageing profile of farmers and limited opportunities for new entrants, who can bring new skills, ideas and innovation into the sector.

3.5 In 2017 the TRIG ¹ presented their views on what changes might be needed in future to help improve productivity growth and structural change in the tenanted sector. TRIG identified several areas of agricultural tenancy legislation which may present barriers to productivity and structural change including:

- Succession provisions in the 1986 Act may be preventing skilled farmers from taking over a holding. Older tenants with no successor have limited options to realise value from their lease to help them retire and so remain on the farm. Providing mechanisms to enable older farmers to retire or move on could make land available to be farmed by a more productive new tenant;
- Some landlords may be discouraged from offering longer-term lets because of the lack of provision in the 1995 Act to enable them to end a tenancy quickly if the tenant breaches the contract in certain circumstances, such as not paying the rent;
- Some landlords may be discouraged from investing in holdings due to the current rent review provisions; and

¹ TRIG is an industry advisory group to Defra and Welsh Government, comprising of representatives from the main tenant farming and landlord industry organisations as well as from professions which advise tenants and landlords.

- Some tenants may be prevented from accessing future land management schemes and undertaking activities which could lead to productivity and environmental improvements due to restrictive clauses in their leases.
- 3.6 The options for reforming tenancy law in this consultation are aimed at tackling these problems and delivering our policy goals of creating an enabling environment for sustainable productivity improvements, facilitating structural change, and ensuring tenants are able to access future land management schemes. Any legislative reforms must also ensure the necessary fair protection in the legal framework for both tenants and landlords is maintained and flexibility and confidence in the tenanted sector remains.
- 3.7 It is important to highlight the role of the tenant landlord relationships in delivering the policy goals we are seeking. Where good relationships exist and tenants and landlords understand each other's businesses they very often work effectively together to resolve problems and issues with no need for recourse to the legislative framework or dispute resolution procedures. The legislative framework remains the backstop when relationships are not working, hence the need to ensure it is fit for the future and will enable our policy goals to be delivered.
- 3.8 Given the importance of landlord tenant relationships there may be a role for non-legislative actions, such as disseminating industry best practice, guidance, training and model agreements as an alternative to or to work alongside legislative reform. These non-legislative options are explored further in section three.

Consultation section one: proposals to facilitate structural change

The proposals in this section focus on reforms to the 1986 Act to help facilitate structural change in the sector and open up more opportunities for entrepreneurial next generation farmers with skills to drive productivity improvements.

4. Proposal for new provision for an assignable Agricultural Holdings Act tenancy

Current legislation, overview of policy issue and aim of proposals

- 4.1 The 1986 Act currently provides life time security of tenure and succession rights for eligible close relatives but there is no provision for a tenant to assign their lease to a third party if they do not have a family successor to take over the holding. This means some tenants can become 'trapped' on the holding. For example where tenants without a family successor, where the farmhouse is their home, and when they have limited financial means to retire. In these cases, land is not being made available to other tenants, who may be able to farm it more productively. Some landlords are tackling this issue by negotiating with their tenants helping them to retire by buying out their remaining life interest in the lease and / or providing them with alternative affordable retirement housing. Not all landlords have the means or motivation to do this.

4.2 As AHA holdings are often larger equipped farms they could provide valuable business opportunities for entrepreneurial farmers wanting to progress and grow a farm business. The aim of the proposals below are to help facilitate structural change in the AHA sector by enabling older tenants who want to retire to realise financial value from their lease by allowing them to sell and assign their lease (subject to certain conditions as set out below) to a new third party tenant, unlocking the land for new tenants.

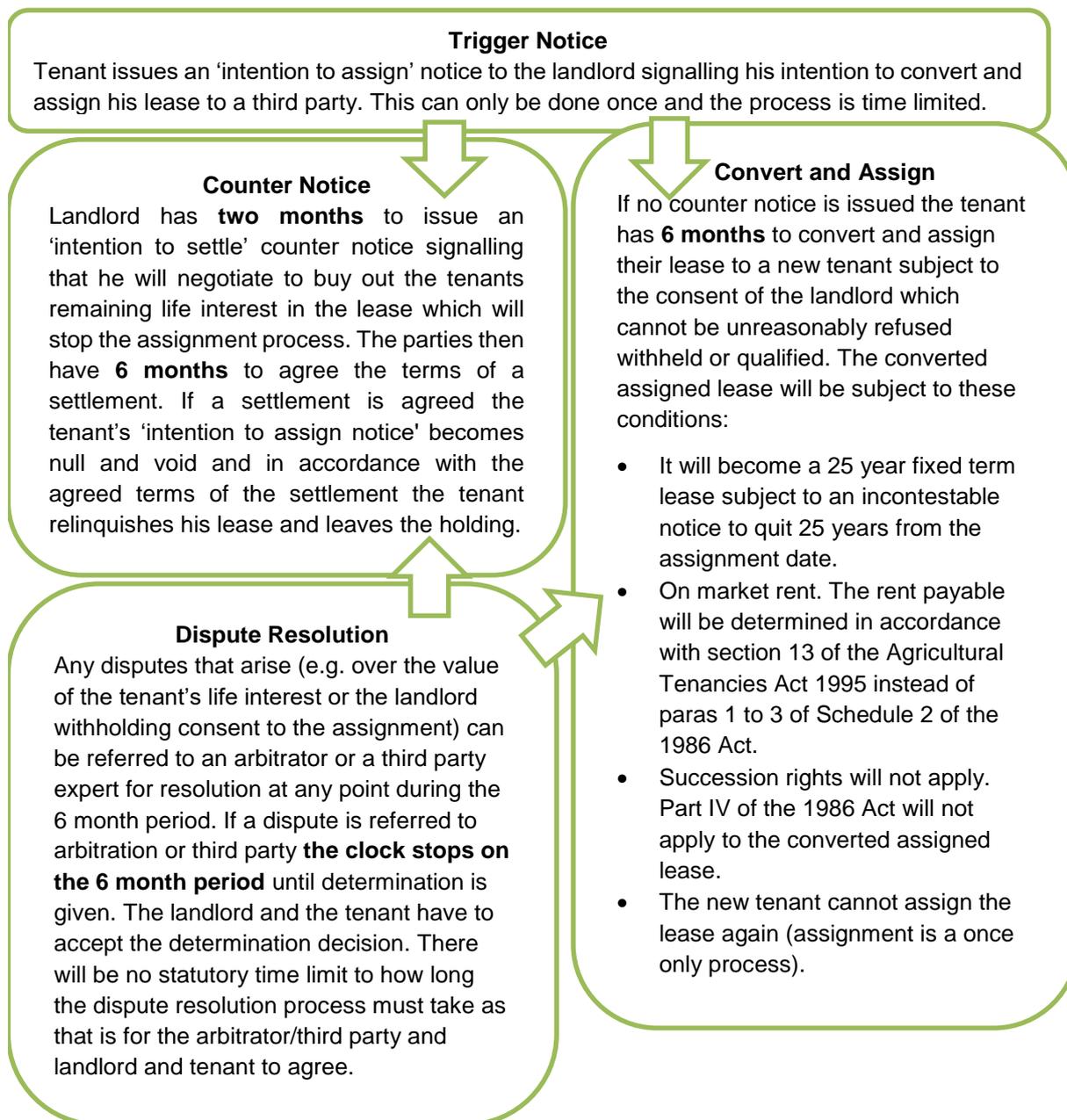
Proposal 1:

This proposal is to insert new provisions in the 1986 Act to enable the tenant to assign their tenancy (for payment) to a new tenant. Assignment would be exercisable on a single occasion only and would be subject to a right for the landlord to pre-empt the assignment by negotiating to buy out the tenant and thereby terminate the tenancy. In addition, on assignment the tenancy would be subject to the following new provisions:

- A right for the landlord to serve an incontestable notice to quit on or at any time after the 25th anniversary of the assignment (so the tenancy can be terminated by the landlord 25 years after assignment or later);
- The rent payable for the assigned tenancy will become open market rent, determined in accordance with section 13 of the Agricultural Tenancies Act 1995 instead of paras 1 to 3 of Schedule 2 of the 1986 Act;
- Part 4 of the 1986 Act will not apply (so succession rights will not apply to the assigned tenancy); and
- The new tenant cannot assign the tenancy again (assignment is a once only process).

In the case of a joint tenancy both tenants would have to agree to the assignment process before it can be triggered.

This proposal will insert new provisions in the 1986 Act to enable the tenant to convert their lease (once only) if they wish to into a fixed term 25 year AHA lease on market rent and assign it (for payment) to a new tenant. This would be subject to a right for the landlord to prevent the assignment by negotiating to buy out the tenant's remaining life interest in the lease and take back occupation of the holding. We envisage the new mechanism might work as described in the flow chart below.



4.3 Under this option the landlord has the right to stop the assignment by buying out the tenant's life interest to regain occupation of the holding. They cannot unreasonably withhold consent to the assignment taking place. Determination over what might constitute a reasonable or unreasonable case for a landlord to withhold consent will be for the arbitration or third party expert process to decide based on each individual case, circumstance and evidence. In Wales this could be achieved through the Agricultural Land Tribunal Wales and the proposed extension of their jurisdiction which was consulted on within the Sustainable Management of Natural Recourses consultation. This can be found at Annex B for reference.

4.4 If the assignment goes ahead, the landlord benefits from certainty over when the lease will end (as it will be a 25 year fixed term lease), a market rent and a new tenant farmer who can see a business opportunity and wants to invest in a long term tenancy. The outgoing tenant benefits financially (either from the landlord

buying out his life interest in the lease or from the sale of the 25 year assigned lease to the new tenant) contributing to their retirement.

4.5 Box 1, below, indicates some of the factors and issues to consider in relation to valuing the tenant's interest and the potential value of the assigned tenancy agreement.

Proposal 1a:

This is a sub option to proposal one with the aim of giving the landlord a greater role in the selection process of the new tenant. This may be necessary in circumstances where the landlord believes the proposed new tenant does not have suitable experience or qualifications or where their farming plans are not in line with the landlord's management practices for the holding or wider estate.

This sub-option would insert an additional step into the process outlined for proposal 1, giving the landlord the right to review the suitability of the proposed new tenant. The landlord would have a right to withhold consent to the assignment on the grounds the proposed tenant and / or their business plan for the holding is not suitable. Any dispute over the suitability of the proposed new tenant could be referred to arbitration or third party determination for resolution. All parties would be bound by the arbitrator's or third party determination decision.

Proposals 1 and 1a above set out the broad principles and outcomes we are aiming to deliver from an assignable AHA mechanism. We recognise the processes involved are complicated so further analysis would be required on how this would work, if supported through this consultation.

Question 1: Do you agree new legal provisions to enable a tenant to assign their lease to a third party tenant will help to deliver the policy aim of facilitating structural change in the AHA sector? Answer scale - Strongly Agree, Agree, Not Sure/Don't know, Disagree, Strongly Disagree

Box 1: Factors and issues for consideration in valuing a tenant's interest in an AHA holding and the value of a 25 year assignable AHA tenancy at open market rent

Tenant interest: the question of what financial value a tenant might get from either a landlord buying out their interest to regain vacant possession of the holding or assignment will depend on each unique circumstance. The following factors are likely to be a key consideration in the valuation of most cases:

- The life expectancy of the tenant (estimates of life expectancy are published by the Office for National Statistics in the National Life Tables²)
- The difference between the investment value of the vacant holding versus the investment value of the let holding (both will depend on size of holding, location, quality of land and quality of fixed equipment e.g. farmhouse, buildings, etc)

Market value of a 25 year assigned AHA tenancy: the question of what financial value there might be in a 25 year AHA agreement at an open market rent is very difficult to predict. It will depend on a range of factors including the economic conditions for agriculture and market conditions for let land at the time, plus factors such as size, location, quality of land and condition of the holding and its fixed equipment. In current market conditions where land prices are high and let land is in short supply farmers looking for progression to a larger more secure holding may see value in the chance to acquire access to land for a secure period (although there is no evidence at present a longer term FBT commands a higher rent than a shorter one of an equivalent tenancy). Also, there may be situations where a neighbouring farmer might pay more for secure access to AHA land where it would complement or add value to his land or business. The individual situation regarding compensation for tenant improvements and liability for remedy or dilapidations will also impact on the value a prospective tenant might place on an assignable AHA agreement.

Tax: the outgoing tenant will also need to consider in advance what tax might be payable (e.g. capital gains tax, stamp duty land tax etc) out of any lump sum they might receive from either a landlord buy out or from assignment.

Retirement: whether a lump sum from either a buy out or assignment will be enough to enable the current tenant to retire will again depend on the individual circumstance. The cost of alternative local housing suggests only tenancies of larger holdings would be likely to generate sufficient value to be of material assistance with retirement. Where the tenant has other assets, a private pension and / or savings the ability to realise value from their tenancy agreement might still make a positive contribution to their overall retirement package.

² National life tables are produced annually for the United Kingdom and its constituent countries. They provide period expectation of life statistics. Period life expectancy is the average number of additional years a person can be expected to live for if he or she experiences the age-specific mortality rates of the given area and time period for the rest of his or her life. The latest life tables for England can be found here:

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/lifeexpectancies/datasets/nationallifetablesenglandreferencetables>

Question 2: Do you agree with proposal 1 to implement new legal provisions to enable a tenant to assign their AHA lease to a third party subject to the conditions described? Answer scale - Strongly Agree, Agree, Not Sure/Don't know, Disagree, Strongly Disagree

Question 3: Do you agree proposal 1a is needed in addition to proposal 1 so landlords have a role in reviewing the suitability of their new tenant? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, Strongly Disagree

Question 4: Please provide comments including evidence of the likely benefits and/or impacts of these proposals.

5. Proposals to change Agricultural Holdings Act succession rights

Current legislation, overview of policy issue and aim of proposals

5.1 The 1986 Act sets out the circumstances in which up to two generations of close family relatives can succeed a tenant after retirement or death. The Act includes a series of succession eligibility tests which must be met. There is currently no upper age limit or cut-off date for when succession applications on death or retirement can be made. There is a minimum age of 65 before which succession applications on retirement cannot be made. This means farmers are unlikely to think about retiring and handing over their tenancy agreement before the age of 65, even if they would like to. Coupled with a culture of farming long past retirement age, this can delay the handover of land to the next generation of farmers looking to bring new ideas, skills and innovation to the holding.

5.2 To unlock potential productivity improvements from the new skills and ideas the next generation of tenant farmers can bring to the AHA sector it is important to incentivise behaviour change towards earlier succession planning and handing over the holding to the next generation earlier. The proposals outlined below aim to tackle these issues by removing the minimum age of 65 for succession on retirement applications (so succession on retirement can be applied for at any age) and removing all succession rights when the tenant reaches 5 years past the state pension age.

Proposal 2:

This proposal will amend the 1986 Act by repealing s51 (3) to remove the minimum age of 65 for when succession on retirement applications can be made. This would mean tenants can decide to retire and hand over to their successor at any age.

Question 5: Do you agree with proposal 2 to remove the minimum age of 65 for succession on retirement applications? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Proposal 3:

This option will amend the 1986 Act to remove the right for close family relatives to apply to succeed to an AHA tenancy when the current tenant reaches five years past the state pension age. For example, if the state pension age is 67 succession rights on

death and retirement would no longer be available for potential family successors when the current tenant reaches the age of 73.

Succession and decisions over the future of a family business can be complex and take time to consider we propose if this option is taken forward there should be an 8 years notice period before it comes into force. This will enable adequate time for businesses to prepare for the change and undertake the necessary succession planning before the cut off age is reached.

Question 6: Do you agree with proposal 3 to remove succession rights when the tenant reaches 5 years past the state pension age? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 7: How should any removal of succession rights operate in the case of joint tenancies? For example where joint tenants are different ages should the age limit (after which succession would cease to be available) be linked to the age of the youngest tenant?

Question 8: Do you agree if proposal 3 were implemented, it would be necessary or appropriate to allow 8 years following the enactment of the legislative change before it should take effect? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 9: If you do not agree 8 years notice is an appropriate amount of time please indicate what time period, if any, should be given in your view.

Question 10: Please provide comments including any evidence you have of the likely benefits and impacts of these proposals.

6. Council farm retirement tenancies

Current legislation, overview of policy issue and aim of proposals

6.1 In recent years the provisions of the 1986 Act have become out of date with policy changes to the state pension age. Currently the 1986 Act enables local authority landlords of council farms to issue a retirement notice to quit when their tenant reaches the age of 65 so the farm can be re-let to a new entrant (as set out in Schedule 3 Case A). However, recent changes to state pension age mean it will no longer be fixed at 65. From 2019 state pension age will increase to the age of 66 by October 2020 and further increases are planned to increase it to 67 between 2026 and 2028.

6.2 The specified age of 65 for retirement notices to quit in relation to council farm retirement tenancies is now out of date with state pension age policy. This means a council farm tenant could be issued with a retirement notice to quit before they are eligible to draw their state pension, which could leave a gap in their income for a few years. The aim of the proposal below is to update the 1986 Act to ensure the provisions which apply to council farm retirement notices are kept in line with current state pension policy.

Proposal 4:

The proposal is to amend schedule 3 Case A of the 1986 Act so a retirement notice to quit can only be served by a Local Authority landlord on a council farm tenant when they have reached the earliest age they can be in receipt of the state pension.

Question 11: Do you agree with proposal 4 to amend tenancy law so council farm retirement notices to quit can only be issued when the tenant has reached current state pension age? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 12: Are there any operational or other implications of this proposal for joint tenancies which we need to consider?

7. Changing succession eligibility criteria: repealing the commercial unit test and updating the suitability test

Current legislation, overview of policy issues and aim of proposals

7.1 The 1986 Act provides succession rights to AHA holdings on death or retirement of the tenant for up to two generations of close family relatives subject to some specific eligibility tests set out in the Act. One of the eligibility tests is the '**Commercial Unit Test**' which states if the applicant already occupies a commercial unit of agricultural land they cannot succeed to an AHA tenancy (because they already have a commercial farm business). A commercial unit is defined in the 1986 Act as a unit of land capable of producing an average annual income equal to at least the average earnings of two full time agricultural workers over twenty years of age. This test is incompatible with current policy objectives of improving farming productivity by encouraging the transfer of land into the hands of skilled commercial farmers (regardless of whether they are already in occupation of a farm business or not). Therefore intervention may be needed to remove this regulatory barrier so productive commercial farmers can succeed to AHA holdings in future.

7.2 Another succession eligibility test is the '**Suitability Test**' which states the Tribunal assessing succession applications must decide whether the applicant is a suitable person to become the tenant of the holding. In making a decision the 1986 Act directs the Tribunal to have regard 'to all relevant matters' including the applicants training and practical experience of agriculture, their physical health and financial standing and the views of the landlord on the suitability of the applicant.

7.3 The Welsh Government's belief is this test sets only a very low standard of suitability. It does not, for example, include the requirement for potential tenants to demonstrate they have good business management skills, which is linked to better farm performance. Given the importance of improving farming competitiveness and productivity, it may be important to modernise the suitability test to set higher business competence standards in future. The aim of modernising the test would be to ensure succession applicants have the skills and credentials to take on a AHA holding.

7.4 The proposals below aim to ensure commercially successful and skilled tenants can succeed to AHA holdings by removing regulatory barriers and modernising succession eligibility criteria.

Proposal 5:

This proposal is to repeal s36 (3) (b) and s50 (2) (b) of the 1986 Act to remove the Commercial Unit Test from the succession provisions so, for example, a close family relative who already occupies a commercial farm would be eligible to succeed to an AHA holding in future (if they meet the other eligibility provisions set out in the 1986 Act). The provisions and regulations relating to the Commercial Unit Test would also be repealed, for example the requirement for Welsh Government to lay the Units of Production Order and provide net annual income assessments, as these would no longer be needed.

Question 13: Do you agree with proposal 5 to remove the commercial unit test?

Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Proposal 6:

This proposal is to replace the current suitability test provisions with a new Business Competence Test, by amending s39(2) and replacing s39(8) of the 1986 Act so the Tribunal has to take into account the following matters when deciding if the applicant tenant is competent and suitable to succeed to the tenancy:

- The applicant (disregarding offers of rent) would reasonably be expected to be shortlisted for the tenancy by the landlord if they applied in an open competition;
- The applicants level of training, experience, capability and agricultural business management skills;
- The applicants health, financial standing and character;
- The character and situation of the holding;
- The terms of the tenancy;
- The provision and standard of the landlords equipment;
- The landlords views as to the suitability of the applicant ;and
- The expectation the holding is to be farmed commercially to a high standard of efficient production and care for the environment and kept in a condition to enable such standards to be maintained in the future.

7.5 If this change is taken forward, potential successors will need adequate time to prepare for this change, therefore we propose there should be a three years notice period before the change comes into force.

Question 14: Do you agree with proposal 6 to modernise the suitability test?

Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 15: Do you agree 3 years is adequate time before this proposed change to the suitability test comes into force? Yes/no? If no, what time do you feel is needed and appropriate?

Question 16: Please provide any additional comments including any evidence you of the likely benefits and impacts of these proposals.

8. Modernising and extending succession rights

Current legislation, overview of policy issues and aim of proposals

- 8.1 The 1986 Act provides rights for up to two generations of eligible close relatives to succeed to the AHA holding. The definition of a close relative has not been updated for many years and is viewed by some industry stakeholders as being out of date with modern family structures. The current definition of a close relative includes a husband, wife, brother, sister or civil partner of the tenant and their children or those treated as children by the tenant in relation to marriage or civil partnership. It does not include the children of a cohabiting partner of the tenant or those treated as children by the tenant in relation to cohabitation. This means children who have grown up and worked on the farm as part of the family business but whose parents are not married or in a civil partnership are not able to succeed to the tenancy. There may be a case to update and clarify the provisions so children (and those treated as children) of cohabiting couples have the same succession rights as children of married and civil partnership couples. The aim is to modernise and clarify the close relative definition so children (and those treated as children) of cohabiting couples have the same succession rights as children of married and civil partnership couples.
- 8.2 In addition, the current close relative definition does not include nieces, nephews or grandchildren of the tenant. Even if they have had a close working involvement with the farm business they are not eligible to succeed to an AHA tenancy. There may be a case for considering extending the definition of a close relative to include nieces, nephews and grandchildren to enable succession to skip a generation so younger members of the family can succeed to the tenancy and continue to grow and improve the family farm business.

Proposal 7:

This proposal is to amend s35 (2) (d) and s49 (3) (d) of the 1986 Act to include children or those treated as children by the tenant in relation to marriage or civil partnership **and cohabitation**. This would mean children (or those treated as children) of cohabiting partners would in future be eligible to apply to succeed to an AHA holding (subject to them meeting the other eligibility tests set out in the 1986 Act). Consideration might also be given to including the cohabiting partner of the tenant in the definition of a close relative so they are given the same succession rights as married and civil partnership couples. Whilst there is no legal definition of cohabitation, an application in this case (as in all cases) would still have to satisfy the other eligibility tests including the livelihood test which requires the applicant successor has worked on the holding for not less than 5 years (section 36(3)(a) of the 1986 Act).

Question 17: Do you agree a cohabitating partner of the tenant should be included in the definition of a close relative of the tenant so that they would also be eligible to apply to succeed to an AHA holding tenancy?

Question 18: do you agree with proposal 7 to extend the definition of close relative so children (or those treated as children) of cohabitating partners can apply to succeed to an AHA holding? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Proposal 8:

This proposal is to amend and extend s35(2) and s49(3) of the 1986 Act to include nieces, nephews and grandchildren of the tenant in relation to marriage, civil partnership and cohabitation so they would be eligible to apply to succeed to an AHA holding in future.

This could potentially extend the tenants family occupation of the holding for many years, we propose in relation to nieces, nephews and grandchildren the new succession right should be limited to a 25 year fixed term AHA lease and be subject to market rent (so the rent payable would be subject to section 13 of the Agricultural Tenancies Act 1995 instead of paras 1 to 3 of Schedule 2 of the 1986 Act). This would provide a new opportunity for relatives from a younger generation to continue the family business whilst giving the landlord certainty over when the tenancy would end and the benefit of a market based rent.

Question 19: Do you agree with proposal 8 to extend the definition of close relative so nieces, nephews and grandchildren of the tenant could apply to succeed to AHA holdings in future?

Question 20: Are there any implications of proposals 7 and 8 for joint tenancies we need to consider?

Question 21: Please provide comments including any evidence you have of the likely benefits and impacts of proposals 7 and 8.

Section Two: Proposals to Facilitate Productivity, Investment and Environmental Improvements

9. Restrictive clauses in AHA leases

Current legislation, overview of policy issue and aim of proposals

9.1 The 1986 Act sets the framework within which individual AHA leases have been negotiated and agreed between landlords and the tenants. Most AHA leases were written and agreed over twenty years ago. Many include standard landlord restrictive clauses to prevent the tenant from undertaking activities which could change the landlord's fixed equipment or land use on the holding without the tenant first gaining the landlord's consent to the activity (e.g. erecting or altering buildings, investing in new fixed equipment, taking on other land or diversifying into non-agricultural activities such as environmental land management).

9.2 Many landlords and tenants are able to work together effectively to negotiate and overcome issues relating to restrictive clauses without the need for recourse to dispute resolution. For example, tenants often work with their landlords to agree diversification plans and to enable them to enter into environmental schemes. We understand this may not be the case for all tenancies and some tenants may find restrictive clauses written several years ago now present a constraint on their ability to develop a productive and viable business. In addition, as we leave the CAP and move towards new agriculture policies some tenants may find restrictive clauses hinder their ability to fully participate in opportunities offered by future schemes, such as those aimed at improving farming productivity or environmental land management, if their landlord is not willing to consent to the activities involved.

9.3 There are no general provisions in the 1986 Act which enable a tenant or landlord to challenge through dispute resolution a restrictive clause in their lease. Currently, the only provision enabling either party to apply to vary the terms of their lease is in relation to the specific issue of the amount of land which has to be kept as permanent pasture (as set out in section 14 of the 1986 Act 'variation of terms of tenancies as to permanent pasture').

9.4 It may be appropriate to provide tenants and landlords with a new mechanism to challenge restrictive clauses on a case by case basis where either party feels they present an unreasonable barrier.

Question 22: Do you agree restrictive clauses in AHA leases are a problem which needs to be addressed? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Proposal 9:

This option will insert a new provision in the 1986 Act to enable either party (tenant or landlord) who consider their activity to be restricted by a clause in their tenancy agreement to serve a notice on the other party referring the restriction to dispute resolution (either arbitration or third party determination). Any disputes will be settled

according to whether the proposed variation to the tenancy agreement and activity to be undertaken is reasonable, including whether the activity / variation:

- Will enable the full and efficient farming of the holding and/or improve agricultural productivity; or
- Will secure environmental improvements; or
- Will enable access to agricultural funding schemes and environmental land management schemes; and
- Will not significantly alter or damage the character of the holding

Question 23: Do you agree with proposal 9 to enable restrictive clauses in AHA leases to be challenged through dispute resolution? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 24: Please provide additional comments including evidence of the extent to which restrictive clauses may be a problem or not and the likely benefits and impacts of this proposal.

10. Removing Barriers to Landlord Investment in AHA Holdings

Current legislation, overview of policy issue and aim of proposals

10.1 The 1986 Act provides rights for the landlord or tenant to request a rent review every three years. The current rent review provisions mean if the landlord finances an investment in the holding (for example to upgrade fixed equipment and infrastructure) they risk losing any economic return on the investment through the statutory rent review process. This is because any investment return charges agreed between the landlord and the tenant can currently be viewed as an obligation of the tenancy and may be deemed relevant to any case for a rent reduction. Feedback from industry stakeholders indicates this may be discouraging landlords from investing in AHA holdings. The aim of the proposal below is to remove this legislative barrier by ensuring in future the return on a landlord's investment in the holding is explicitly excluded from rent review considerations. This may help to unlock landlord investment in the AHA sector helping to drive productivity improvements and could be particularly helpful where the tenant cannot easily access other sources of investment finance.

Question 25: Do you agree AHA rent review provisions may act as a barrier to landlord investment in AHA holdings? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Proposal 10

This option will amend paragraph section 3 of schedule 2 of the 1986 Act (the statutory rent review provisions) to add new provisions which direct the arbitrator or third party expert to explicitly disregard from the rent review determination process the following:

- Improvements which has been financed wholly or partly by the landlord, and
- Payments due from the tenant to the landlord under written agreement which are to pay a return to the landlord for any finance they have provided (either wholly or partly) for an improvement to the holding.

In addition the 1986 Act provisions will be amended to clarify any improvement resulting from the landlord's investment is to be regarded as a landlord improvement at the end of the tenancy.

Question 26: Do you agree with proposal 10 to exclude the landlord's return on investment from rent review considerations? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

11. Introducing Short Notices to Quit for New Farm Business Tenancies of Ten Years or More

Current legislation, overview of policy issue and aim of proposals

- 11.1 Farming is a long-term business and feedback from some industry stakeholders indicates there is a lack of opportunity for tenants to access longer-term lets, for example of ten years or longer. This may mean tenants do not have the security they need to make longer-term investments in sustainable land management practices and productivity improvements. Recent data from the CAAV's Agricultural Land Occupation Survey 2017³ indicates the average length of FBTs is nearly 4 years, and when seasonal lettings of a year or shorter are excluded the average is just under 5 years. Larger and better-equipped holdings such as those with a house and buildings were let for longer terms, on average for 9 years.
- 11.2 One of the reasons landlords may be reluctant to enter into longer term agreements (without a landlord break clause) is the lengthy procedures which must be followed to end a tenancy if the tenant defaults on the agreement. Landlords often lean towards shorter tenancies or include a landlord break clause to minimise their exposure to the risk of a tenant defaulting. In addition, some landlords may want the flexibility to potentially develop land on the holding for non-agriculture use in future, and so are unwilling to offer longer terms due to lengthy termination procedures.
- 11.3 The 1995 Act provides a fixed term tenancy of two years or longer can be terminated by either party giving a minimum of 12 months' written notice to the other. If the tenancy is not validly terminated, it continues as a statutory periodic tenancy from year to year. To terminate such a periodic tenancy, the landlord or tenant must also give a minimum of 12 months' notice before the end date of the periodic tenancy. The only other legal recourse the landlord has to end the tenancy and regain possession of the holding (e.g. when the tenant is in breach of contract) is to apply to the courts using forfeiture procedures which can be a lengthy, costly and an uncertain process for them. Feedback from industry stakeholders is these lengthy termination procedures act as a disincentive to landlords letting for longer terms.
- 11.4 The policy aim of the proposal below is to encourage more landlords to offer longer-term lets of ten years or longer by providing them with shorter termination

³ The Annual Agricultural Land Occupation Survey for Great Britain 2017

procedures in specific circumstances, such as non-payment of rent, death of the tenant, or when the landlord has planning consent to develop land on the holding for non-agricultural use. The policy goal is to facilitate and encourage investment in productivity improvements and environmental outcomes in the tenanted sector by increasing the availability of longer-term lets (which give tenants more security to make those investments) by correcting a legislative disincentive and de-risking longer-term agricultural lettings for landlords.

Question 27: Do you agree providing new shorter termination procedures for FBTs of ten years or longer will encourage more landlords to offer longer-term lets, which would facilitate and encourage more tenants to invest in improving productivity and the environment? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 28: Are there other options which would encourage landlords to let for longer terms we should consider?

Proposal 11:

This proposal is to insert provisions into the 1995 Act to give landlords who let new FBTs for a period of ten years or longer, and without a landlord break clause, new rights to issue shorter notices to quit (as an alternative to, but not a replacement for, forfeiture) in the specific circumstances as described below:

- **Non-payment of rent:** where the tenant has not paid the rent in line with the agreement, the landlord will be able to issue a notice to pay and a notice to quit, giving the tenant **2 months in which to pay** the rent and a **3 month notice to quit** (the notice to pay and notice to quit can be amalgamated and issued together). The tenant will have the right to serve a counter notice up to **1 month** after the landlord's notice to pay, challenging liability and/or seeking further time of up to a further **3 months** to pay the rent. The notice to quit takes effect 3 months after service, unless the tenant pays the rent within the 2 months' notice to pay period, or applies for further time before the notice to quit takes effect, in which case up to a further 3 months can be permitted. Disputes can be referred to arbitration or third party determination within 1 month of the tenant's counter-notice, and the effect of the notice to quit will be suspended during the dispute resolution period.
- **Death of the tenant:** on the death of the tenant the landlord will be able to issue a **12 month notice to quit** to terminate the agreement and regain occupation of the holding. In these circumstances the 12 months' notice to quit will not be linked to the end date of the periodic tenancy. This will give the deceased tenant's representatives time to conclude affairs and hand back the holding to the landlord within the 12 month period. The tenant's representatives have one month from the issue date of the landlord's notice to refer disputes to arbitration or third party determination and/or apply for more time. The effect of the notice to quit would be suspended during the dispute resolution period.
- **Planning consent for non-agricultural use:** If the landlord has planning consent and wishes to remove land from the holding for non-agricultural

development they will be able to issue a **6 month notice to quit to the tenant** to vacate the land which has been granted planning permission. The landlord must have planning permission for non-agricultural use and any farmhouse which is the tenant's home will be excluded from these new provisions. Where the landlord has planning permission for non-agricultural use for only part of the land on the holding, a part notice to quit can only be issued where there is a clause in the tenancy agreement permitting it. The tenant has 1 month from the issue date of the landlord's notice to quit to refer disputes to arbitration or third party determination and/or apply for more time. The effect of the notice to quit would be suspended during the dispute resolution period. It is envisaged statutory compensation provisions should be available to the tenant to compensate for the loss of land and impact on their business. We are interested in views on the most appropriate basis for awarding compensation in these circumstances.

11.5 We are also interested in views on whether any other serious breaches of the tenancy agreement by the tenant, in addition to non-payment of rent, should be considered in any new provisions for shorter notices to quit. For example, in the event the tenant becomes insolvent, sub-lets all or part of the land covered by the tenancy agreement, or any other serious breaches where the tenant should be given notice to remedy, and if they do not remedy be given notice to quit.

Question 29: Do you agree with proposal 11 to provide shorter notice to quit procedures for new FBTs of ten years or longer in the specific circumstances of the death of the tenant, non-payment of rent and where the landlord has planning permission to develop land on the holding for non-agricultural use? Answer scale for each circumstance - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 30: In addition to non payment of rent should any other serious breaches of the agreement by the tenant be included in any future provisions for shorter notices to quit? Yes / No

And if you think they should be please list what breaches should be included and what notice periods should be applied in those circumstances?

Question 31: What issues and principles should be taken into account when calculating compensation for tenant' who have been issued a notice to quit land which has planning permission for non-agricultural use?

Question 32: Please provide additional comments, including evidence, of the likely benefits and impacts of proposal 11.

12. Timetable for using third party dispute resolution in AHA rent reviews (technical correction)

Current legislation, overview of policy issue and aim of proposals

- 12.1 The Welsh Government undertook a consultation on the extension of jurisdiction of the Agricultural Land Tribunal (Wales) (ALTW) as part of the wider “Taking Forward Wales’ Sustainable Management of Natural Resources”, in 2017. Views were sought on whether the jurisdiction of ALTW should be extended to incorporate disputes currently specified as referable for arbitration under the 1986 Act.
- 12.2 Under the current provisions of the AHA, the Royal Institute of Chartered Surveyors (RICS) is specified as the statutory body to provide arbitration services. To enable the ALTW to take on additional functions currently subject to arbitration would require an amendment to the AHA.
- 12.3 The chapter within “Taking Forward Wales’ Sustainable Management of Natural Resources” has been appended to this consultation (Annex B) and Welsh Government would welcome any further thoughts on this.

Proposal 12

This proposal is to take forward the procedural reforms described below (I – IV) which are recommended by industry experts to improve the operation of the 1986 Act succession provisions:

- I. Enabling agreed successions without an application to the Tribunal⁴:** this proposal is to amend section 37 of the 1986 Act and section 4 of the 1995 Act so in future where both parties agree to a succession and record it as such (without an application having been made to the Tribunal for the succession) it should be protected as a succession and count as a succession. This broadens options for parties who are in ready agreement to a succession by ensuring a properly drawn up, voluntary written agreement between them can count as a succession without requiring an application to be made to the Tribunal. This will save time and costs for both parties and for the Tribunal.
- II. Removing technical obstacles to joint successions:** this proposal is to amend section 37 of the 1986 Act so in future the provisions expressly recognise the previous tenant may be a joint tenant in the succession tenancy. Currently, this does not count as a succession even if all parties intend it to be, which limits the opportunities for practical agreements between parties where the continuing involvement of the previous tenant is valued. This change will remove technical obstacles to practical succession arrangements.
- III. Clarifying the position for male widowers of a deceased tenant:** this proposal is to amend section 36(4) of the 1986 Act which make express provision for a deceased tenant’s wife so in future it refers to all surviving spouses (i.e. wife

or husband) and civil partners. This is a small technical updating to help clarify the provisions in relation to both female and male spouses of a deceased tenant.

IV. Improving the process between delayed Tribunal decisions on succession and the operation of end of tenancy claims: sometimes succession applications can be complex and take a long time to determine, which can have knock-on effects for end of tenancy arrangements and claims. This proposal seeks to address this by amending section 43 (restrictions on the operation of a notice quit on death of the tenant) and section 44 (provisions for the landlord to obtain the Tribunal's consent to operation of notice to quit) of the 1986 Act. Where there is a late Tribunal determination to a succession application, the following circumstances would apply:

- Where the Tribunal has refused a succession application, the provisions should allow the Tribunal to be able to determine a period of time in which the applicant can remain on the holding solely in order to effect an orderly departure (where the applicant requests this)
- In the event of a delayed tribunal decision, parties will still be able to make enforceable end of tenancy claims and the time limits for the procedures for tenant's fixtures can still work.

Question 33: do you agree with proposal 14 to deliver procedural reforms to improve the operation of the 1986 Act succession provisions?

Question 34: Please provide additional comments including evidence of the likely benefits and impacts of these procedural reforms.

Consultation Section 3 – Non Legislative Options

Non Legislative Options

12.4 Many of the sorts of disputes the proposals in this consultation are seeking to address (particularly around retirement, succession, and restrictive clauses) are able to be resolved, in many cases, through discussion and agreement between landlords and tenants. The role of professionals who advise landlords and tenants is also important in finding solutions.

12.5 Greater knowledge exchange, guidance and case studies, detailing how landlords and tenants have successfully found solutions, could help. These could be considered as alternatives to changes to tenancy law where they can deliver the same outcomes more effectively, or they could work alongside legislative changes to enhance the delivery of our policy aims.

12.6 Options include:

Retirement / Succession planning

- Develop guidance and case studies on the benefits of early succession and retirement planning, including examples of negotiated retirement solutions for older AHA tenants with no successor;
- Signpost sources of advice to encourage more tenants to consider handing over the holding to the next generation in a timely way, and change the culture of farming long past retirement age;
- Raise awareness of how changes to agricultural permitted development rights might be used to enable landowners to develop housing for rural workers;
- Raise awareness of changes to the National Planning Policy Framework, which supports the construction of isolated dwellings where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently or near to their place of work in the countryside;.
- Develop guidance and case studies to show how negotiation can result in solutions to succession disputes which offer benefits to both parties. This could include guidance on negotiating a surrender of an AHA tenancy whilst agreeing a new long term FBT with the tenant's successor, who may not otherwise be eligible to succeed (e.g. a grandchild/niece/nephew of the tenant or a relative who is already a commercial farmer).

Restrictive clauses

- Develop best practice guidance, case studies and model terms of how landlords and tenants can work together to review and agree to vary restrictions in AHA agreements. This could focus on situations where restrictions might prevent productivity or environmental improvements, or limit the ability for either party to access future agricultural or environmental land management schemes.

Longer term FBTs

- Raise awareness of the potential benefits of longer-term FBT agreements for both landlords and tenants. Develop best practice guidance, case studies and model agreements to encourage more creative use of the FBT framework to agree longer-term tenancies rather than defaulting to shorter-term agreements.

Question 35: Do you agree the non-legislative options outlined above should be considered as a way of delivering our policy aims of:

- **facilitating structural change in the tenanted sector?** *Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree*
- **enabling productivity improvements in the tenanted sector?** *Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree*
- **enabling environmental improvements in the tenanted sector?** *Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree*

Question 36: Should the non-legislative options outlined above be considered as an alternative to the tenancy law reform proposals set out in this consultation, or be considered in addition to the tenancy law reform proposals? *'Instead of tenancy law reform / alongside tenancy law reform / neither / don't know*

Question 37 Please provide comments including evidence of the likely benefits and impacts of the non-legislative options listed and any other options you think should be considered.

Section Four: call for evidence

13 Call for evidence on the impact of mortgage restrictions over let land

Background and overview of issue

13.2 From 1 September 1995, Section 31 of the 1995 Act has restricted the ability of a landowner with a mortgage over their agricultural land to grant any tenancies on land without first gaining permission from their mortgage lender.

13.3 We are interested in gathering evidence and examples of why such restrictions over mortgaged agricultural land are necessary for banks and lenders. We are also interested in gathering evidence on the extent to which such mortgage restrictions might be a barrier and disincentive to letting out agricultural land and therefore may limit opportunities for agricultural tenancies in future.

13.4 If there is evidence mortgage restrictions are a barrier to letting agricultural tenancies there may be a case for exploring the option of repealing section 31 of the ATA 1995 so in future landowners entering into a mortgage agreement over agricultural land are able to grant tenancies over the land without needing to gain permission from their mortgage lender first. We are interested in exploring the potential benefits and impacts of this option on the finance sector and for agricultural landowners/landlords.

Question 38: Please provide evidence or examples of why it is important and necessary for mortgage lenders to restrict the ability of a landowner to grant agricultural tenancies on the mortgaged land?

Question 39: Do you have evidence or examples of whether the current mortgage restrictions for letting land are a barrier to landowners offering agricultural tenancies?

Question 40: Do you agree consideration should be given to repealing section 31 of the Agricultural Tenancies Act 1995 so in future landowners can grant agricultural tenancies on mortgaged land without the prior consent of their mortgage lender? Answer Strongly Agree, Agree, Don't Know, Disagree, Strongly Disagree

Question 41: Please provide any additional comments including evidence of the likely impacts of considering removing mortgage restrictions over let land in future.

14 Call for evidence on procedures relating to repossession of farm businesses

Background

14.2 Many farm businesses rely on loans and finance to cover the start-up costs of a new business, to fund business expansion or investment in new equipment and infrastructure, or to meet ongoing costs of business. The agricultural sector is a major area of business activity for the UK Financial Services industry. At the end of December 2017, the stock of lending by UK banks to the agricultural sector totalled around £15.5 billion, up nearly £600m on a year before⁵.

14.3 But the profitability of the agriculture sector can be particularly sensitive to external factors, such as extreme weather events, disease outbreaks, and significant changes to both the cost of production inputs or value of outputs. These and other factors increase the risk levels of agricultural production, and therefore farm income, do not materialise as forecast. For farm businesses who rely on loans and finance, the effect of these external factors can increase the risk they are, even temporarily, not able to meet repayment requirements.

Repossession proceedings

14.4 In the event of missed loan repayments, the process for lenders to recover debts depends on the status of the borrower and purpose of borrowing. When companies become unable to meet loan repayments, they have the opportunity for company rescue via administration. Unincorporated businesses are not afforded the same option. Many smaller businesses are unincorporated, and this is particularly common for agricultural businesses, where lots of farms are sole traders or partnerships.

14.5 Arrangements are different for home-owners with a mortgage. Provisions set out in the Administration of Justice Act 1970 mean mortgage lenders are only able to repossess a home if the court grants permission through a repossession order. The court has a number of options for providing the mortgage-holder with further opportunity to meet repayments before eviction proceedings can commence. This might include changing the regular amount paid to the lender, or delaying the next payment.

Farm businesses

14.6 As we start to move out of the CAP and into our future farming policy, it is timely to consider whether existing arrangements for repossession of farm businesses are appropriate and fair for both parties. There might be a case to consider introducing additional measures to provide farm businesses with an additional opportunity to meet repayment requirements before the commencement of any repossession proceedings.

14.7 One option for creating additional protection for farm businesses could be to require lenders to apply to a court for a possession order before they are able to

⁵ Bank of England, Bankstats Table A8.1

undertake repossession proceedings. This would allow the court to consider any extenuating circumstances and possibly provide the farm business with more time to meet the repayment requirements depending on the evidence in any given case.

Question 42: Do you have examples or evidence of how farmers are particularly vulnerable to repossession of their agricultural land now or might be in the future?

Question 43: Are there any differences or impacts which should be considered in relation to the procedures and practices for repossessing agricultural land compared to the procedures and practices for repossessing assets in other sectors where businesses are unincorporated?

Question 44. Do you think additional measures should be introduced to provide owners of agricultural land with additional protections as part of repossession proceedings, possibly similarly to those afforded to owners of dwelling-houses?
Strongly agree/agree/don't know/disagree/strongly disagree

Question 45: Please provide any additional comments, including evidence of the likely impacts and benefits of considering policy changes to strengthen legal protections for the owners of agricultural land in relation to repossession procedures?

Question 46: Is there evidence to suggest that farm businesses are particularly vulnerable to repossessions or might be in the future?

Question 47: Do you think that there is a need to introduce additional protections for farm businesses as part of repossession proceedings? Answer Strongly Agree, Agree, Don't Know, Disagree, Strongly Disagree

Question 48: If you think that additional protections are required, what do you think these additional protections should be?

What happens next?

The closing date for this consultation is midnight on **2 July 2019**. Responses received by this date will be analysed and taken into account by Welsh Ministers in their consideration of the proposals to reform agricultural tenancy law. The consultation responses will be published. If you do not wish for your response to be published, please make it clear in your reply. A summary analysis of responses to the consultation will be published within 12 weeks of the closure of this consultation.

**During the consultation, if you have any enquiries, please contact:
SLMEnquiries@gov.wales**

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Annex A

Summary of Questions

Question 1: Do you agree new legal provisions to enable a tenant to assign their lease to a third party tenant will help to deliver the policy aim of facilitating structural change in the AHA sector? Answer scale - Strongly Agree, Agree, Not Sure/Don't know, Disagree, Strongly Disagree

Question 2: Do you agree with proposal 1 to implement new legal provisions to enable a tenant to assign their AHA lease to a third party subject to the conditions described? Answer scale - Strongly Agree, Agree, Not Sure/Don't know, Disagree, Strongly Disagree

Question 3: Do you agree proposal 1a is needed in addition to proposal 1 so landlords have a role in reviewing the suitability of their new tenant? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, Strongly Disagree

Question 4: Please provide comments including evidence of the likely benefits and/or impacts of these proposals.

Question 5: Do you agree with proposal 2 to remove the minimum age of 65 for succession on retirement applications? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 6: Do you agree with proposal 3 to remove succession rights when the tenant reaches 5 years past the state pension age? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 7: How should any removal of succession rights operate in the case of joint tenancies? For example where joint tenants are different ages should the age limit (after which succession would cease to be available) be linked to the age of the youngest tenant?

Question 8: Do you agree if proposal 3 were implemented, it would be necessary or appropriate to allow 8 years following the enactment of the legislative change before it should take effect? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 9: If you do not agree 8 years notice is an appropriate amount of time please indicate what time period, if any, should be given in your view.

Question 10: Please provide comments including any evidence you have of the likely benefits and impacts of these proposals.

Question 11: Do you agree with proposal 4 to amend tenancy law so council farm retirement notices to quit can only be issued when the tenant has reached current state pension age? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 12: Are there any operational or other implications of this proposal for joint tenancies which we need to consider?

Question 13: Do you agree with proposal 5 to remove the commercial unit test? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 14: Do you agree with proposal 6 to modernise the suitability test? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 15: Do you agree 3 years is adequate time before this proposed change to the suitability test comes into force? Yes/no? If no, what time do you feel is needed and appropriate?

Question 16: Please provide any additional comments including any evidence you of the likely benefits and impacts of these proposals.

Question 17: Do you agree a cohabitating partner of the tenant should be included in the definition of a close relative of the tenant so that they would also be eligible to apply to succeed to an AHA holding tenancy?

Question 18: do you agree with proposal 7 to extend the definition of close relative so children (or those treated as children) of cohabitating partners can apply to succeed to an AHA holding? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

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Question 20: Are there any implications of proposals 7 and 8 for joint tenancies we need to consider?

Question 21: Please provide comments including any evidence you have of the likely benefits and impacts of proposals 7 and 8.

Question 22: Do you agree restrictive clauses in AHA leases are a problem which needs to be addressed? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 23: Do you agree with proposal 9 to enable restrictive clauses in AHA leases to be challenged through dispute resolution? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

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Question 25: Do you agree AHA rent review provisions may act as a barrier to landlord investment in AHA holdings? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 26: Do you agree with proposal 10 to exclude the landlord's return on investment from rent review considerations? Answer scale - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

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Question 29: Do you agree with proposal 11 to provide shorter notice to quit procedures for new FBTs of ten years or longer in the specific circumstances of the death of the tenant, non-payment of rent and where the landlord has planning permission to develop land on the holding for non-agricultural use? Answer scale for each circumstance - Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 30: In addition to non payment of rent should any other serious breaches of the agreement by the tenant be included in any future provisions for shorter notices to quit? Yes / No

And if you think they should be please list what breaches should be included and what notice periods should be applied in those circumstances?

Question 31: What issues and principles should be taken into account when calculating compensation for tenant' who have been issued a notice to quit land which has planning permission for non-agricultural use?

Question 32: Please provide additional comments, including evidence, of the likely benefits and impacts of proposal 11.

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Question 34: Please provide additional comments including evidence of the likely benefits and impacts of these procedural reforms

Question 35: Do you agree the non-legislative options outlined above should be considered as a way of delivering our policy aims of:

facilitating structural change in the tenanted sector? Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

enabling productivity improvements in the tenanted sector? Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

enabling environmental improvements in the tenanted sector? Strongly Agree, Agree, Don't Know, Disagree, and Strongly Disagree

Question 36: Should the non-legislative options outlined above be considered as an alternative to the tenancy law reform proposals set out in this consultation, or be considered in addition to the tenancy law reform proposals? 'Instead of tenancy law reform / alongside tenancy law reform / neither / don't know

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Question 38: Please provide evidence or examples of why it is important and necessary for mortgage lenders to restrict the ability of a landowner to grant agricultural tenancies on the mortgaged land?

Question 39: Do you have evidence or examples of whether the current mortgage restrictions for letting land are a barrier to landowners offering agricultural tenancies?

Question 40: Do you agree consideration should be given to repealing section 31 of the Agricultural Tenancies Act 1995 so in future landowners can grant agricultural tenancies on mortgaged land without the prior consent of their mortgage lender? Answer Strongly Agree, Agree, Don't Know, Disagree, Strongly Disagree

Question 41: Please provide any additional comments including evidence of the likely impacts of considering removing mortgage restrictions over let land in future.

Question 42: Do you have examples or evidence of how farmers are particularly vulnerable to repossession of their agricultural land now or might be in the future?

Question 43: Are there any differences or impacts which should be considered in relation to the procedures and practices for repossessioning agricultural land compared to the procedures and practices for repossessioning assets in other sectors where businesses are unincorporated?

Question 44. Do you think additional measures should be introduced to provide owners of agricultural land with additional protections as part of repossession proceedings, possibly similarly to those afforded to owners of dwelling-houses? Scale strongly agree/agree/don't know/disagree/strongly disagree

Question 45: Please provide any additional comments, including evidence of the likely impacts and benefits of considering policy changes to strengthen legal protections for the owners of agricultural land in relation to repossession procedures?

Question 46: Is there evidence to suggest that farm businesses are particularly vulnerable to repossessions or might be in the future?

Question 47: Do you think that there is a need to introduce additional protections for farm businesses as part of repossession proceedings? Answer Strongly Agree, Agree, Don't Know, Disagree, Strongly Disagree

Question 48: If you think that additional protections are required, what do you think these additional protections should be?