Number: WG38672

Welsh Government
Consultation – Summary of Responses, including Welsh Government Response

Agricultural Tenancy Reform

September 2021

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

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Contents

Introduction

Between April and July 2019, the Welsh Government consulted on a range of options to reform agricultural tenancy law based on recommendations of the Tenancy Reform Industry Group (TRIG). The proposals aimed to remove perceived barriers which may prevent tenants' and landlords' adapting to change, improving productivity, enabling structural change and accessing future sustainable land management schemes.

The consultation also included a call for evidence and views on two financial matters:

- 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**.**

A significant portion of agricultural land in Wales is subject to some form of tenancy agreement, therefore enabling fair access to the future sustainable land management scheme is important in the delivery of the outcomes we seek. The responses to this consultation informed the development of the Agriculture (Wales) White Paper, and will continue to help inform scheme design and the Agriculture (Wales) Bill.

In total 33 responses were received from agricultural tenants, landlords and stakeholders. A list of respondents is at Annex A. This document summarises the main points raised by respondents, the Welsh Government's response and next steps for each proposal.

Many of the consultation questions invited response on a scale ranging from 'Strongly Agree' to 'Strongly Disagree'. Many respondents chose not to provide an answer on the scale, but provided comments instead. Wherever possible, these views have been incorporated into the quantitative analysis. There are a number of limitations with regard to this approach which are important to note:

- The respondents who contributed their views and perspectives are not necessarily representative of the wider community of agricultural landlords or tenants, organisations or individuals with an interest in the proposals;

- Not all respondents answered every question, and some did not provide enough information to determine their position. The qualitative analysis and terms used to describe the prevalence of views only reflect those who answered a specific question. Therefore, they cannot be assumed to relate numerically back to the total number of people and organisations that responded or to the broader Welsh community at large.

The responses should be considered to provide an indication of the views, sentiments and opinions of those who responded, and not the community at large.

Where further discussions are required, the Welsh Government will continue to work closely with TRIG and wider stakeholders on the future direction and prioritisation of policy proposals.

Summary

The table below summarises the proposals consulted on and our response.
A number of proposals which received broad support have already been progressed through the UK Agriculture Act 2020.

The Agriculture (Wales) Bill will be introduced this Senedd Term and will used to progress legislative proposals which are essential to delivery of a new system of farm support.

The Bill represents the first stage of our programme of agricultural reform, and we will continue to work closely with stakeholders and farmers on the proposal that need further consideration.

Proposal		**Welsh Government Response**
1	To help facilitate structural change in the Agricultural Holding Act 1986 (the 1986 Act) sector by inserting new provisions in the 1986 Act to enable the tenant to convert their lease (once only) into a fixed term 25 year Agricultural Holdings Act (AHA) lease and assign it to a new tenant.	The proposals received strong support, however many issues were raised which need further consideration. There were also a number of alternative suggestions and proposals to deliver the policy aim. We will work with TRIG and wider industry stakeholders to explore the alternative proposals and consider how the proposal could be revised and progressed in future.
1a	To help facilitate structural change in the 1986 Act by giving the landlord a greater role in the selection process of the new tenant.	
2	To remove the minimum age of 65 for when succession on retirement applications by repealing s51(3) of the 1986 Act. Tenants can then decide to retire and hand over to their successor at any age.	The consultation responses show very strong support for this proposal. Provisions have been included in Schedule 3 of the UK Agriculture Act to amend the 1986 Act as proposed.
3	To amend the 1986 Act in order 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.	Many respondents supported this proposal, however significant concerns and issues were also raised. As such, we have decided not to take forward this proposal in its current form. We will work with TRIG and wider industry stakeholders to explore alternative options to encourage earlier succession planning, including case studies, guidance and better signposting of advice and support.

4	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.	The consultation responses show strong support for this proposal. Provisions have been included in Schedule 3 of the UK Agriculture Act to amend the 1986 Act as proposed.
5	To change and modernise succession eligibility criteria by removing the Commercial Unit Test from the 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).	There was strong support to repeal the Commercial Unit Test. Provisions have been included in Schedule 3 of the UK Agriculture Act to provide powers to Welsh Ministers to make regulations setting out the criteria to be used in determining a person's suitability to become a tenant of an AHA holding. These will not commence until the new regulations come into force and we will work with TRIG and wider industry stakeholders to determine the specific details of the new criteria.
6	To replace the current Suitability Test provisions with a new Business Competence Test, by amending section 39(2) and replacing section 39(8) of the 1986 Act.	
7	To modernise and extend succession rights by amending section 35(2)(d) and 49(3)(d) of the 1986 Act so children or those treated as children by the tenant in relation to marriage or civil partnership and cohabitation 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 many of the consultation responses supported this proposal, significant concerns and issues were also raised. We will work with TRIG and wider industry stakeholders to determine the specifics of the proposals in more detail and consider how the proposal could be revised and progressed.
8	To modernise and extend succession rights by amending section 35(2)(d) and 49(3)(d) of the 1986 Act so nieces, nephews and grandchildren of the tenant in relation to marriage, civil partnership and cohabitation would in future be eligible to apply to succeed to an AHA holding (subject to them	Responses to this proposal were mixed, with many of those in favour only providing conditional support and others believing it could undermine tenancy law. We will not take the proposal forward in its current form. We will work with

	meeting the other eligibility tests set out in the 1986 Act).	TRIG and wider industry stakeholders to determine the specifics of the proposals in more detail and consider if the proposal could be revised.
9	To facilitate productivity, investment and environmental improvements by inserting 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).	The majority of respondents agreed with the proposal. Provisions have been included in Schedule 3 of the UK Agriculture Act to provide Welsh Ministers with the powers to enable tenants of Agricultural Holdings Act 1986 tenancies to refer to dispute resolution requests for landlord's consent to activities that are restricted under the terms of their tenancy agreement or requests for a variation of terms, where that request relates to meeting statutory requirements or accessing financial assistance in exceptional market conditions. We intend to take powers through the Agriculture (Wales) Bill to introduce new provisions for tenants to access dispute resolution in relation to future land management schemes. We will work TRIG and wider industry stakeholders, including representatives of landlords and tenants when developing the implementing regulations. A few respondents were of the view the proposal should be extended to Farm Business Tenancies. We explored this further through the Agriculture (Wales) White Paper.
10	To removing barriers to landlord investment in AHA holdings by amending Section 3 of Schedule 2 of the 1986 Act to ensure in future the return on a landlord's investment in the holding is explicitly excluded from rent review considerations.	The majority of respondents agreed with the proposal, therefore the provision has been included in Schedule 3 of the UK Agriculture Act to amend the 1986 Act. In response to feedback, the provisions have been drafted so any benefit from the improvement to the tenant will be disregarded from rent considerations

		whilst the tenant is still making payments for the improvement. These new provisions remove the risk a landlord could lose their economic return on investment at rent review whilst also protecting the tenant from paying twice for the benefit of the investment.
11	To encourage longer-term lets of ten years or more in order to facilitate investment in productivity improvements and environmental outcomes by inserting 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 specific circumstances.	Whilst respondents were supportive of the policy aims of this proposal, responses highlighted the need to further develop our thinking in this area. We will not take this proposal forward but continue to work with TRIG and wider industry stakeholders to explore the alternative mechanisms for achieving the policy objective.
12	To take forward procedural reforms recommended by industry experts to improve the operation of the 1986 Act succession provisions: • Enable agreed successions without an application to the Tribunal • Remove technical obstacles to joint successions • Clarify the position for male widowers of a deceased tenant • Improve the process between delayed Tribunal decisions on succession and the operation of end of tenancy claims	The consultation responses showed strong support for the proposals, however a number of concerns and suggestions were made which need further consideration. We will continue to work with TRIG and wider industry stakeholders to clarify these technical points and refine the proposals.

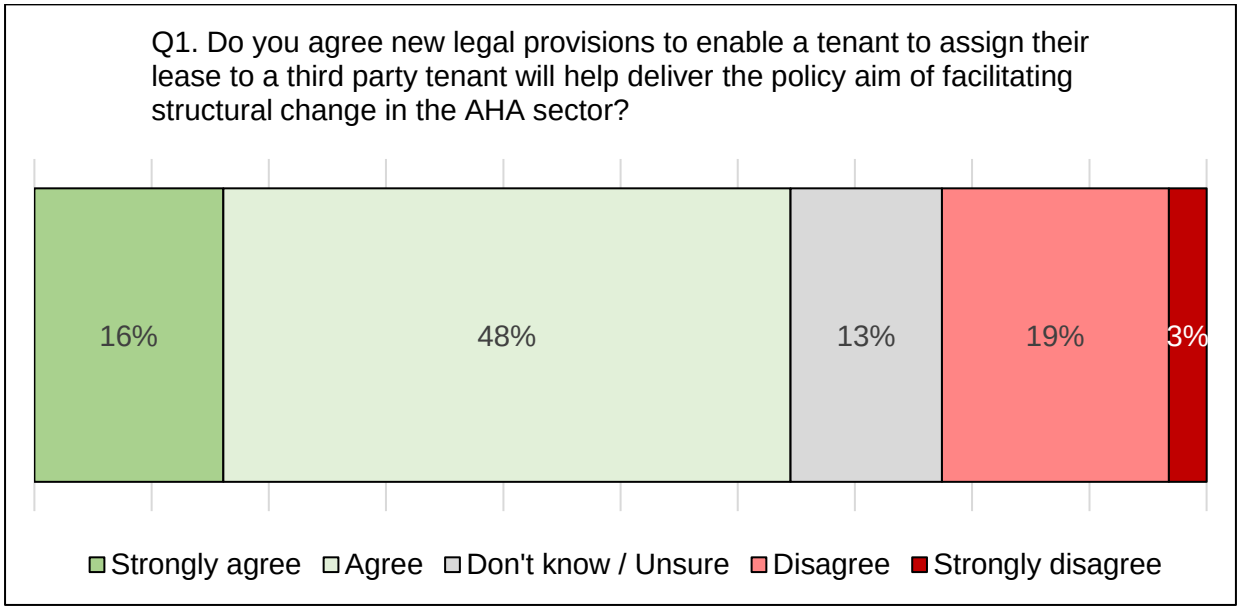
Proposals to Facilitate Structural Change

The aim of proposals 1 and 1a is to help facilitate structural change in the Agricultural Holding Act 1986 (the 1986 Act) sector by enabling older tenants who want to retire to realise financial value from their lease. Allowing them to sell and assign their lease for payment (subject to certain conditions) to a new third party tenant, unlocking opportunities for entrepreneurial next generation farmers with skills to drive productivity improvements.

Proposal 1 would insert new provisions in the 1986 Act to enable the tenant to convert their lease (once only) into a fixed term 25 year Agricultural Holdings Act (AHA) lease and assign it to a new tenant.

Proposal 1a aims to give the landlord a greater role in the selection process of the new tenant.

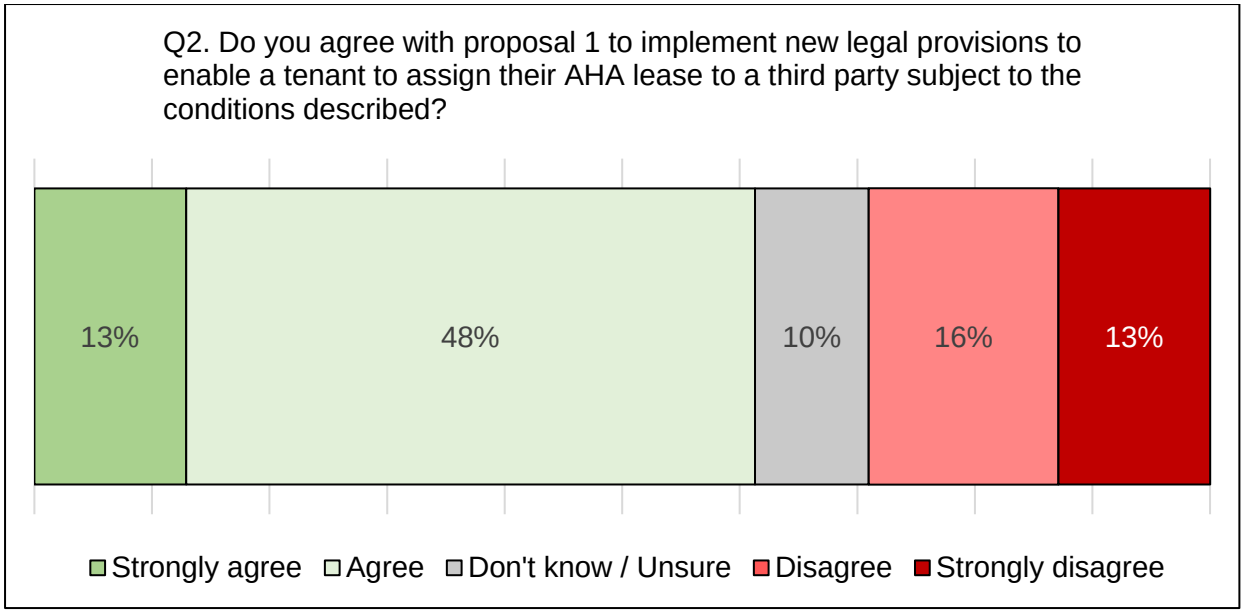
Consultation questions and responses



Response rate: 94%

The majority of respondents (64 per cent) felt this change would assist with both tenant retirement and restructuring of the AHA sector. Those which agreed felt the new provisions could provide a route into retirement for some tenants without successors, whilst also providing opportunities for some new entrants and improvements in productivity.

However, some (22 per cent) disagreed with the proposal and a further 13 per cent were unsure or did not know. Those who disagreed did not believe it would bring about the structural change or productivity benefits required and may perpetuate an outdated system. Some also warned it could lead to tenancies being ‘sold’ to the highest bidder, rather than providing opportunities for new entrants as intended. Others felt the financial value released by assignment may not be sufficient to enable an outgoing tenant to retire.



Response rate: 94%

The majority of respondents (61 per cent) strongly agreed or agreed with this proposal, however there were a number of technical and operational issues raised that need further consideration. For example, questions were raised about fairness, tax implications, selection and suitability of an assignee and the timeline for assignment.

Some raised issues about AHA tenancies let on a ‘year by year’ basis. For example, assigning tenancies for 25 years may require land to be registered with the Land Registry and the necessary Land Registry Prescribed Clauses for Leases included in Title Deeds of the land. This could create extra cost to either party involved in the transaction and increased regulation.

There was a lot of concern about the selection of an assignee and their suitability to manage the land in accordance with the tenancy agreement. For example, a new tenant’s ethos may not align with the landlord’s wider estate objectives.

A number of respondents raised issues with Agricultural Property Relief (APR) and the implications any assignment may have for the landlord.

There were concerns whether the new lease would still be classed as an AHA, and therefore remain subject to landlords’ Incontestable Notices to Quit. This may put a new entrant, who has spent a great deal of money in securing the assigned lease and the capital investment needed to farm the land, in a position where they could still be evicted. In addition, some felt the outgoing tenant should pay the reasonable costs of the landlord in assigning the tenancy to a third party.

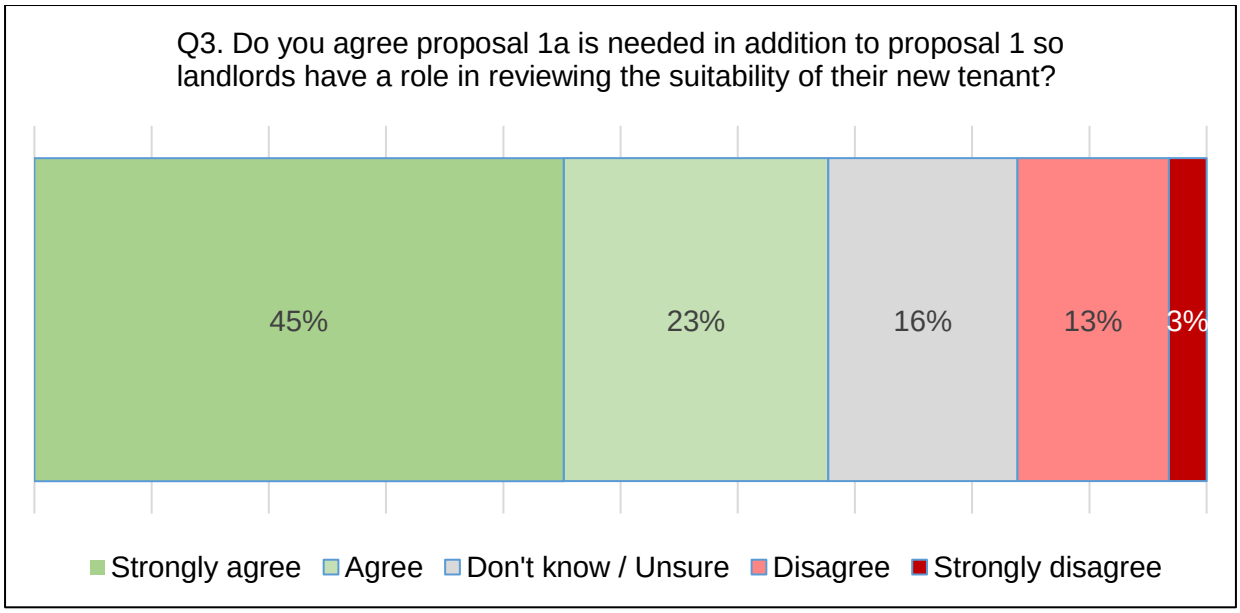
A question was raised as to whether or not this would have any impact on Local Authority holdings.

One respondent stated it was not so much the complexity of a tenancy agreement which was preventing mobility within the sector, more so the resistance by farmers to plan ahead and give sufficient time to properly plan their exit strategy. However this was not a one-sided argument as the respondent also questioned the lack of interest some landlords have with their tenants and their businesses. The respondent also said some land agents appointed to manage tenancies on behalf of the landlord lacked proficient knowledge of tenancy legislation and subsequently were creating bigger issues resulting in more disputes and arbitration cases.

One group of respondents identifying with landlords expressed concern reassigning a tenancy, particularly close to the end of the agreement, could impact on the medium to long term strategy of the estate.

Some also felt having a guarantor should be part of the assignment terms of agreement, providing the landlord with a safety net from defaulted rental payments. Some felt the guarantor should be the outgoing tenant, placing more responsibility on them to assign to a genuine farming business.

Some respondents identifying with tenants raised issues regarding the timeline for dispute resolution. Some questioned how an assignee could be kept in place should dispute resolution take up to a year.



Response rate: 94%

The majority of respondents (68 per cent) strongly agreed or agreed that the landlord should have a role in reviewing the suitability of their new tenant.

Some respondents felt giving the overarching decision to the outgoing tenant could lead to a number of risks for the landlord, instead they suggested all parties should be involved in the selection process. Part of the proposal provides for third party arbitration during the selection process should the outgoing tenant or assignee believe the decision to be unfairly overruled by the landlord.

A number of respondents felt tenanted holdings should be assigned in whole, not in part. One industry stakeholder organisation countered this view by stating this should be allowable in certain circumstances. For example, where the assignee already has a farm which includes a habitable residential house.

Many felt further work was required to fully understand the impacts and implications the proposal may have to the tenanted sector and wider agricultural industry, suggesting TRIG undertake this on behalf of both Welsh Government and Defra.

Conclusions and next steps

The proposals received strong support, however many issues were raised which need further consideration. There were also a number of alternative suggestions and proposals to deliver the policy aim. We will work with TRIG and wider industry stakeholders to explore the alternative proposals and consider how the proposal could be revised and progressed.

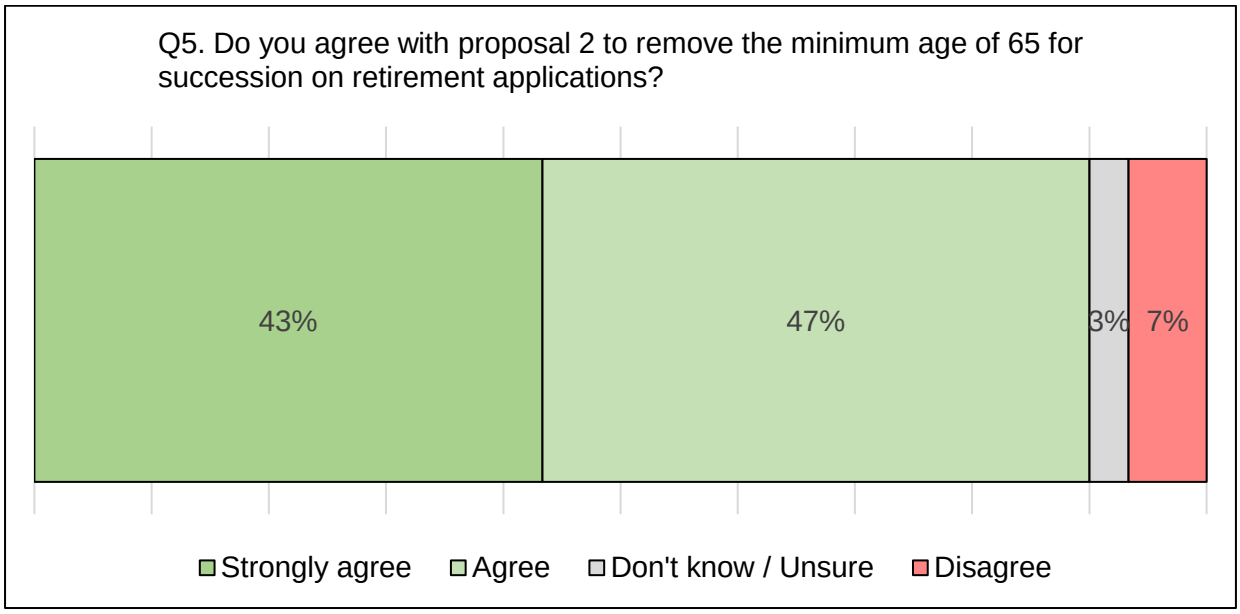
Proposals to Change Agricultural Holdings Act Succession Rights

The aim of these proposals is to incentivise earlier succession planning so holdings are passed onto the next generation sooner, where appropriate.

Proposal 2 would repeal section 51(3) of the 1986 Act to remove the minimum age of 65 when succession on retirement applications could be made.

Proposal 3 would 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.

Consultation questions and responses



Response rate: 91%

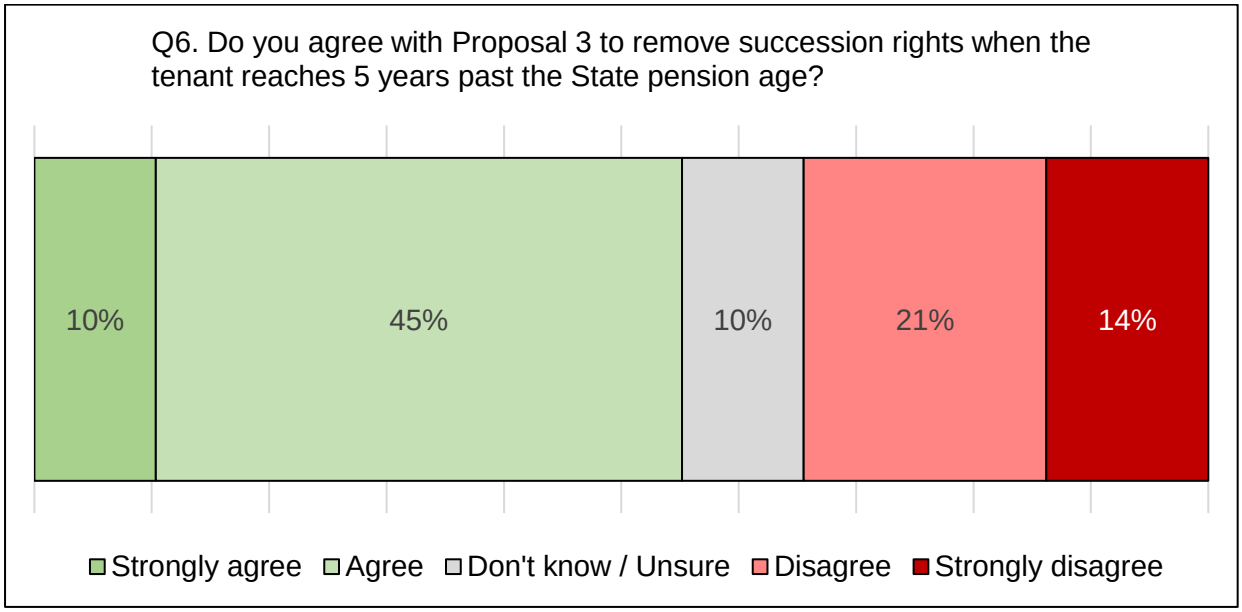
Most respondents (90 per cent) strongly agreed or agreed with Proposal 2. Many comments were very similar stating this would have the effect of encouraging more timely successions as well as allowing businesses to be more flexible in how they operate. The proposal could also assist in bringing forward succession planning and provide greater flexibility. It was also stated such a change would be neutral to the interest of landlords and tenants, given the right already exists, but this proposal could raise awareness and thus encourage early succession discussions between landlords and tenants and give an opportunity for new entrants.

A few disagreed (7 per cent) or were unsure (3 per cent) about the proposal, but no additional comments were submitted.

Conclusions and next steps

The consultation responses show very strong support for this proposal. Provisions have been included in Schedule 3 of the UK Agriculture Act[1] to amend the 1986 Act as proposed.

Consultation questions and responses



Response rate: 88%

Many respondents (55 per cent) strongly agreed or agreed with the removal of succession rights when the tenant reaches five years past the state pension age as it would facilitate more timely succession. This would enable structural change and would support new entrants and next generation farmers, resulting in more productive holdings. However, many of those who agreed with the proposal also questioned whether it is right to force an age limit on individuals who could still be very active five years past the state pension age.

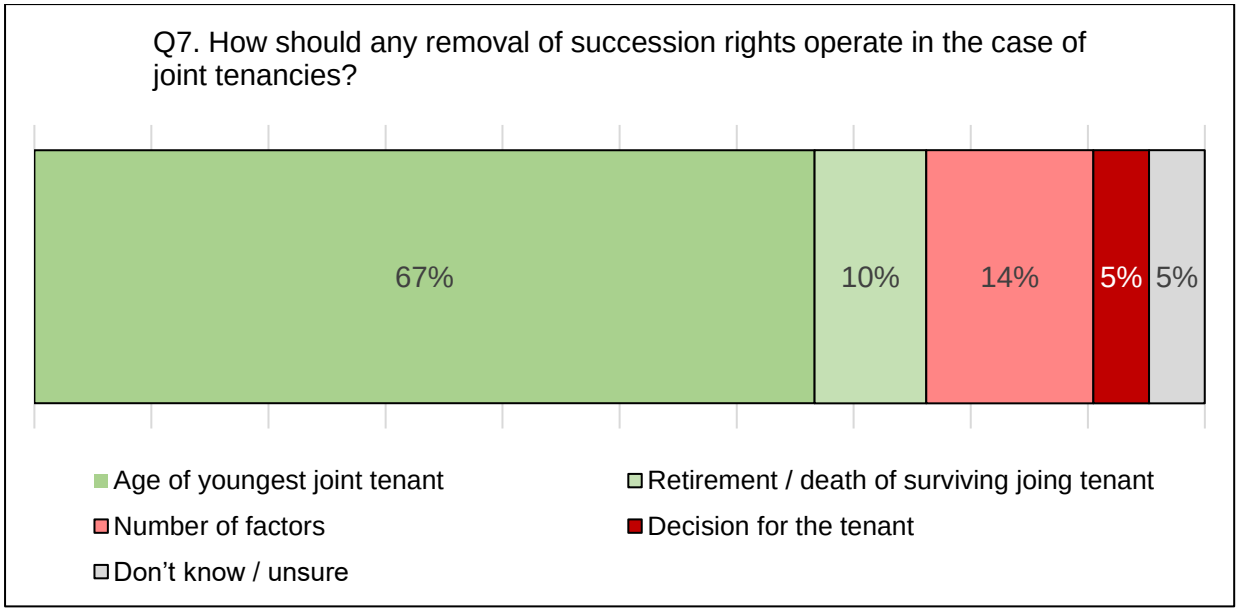
Some respondents (35 per cent) strongly disagreed or disagreed with the proposal stating it could erode succession rights, reduce opportunities for succession and benefit sitting tenants and landlords. For example, delaying hand-over could deprive the right of a successor, who might otherwise be entitled. Some also felt the right of tenancy succession should not be taken away arbitrarily simply because the tenant reaches a certain age. Some felt the proposal could raise issues around housing and retirement costs for the ageing tenant who is 'forced' to allow succession. In addition, some stated there could be instances where the potential successor would be too young to take over, especially if Proposal 8 around extending succession to grandchildren is taken forward.

One industry stakeholder organisation identifying with tenants stated in order to be balanced in respect of the interests of landlords and tenants, losing the right of

[1] https://www.legislation.gov.uk/ukpga/2020/21/contents/enacted

statutory succession should occur when the sitting tenant reaches ten years beyond the state retirement age.

Some respondents questioned whether the proposal would meet the policy goals. In practice, the tenant passing on the succession may not retire from the business and the farming partnership may continue as before. In this instance, the proposal would only change the name on the tenancy and enable succession to happen earlier. Some respondents felt this would be desirable anyway.



Response rate: 64%

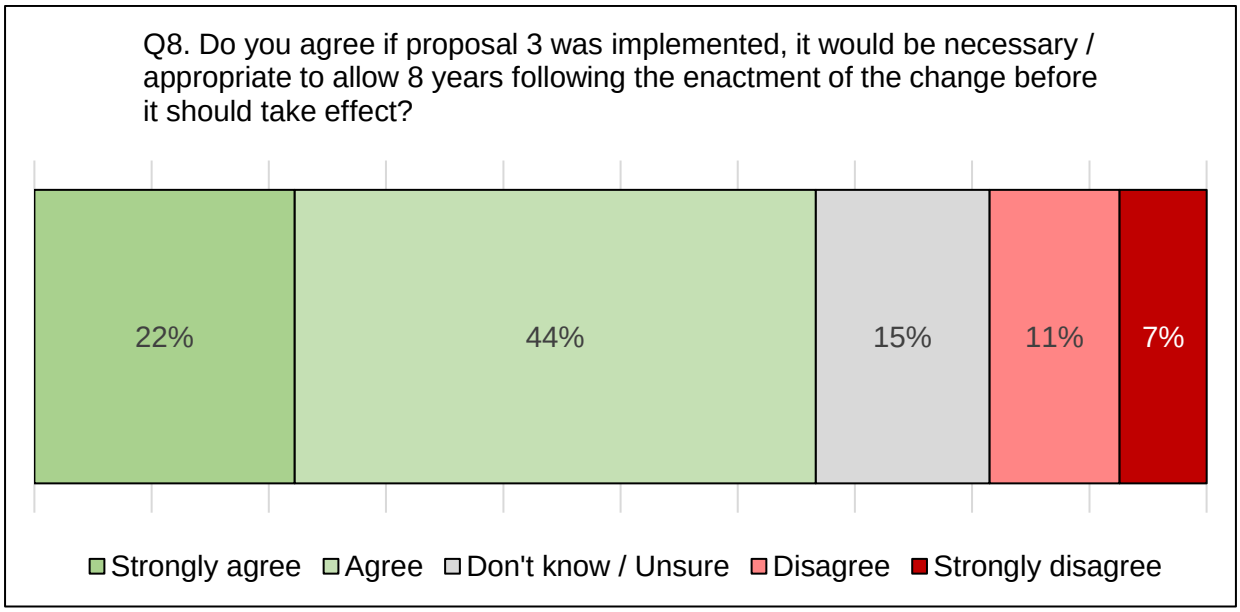
Most respondents (67 per cent) felt the age limit should be linked to the age of the youngest tenant so as not to disadvantage them. It was also stated close relatives of the elder joint tenant should not be barred from succession where the elder joint tenant exceeds the five years past state pension age, provided the youngest joint tenant is below the age threshold.

An industry stakeholder organisation advised the age of the successor will need to be taken into consideration. For example, if grandparents are nominating a grandchild, who may be too young to take on full responsibilities.

A minority (10 per cent) felt it should be linked to the retirement or death of the last surviving joint tenant as there may be instances where the younger tenant died first. If the elder tenant was more than five years past state pension age this would remove succession rights which might otherwise have been used.

Some (14 per cent) said a blanket approach could not be applied. Instead a number of factors would need to be taken into consideration including age, health, financial standing, training and experience. For example, the 'younger' tenant may not be suitably qualified, experienced and physically capable of carrying on.

A respondent identifying with landlords said it should be up to the tenant as family dynamics have changed with second families, people having children much later in life, and people via alternative careers having to build up capital reserves to take on the family farm.



Response rate: 82%

Many (66 per cent) strongly agreed or agreed it would be appropriate to allow eight years for the change to take effect, allowing sufficient time for succession planning within a business. One professional body felt a shorter timescale would encourage more active consideration of succession, both in general and ahead of the change being implemented.

Some (18 per cent) strongly disagreed or disagreed that eight years notice is an appropriate amount of time. However, there was an equal split between those who felt eight years was too long and those that felt it was too short.

One respondent suggested there be a period of communication during which the message about the change is effectively and continuously broadcast, followed by a transition period to enable succeeding tenants to successfully comply. They suggested 10 years as a sensible minimum timeframe, with the first four years for communication

One respondent identifying with landlords felt an eight year transition period may not provide enough motivation to plan a timely succession. However, other respondents commented the proposed amendments would be a step forward in ensuring a smooth succession to family members, particularly for farmers who may find it difficult to actively farm up to the retirement age. Such changes would be a positive step towards encouraging the younger generation into the industry.

Some noted there would need to be a similar communication strategy for landlords, explaining the impact of the changes and the benefits which could be achieved.

A few felt the proposal was ageist and discriminatory and contradicted existing Government policy. Some suggested the cut-off of five years after reaching state pension age could be qualified so it is deferred until 25 years after the birth of any child of the tenant.

It was also stated the degree of impact will often depend upon whether the holding includes a house, or the only house. Where there is no house, or if the tenant lives off the holding, the impact will be much less. Some suggested allowing the retiring tenant to remain in occupation of the farmhouse for their remaining life would encourage earlier succession.

Conclusions and next steps

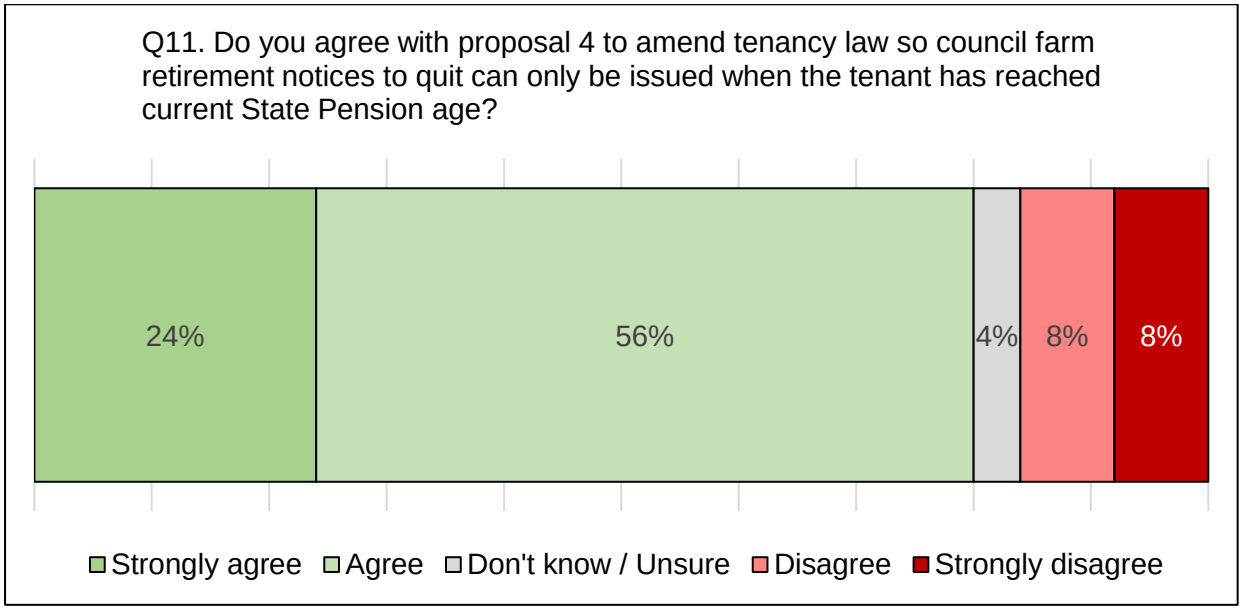
Many respondents supported this proposal, however significant concerns and issues were also raised. As such, we have decided not to take forward this proposal in its current form. We will work with TRIG and wider industry stakeholders to explore alternative options to encourage earlier succession planning, including case studies, guidance and better signposting of advice and support.

Council Farm Retirement Tenancies

The aim of the proposal is to update the 1986 Act to ensure provisions which apply to council farm retirement notices are kept in line with current state pension policy.

Proposal 4 would 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.

Consultation questions and responses



Response rate: 76%

Most (80 per cent) strongly agreed or agreed with the proposal (subject to a general proviso this would meet with equality and age discrimination law) with many respondents stating this would avoid the issues of a tenant having a void in income between quitting the holding and ability to draw a state pension due to the increase in state pension age.

A few respondents (16 per cent) strongly disagreed or disagreed with the proposal but no reasons were given.

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

Most respondents (75 per cent) who commented on this question stated the ability to serve a Notice to Quit must be linked to the age of the youngest joint tenant, so a notice can only be issued when both tenants reach state pension age.

There were also several comments regarding alternative accommodation for the tenant. Some stated local authorities have difficulties providing suitable alternative accommodation, which can be a barrier to helping their tenants retire. Others noted sometimes tenants do not get enough time to review the suitability of alternative

accommodation, and the process should be changed so local authorities are required to identify the alternative accommodation at the time the notice is served. This would enable the issue of suitability to be considered much earlier in the process. Should the accommodation be deemed to be unsuitable, or no longer available at the point the tenancy terminates, the Notice to Quit should fail.

Two respondents felt the proposal could reduce the availability of starter units for young farmers wishing to enter agriculture and may hinder development of the industry. Some suggested developing a new mentoring scheme to ease transition for the retiring farmer and provide support to the new entrant.

One industry stakeholder organisation stated this proposal should also be applied to Farm Business Tenancies where the fixed term of which are frequently calculated in accordance with the tenant's age to coincide with the tenant reaching 65.

Conclusions and next steps

The consultation responses show strong support for this proposal. Provisions have been included in Schedule 3 of the UK Agriculture Act to amend Schedule 3 Case A of the 1986 Act, as proposed.

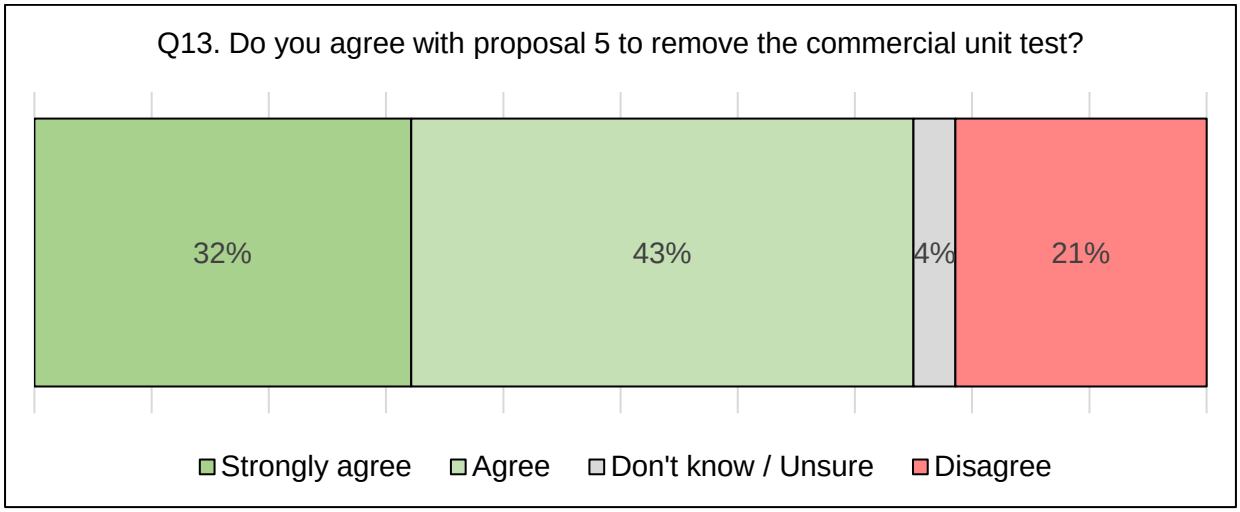
Changing Succession Eligibility Criteria: Repealing the Commercial Unit Test and Updating the Suitability Test

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

Proposal 5 would repeal sections 36(3)(b) and 50(2)(b) of the 1986 Act to remove the Commercial Unit Test from the succession provisions.

Proposal 6 would replace the current suitability test provisions with a new Business Competency Test by amending section 39(2) and replacing section 39(8) of the 1986 Act.

Consultation questions and responses

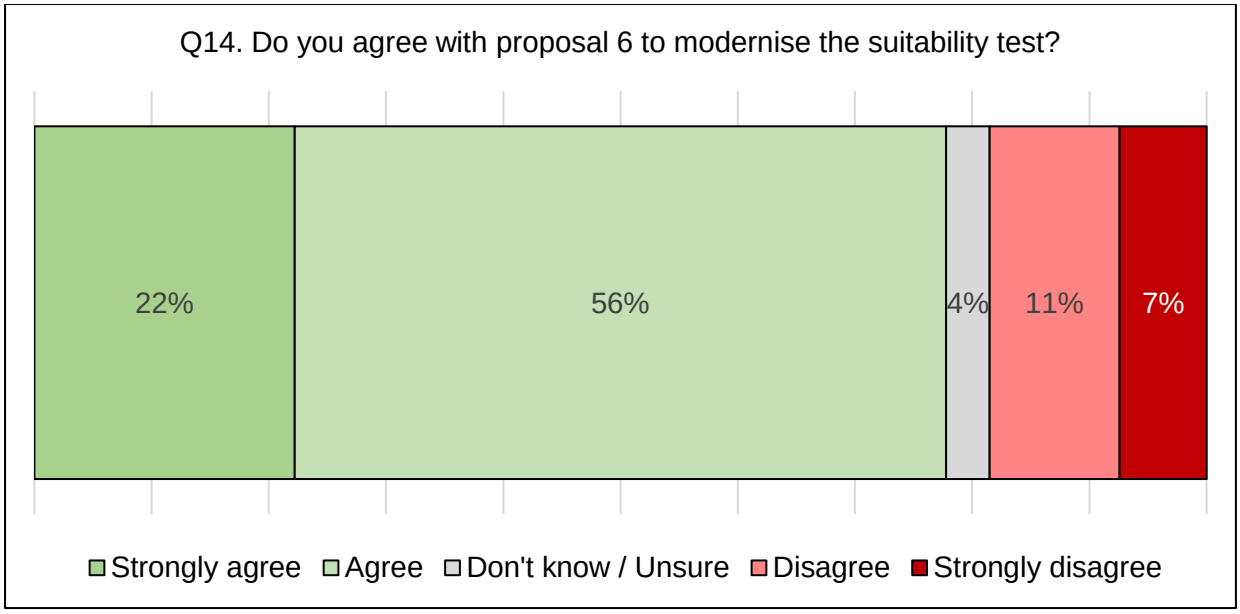


Response rate: 85%

Most respondents (75 per cent) strongly agreed or agreed with the removal of the Commercial Unit Test (CUT). They felt the current test is not fit for purpose and acts as a barrier to potential successors, reducing opportunities for those who may be better equipped to improve productivity. Some said it considerably increases the cost of negotiating successions and catches out individuals in unforeseen circumstances. It was also suggested repealing the test would allow for the amalgamation of holdings which could protect the viability of a farm business and ultimately increase productivity.

However, some respondents (21 per cent) disagreed with the proposal, believing the test to be a valuable check on a prospective succession. Although some of those that disagreed felt it needed updating.

One industry stakeholder organisation felt removing the test would disadvantage AHA landlords and unfairly impact their property rights, whilst another felt the proposal ran contrary to the policy aim of supporting new entrants and next generation farmers into the sector.



Response rate: 82%

Replacing the Suitability Test with a new Business Competence Test (BCT) was welcomed by many respondents (78 per cent) who strongly agreed or agreed with Proposal 6. They felt it could increase professional standards across the industry by ensuring successors are those best equipped to develop successful farming businesses whilst maintaining and enhancing the natural environment.

A few respondents (18 per cent) strongly disagreed or disagreed with Proposal 6, with one industry stakeholder organisation stating it would be a barrier to new entrants unless alternative assurances could be provided e.g. training programmes, mentors or experience from other sectors.

Of those who agreed with the proposal, many said the new BCT will need clearly defined and robust criteria to provide certainty to potential successors, the Tribunal and agents.

A few felt practical farming experience and academic qualifications should be given equal value, and some said new entrants must be given adequate opportunity to develop the skills and knowledge required to support any future BCT. Furthermore, some suggested a clear set of requirements or minimum standards should be set and upheld as part of the tenancy agreement, for example a mentoring package as part of a new entrant scheme.

One industry stakeholder organisation identifying with tenants suggested protection was required for the spouses of deceased tenants who may not have been the principal farmer, but who are able to conduct the business affairs of the farm whilst either employing others or farming in partnership with those with more practical skills.

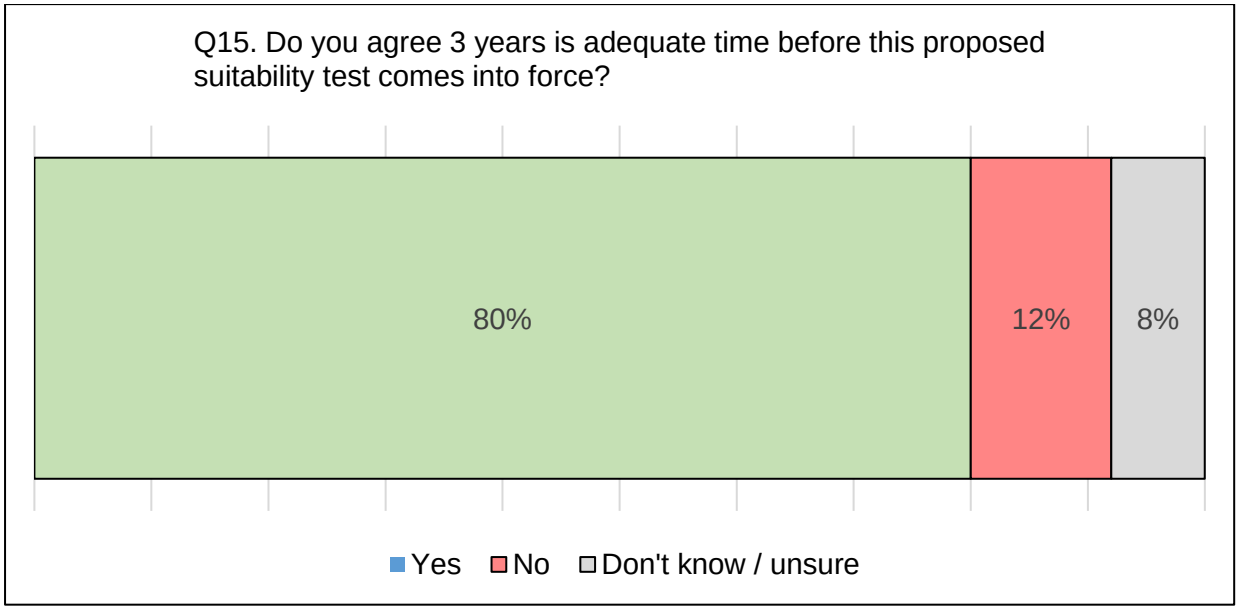
Other proposals from respondents with regard to criteria for any new test included the applicant's level of training, experience, willingness and ability to manage land

sustainably, enter into sustainable land management schemes and undertake continuing professional development.

Some also noted the Principle Source of Livelihood Test would need to be adjusted to accommodate the proposal, whilst others raised concerns about the landlord's role in gauging the suitability of the tenant where there had been a breakdown in the landlord-tenant relationship. One industry stakeholder organisation questioned assessment of 'applicants health and character' from a Human Rights perspective.

Many respondents felt Welsh Government should undertake further work with the industry to develop criteria for the new test, before the Suitability Test is changed. It was also frequently suggested repeal of the CUT and the introduction of a new BCT must occur simultaneously.

Some noted a transition period should apply to applications lodged with the Tribunal prior to the new test taking effect, allowing them to be determined under the 'old' rules.



Response rate: 76%

The majority of respondents (80 per cent) agreed three years would provide adequate time for potential successors to prepare for the change. A few commented any longer could risk tenants putting off preparing proactively for the change as it may seem too far in the future.

Several respondents in favour of the three year notice period suggested the new test should be piloted prior to implementation to ensure it will deliver the required outcomes without unintended consequences for tenants.

A few respondents suggested a longer period of three to five years might be better as it would enable successors to gain the education, training and experience that might be needed.

Conclusions and next steps

There was strong support to repeal the Commercial Unit Test. Provisions have been included in Schedule 3 of the UK Agriculture Act to provide powers to Welsh Ministers to make regulations setting out the criteria to be used in determining a person's suitability to become a tenant of an AHA holding. These will not commence until the new regulations come into force and we will work with TRIG and wider industry stakeholders to determine the specific details of the new criteria.

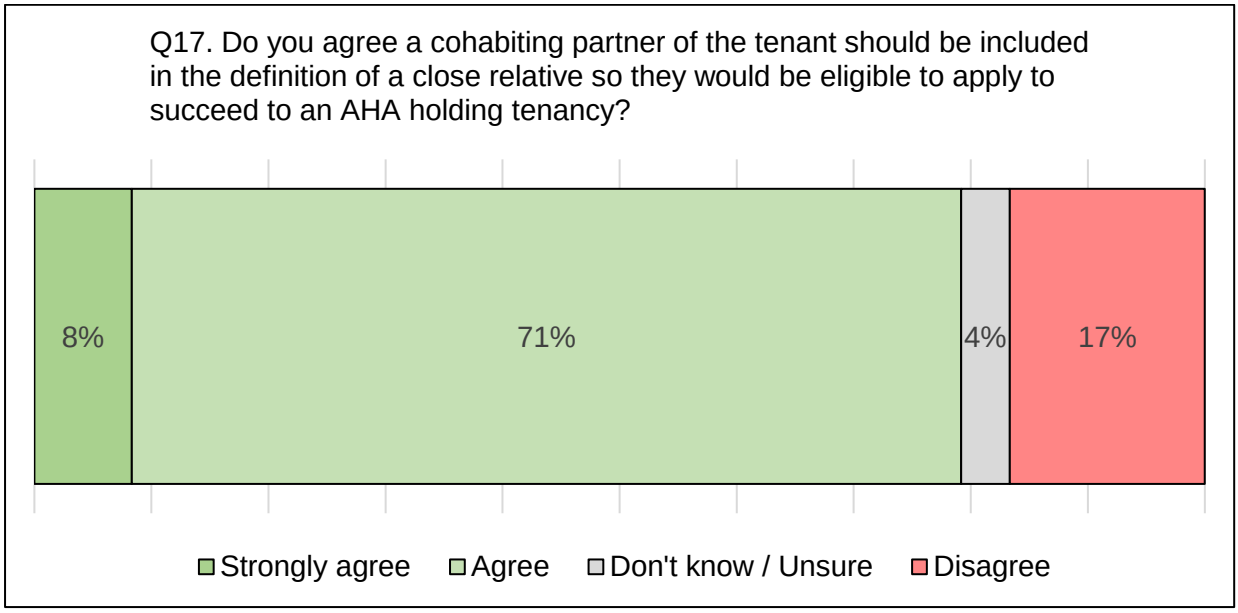
Modernising and Extending Succession Rights

The aims of these proposals are to modernise and clarify the definition of a close relative so cohabiting partners and their children and those treated as children have the same succession rights as children of married and civil partnership couples so they would be eligible to succeed to an AHA holding in the future. It was also proposed to extend the definition to include nieces, nephews and grandchildren allowing succession to skip a generation so younger members of the family can succeed to the tenancy (with the term of the tenancy being limited to 25 years and subject to market rent).

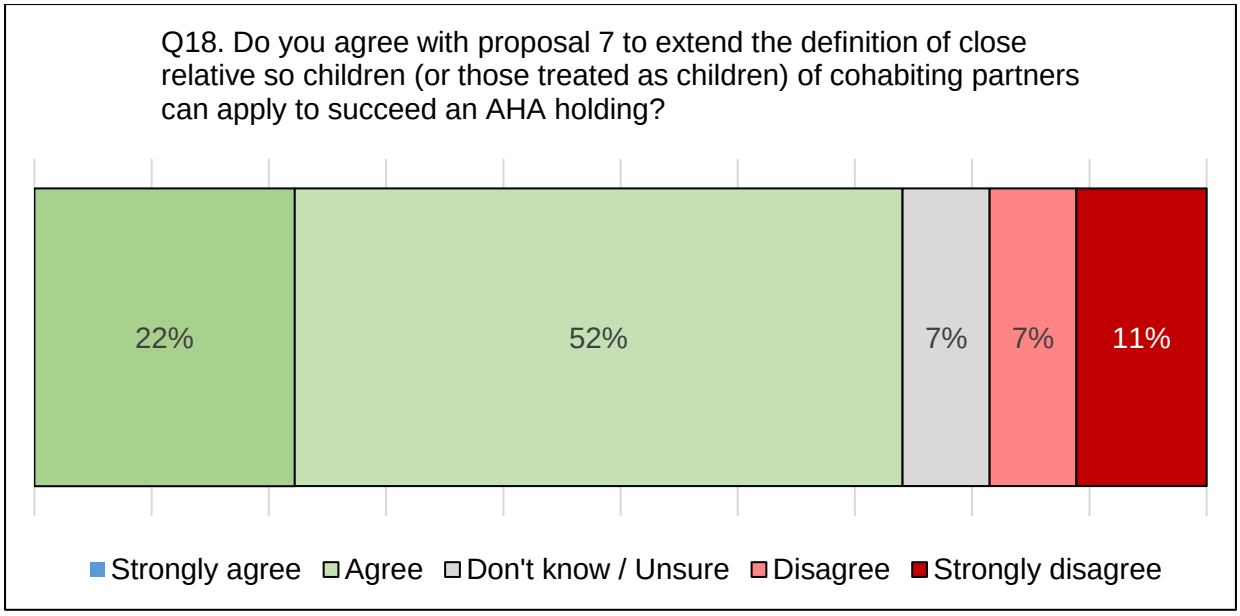
Proposal 7 would amend section 35(2)(d) and section 49(3)(d) of the 1986 Act to include children or those treated as children by the tenant in relation to marriage or civil partnership and cohabitation.

Proposal 8 would amend and extend section 35(2) and section 49(3) of the 1986 Act to include nieces, nephews and grandchildren of the tenant in relation to marriage, civil partnership and cohabitation.

Consultation questions and responses



Response rate: 73%



Response rate: 82%

The majority (79 per cent) of respondents either strongly agreed or agreed cohabiting partners should be included, reflecting the changing nature of family life in the UK.

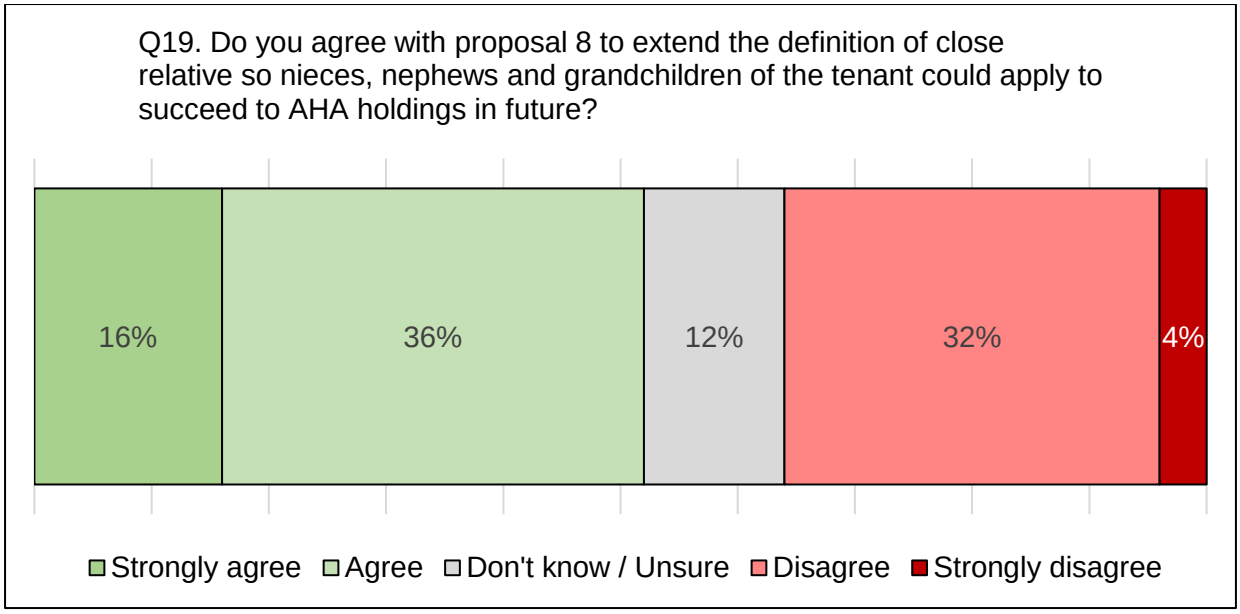
The majority (74 per cent) of respondents also either strongly agreed or agreed to extending the definition of close relative to children (or those treated as children) of cohabiting partners.

However, 11 respondents felt the proposal could be open to abuse, for example by tactical co-habiting. They suggested a minimum cohabitation period of five years as a solution. Some also noted the livelihood test should still be satisfied to ensure eligibility.

It was also stated by a few the lack of a legal definition of cohabitation may create difficulties when defining a succession application and the evidence required to satisfy it.

Some felt consideration would need to be given to a number of scenarios, for example children from multiple relationships or instances where joint tenants are no longer residing with each other on the farm (possibly with a different partner cohabiting). One industry stakeholder organisation agreed with the proposals on the proviso the cohabiting partner does not benefit from section 36(4) AHA 1986 which enables agricultural work carried out by the deceased to satisfy the livelihood test.

A few respondents (17 per cent) disagreed cohabiting partners should be classed as a close relative and 18 per cent either strongly disagreed or disagreed with extending the definition of close relative to children (or those treated as children) of cohabiting partners. One respondent said the additional scope would reduce landowner flexibility whilst another said there would be too much scope for abuse leading to disputes.



Response rate: 76%

Many respondents (52 per cent) either strongly agreed or agreed with the proposal to extend the definition of close relative to nieces, nephews and grandchildren. However many of those who agreed stated they would only support the proposal with certain conditions. These included only allowing succession in very specific circumstances such as in the context of a joint tenancy when, if the last surviving tenant is childless, no children of other joint tenants, who may be closely involved in the business, can apply to succeed or where the tenant has taken in a child and then raised the child as their own. While such cases might ordinarily be covered by the "treated as child of the marriage" provision, where the tenant is unmarried or the child was taken in after the end of any marriage, the child is excluded. Also, where the grandchild succeeds as a first succession there would be no further succession rights available for a second succession. There would also be a need for the eligibility of livelihood test being satisfied.

Many respondents (36 per cent) strongly disagreed or disagreed with nieces, nephews and grandchildren being included in the definition of close relative, stating it could defer planned landowner possession and undermine their confidence in the stability of tenancy law.

Those in favour felt the proposal would provide families with flexibility to choose the best successor for the farming business, ensuring business continuity and avoiding the breakup of strong agricultural businesses whilst also increasing options for some existing tenants. However, those who disagreed stated the proposal was not necessary as many tenancies already change hands by voluntary negotiation between landlords and tenants, leading to constructive, long-term working relationships. Others felt it could perpetuate the AHA regime and thus prove even more of a barrier to new entrants.

Some felt extending the options of succession is contrary to the stated objective of facilitating structural change and supporting new entrants into the sector. Others felt succession by grandchildren may also be largely unworkable if the earlier Proposal 3 to remove succession rights on reaching five years past state pension age is introduced as many grandchildren may not be old enough or experienced enough when the tenant reaches the cut-off date for succession.

Conclusions and next steps

Whilst many of the consultation responses supported Proposal 7 to update the definition of close relative to include children or those treated as children of cohabiting partners, significant concerns and issues were also raised. As a next step we will work with TRIG and wider industry stakeholders to determine the specifics of the proposals in more detail and consider how the proposal could be revised and progressed.

Responses to proposal 8 to extend the definition of close relative to nieces, nephews and grandchildren were mixed, with many of those in favour only providing conditional support and others believing it could undermine tenancy law.

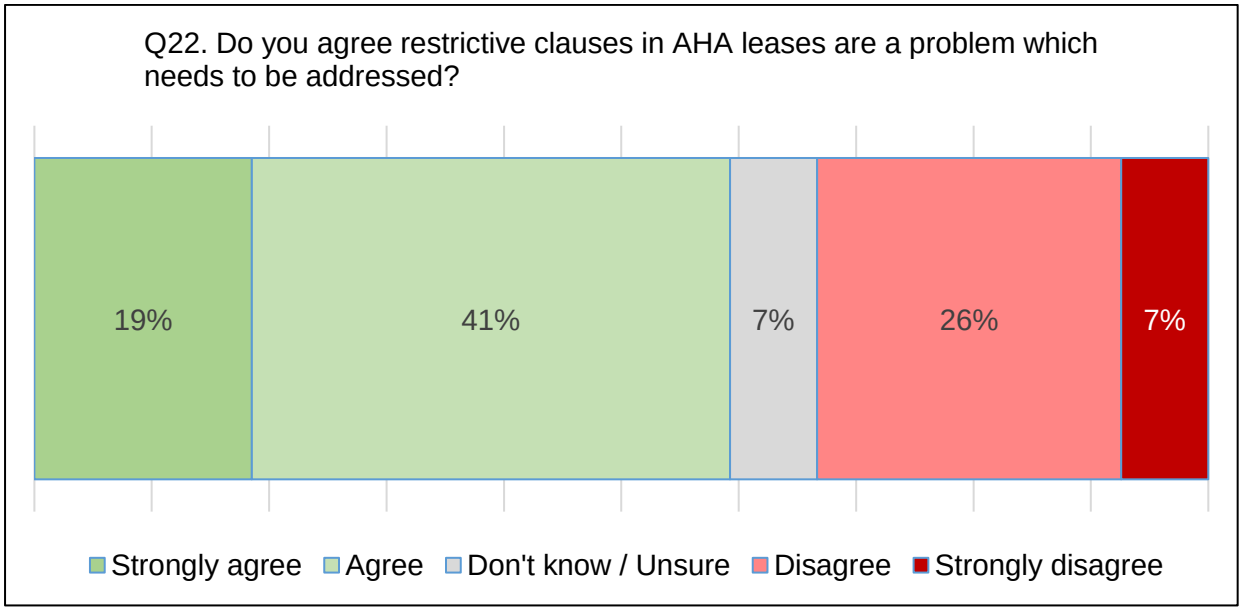
We will not take this proposal forward in its current form. We will work with TRIG and wider industry stakeholders to determine the specifics of the proposals in more detail and consider if it could be revised.

Restrictive Clauses in AHA Leases

Currently, 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. The aim of the proposal is provide tenants and landlords with a new mechanism to challenge restrictive clauses where either party feels they present an unreasonable barrier to full and efficient farming of the holding, improving productivity, securing environmental improvements or accessing agricultural funding schemes.

Proposal 9 would 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)

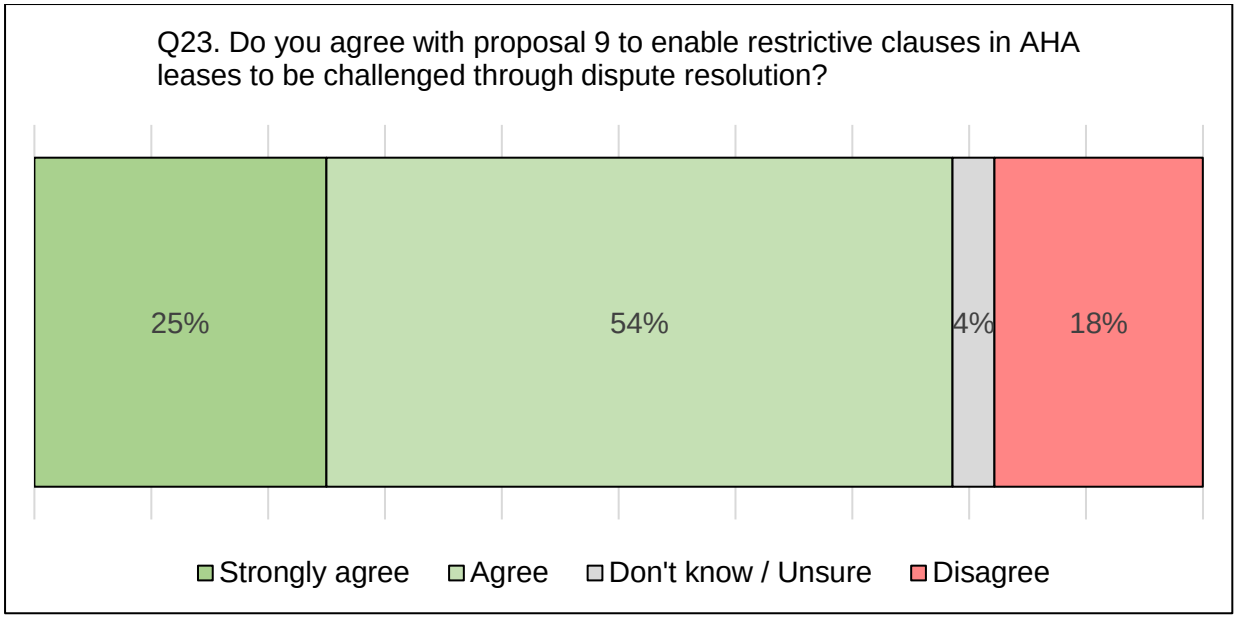
Consultation responses and questions



Response rate: 82%

Many respondents (60 per cent) either strongly agreed or agreed restrictive clauses need to be addressed, with some respondents stating clauses can be outdated and the inability to challenge them can present a barrier to business development, diversification, meeting regulatory standards and uptake of land management schemes. Some felt landlords should not be able to withhold consent on an unreasonable basis.

However, 33 per cent of respondents either strongly disagreed or disagreed, stating parties often negotiate a suitable amendment to the agreement.



Response rate: 85%

Most respondents (79 per cent) agreed or strongly agreed that a formal procedure, binding on both parties, was needed. Some felt it could facilitate better discussions and negotiations between landlord and tenant. Two industry stakeholder organisations which agreed felt the proposal should be extended to Agricultural Tenancies Act 1995 ("1995 Act") agreements, where another explicitly opposed this view.

Some respondents (18 per cent) disagreed with the introduction of Proposal 9. Some felt it would interfere with the terms of agreed contracts, and others said it would be inappropriate for a tenant to be able to seek the lifting of a restrictive clause and to manage the land contrary to the long established wishes of the landowner. A few respondents said caution should be exercised as a landlord's right to maintain a restrictive clause for genuine reasons (including non-business reasons such as landscape, amenity, visual appearance and environmental reasons) should not be unreasonably restricted. They suggested the scope and grounds for challenging a restriction in a tenancy agreement must be clearly set out in law and be limited to ensure fairness to both tenant and landlord, with the landlord's interest being sufficiently represented.

A few respondents identifying with tenants stated Proposal 9 should only apply to tenants, given landlords are not restricted in the same way. In addition, one industry stakeholder organisation identifying with tenants strongly felt providing the same mechanism to landlords could risk pressure being placed upon tenants to do things which they may not have the skills, finance or desire to do or where the proposed activities would compete with or otherwise impede existing activities on the holding.

Some respondents stated future financial support based on 'Payment for Public Goods' may disadvantage tenant farmers where it is outside the definition of

‘agriculture’ often included in traditional tenancy arrangements. They felt the mechanism alone would not sufficiently address the policy goal of enabling more tenant farmers to access new sustainable land management schemes. Some suggested the definition of agriculture for tax purposes should be amended to include all existing and future schemes.

Several responses also questioned whether the proposal was the most effective and efficient way to resolve disputes. Some were of the view that expert determination would be a better form of resolution in the first instance. The expert determining the decision would be able to use their knowledge to seek a resolution between the parties and may be able to suggest alternative arrangements, after which the option for arbitration still exists. Another stated the Agricultural Land Tribunals may deliver the service more effectively and at a lower cost than referral to arbitration.

Conclusions and Next Steps

The majority of respondents agreed with the proposal. Many who agreed noted that restrictive clauses were a particular issue for AHA tenants, preventing them from meeting regulatory standards, diversifying and entering into land management schemes. Although some respondents identifying with landlords expressed the importance of restrictive clauses in protecting the landlords interest in the holding and wider estate management objectives, stating that their views should be given equal consideration in any dispute resolution process.

In response to feedback, provisions have been included in Schedule 3 of the UK Agriculture Act to provide Welsh Ministers with the powers to enable tenants of AHAs to refer to dispute resolution requests for landlord’s consent to activities that are restricted under the terms of their tenancy agreement or requests for a variation of terms, where that request relates to meeting statutory duties or accessing financial assistance in exceptional market conditions.

We intend to take forward provisions that will enable AHA tenants to access dispute resolution in relation to future land management schemes through the Agriculture (Wales) Bill.

We recognise the importance of protecting the landlord’s interest and will work with TRIG and wider industry stakeholders, including representatives of landlords and tenants, to ensure the interests and views of both parties are taken into account when developing the implementing regulations.

A few respondents were of the view the proposal should be extended to Farm Business Tenancies. We explored this further through the Agriculture (Wales) White Paper.

Removing Barriers to Landlord Investment in AHA Holdings

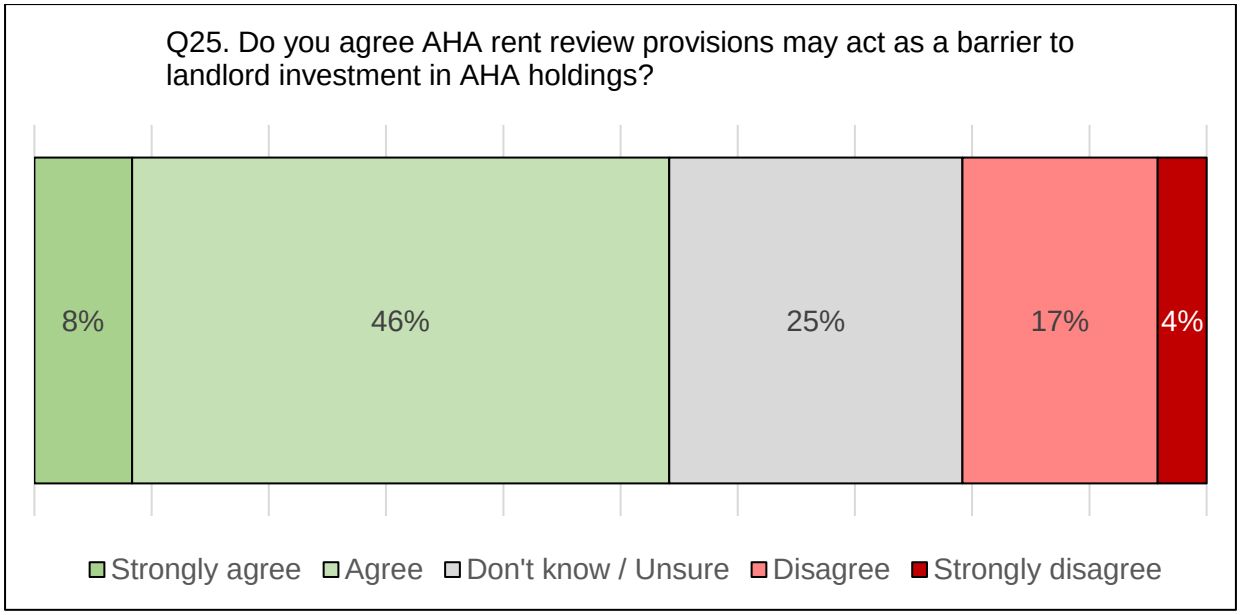
The aim of this proposal is to ensure the return on a landlord's investment in the holding is explicitly excluded from rent review considerations in order to help unlock landlord investment in the AHA sector helping to drive productivity improvements.

Proposal 10 would amend 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 have 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 would 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.

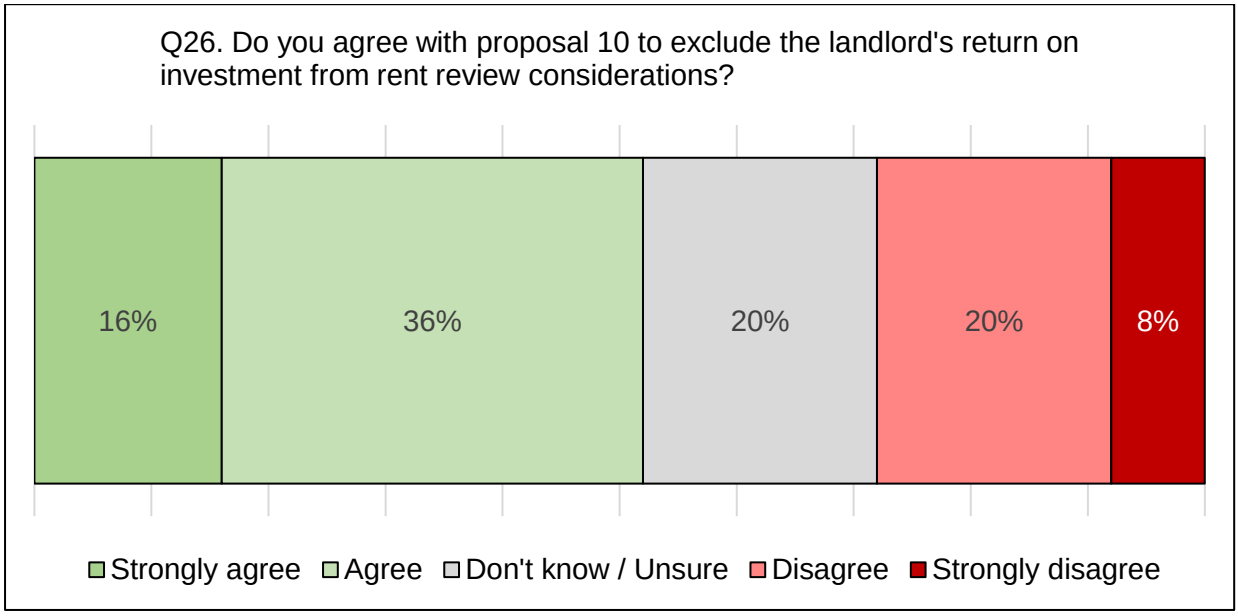
Consultation questions and responses



Response rate: 73%

Many respondents (54 per cent) either strongly agreed or agreed rent review provisions may act as a barrier to landlord investment stating some landlords are reluctant to invest in holdings if they risk losing a financial return on their investment, for example, through a rent review where rent decreases. It was also suggested there could be scenarios whereby the landlord cannot or will not make the investment required to reach statutory requirements and the tenant is unable to secure capital from agricultural lenders to reach compliance themselves.

Some (21 per cent), mainly identifying with landowners and the legal profession, did not feel this was an issue that commonly arose and a further 25 per cent were unsure or did not know.



Response rate: 76%

Fifty-two per cent of respondents strongly agreed or agreed that landlord's return on investment should be excluded from rent review considerations, whereas 28 per cent strongly disagreed or disagreed and a further 20 per cent were unsure or did not know.

Some felt the proposal would encourage landlord investment in infrastructure on holdings, provide for a more commercial arrangement between parties and offer certainty to both parties regarding payments over the lifetime of the investment.

Two industry stakeholder organisations suggested the provision should be extended to 1995 Act agreements as well, whereas another was of the opinion the benefit of the investment to the tenant must also be excluded in the rent review unless, or until, the agreed payments by the tenant in respect of the investment no longer apply.

Conclusions and next steps

There was strong support for the proposal, therefore the provision has been included in Schedule 3 of the UK Agriculture Act to amend the 1986 Act. In response to feedback, the provisions have been drafted so any benefit from the improvement to the tenant will be disregarded from rent considerations whilst the tenant is still making payments for the improvement. These new provisions remove the risk a landlord could lose their economic return on investment at rent review whilst also protecting the tenant from paying twice for the benefit of the investment.

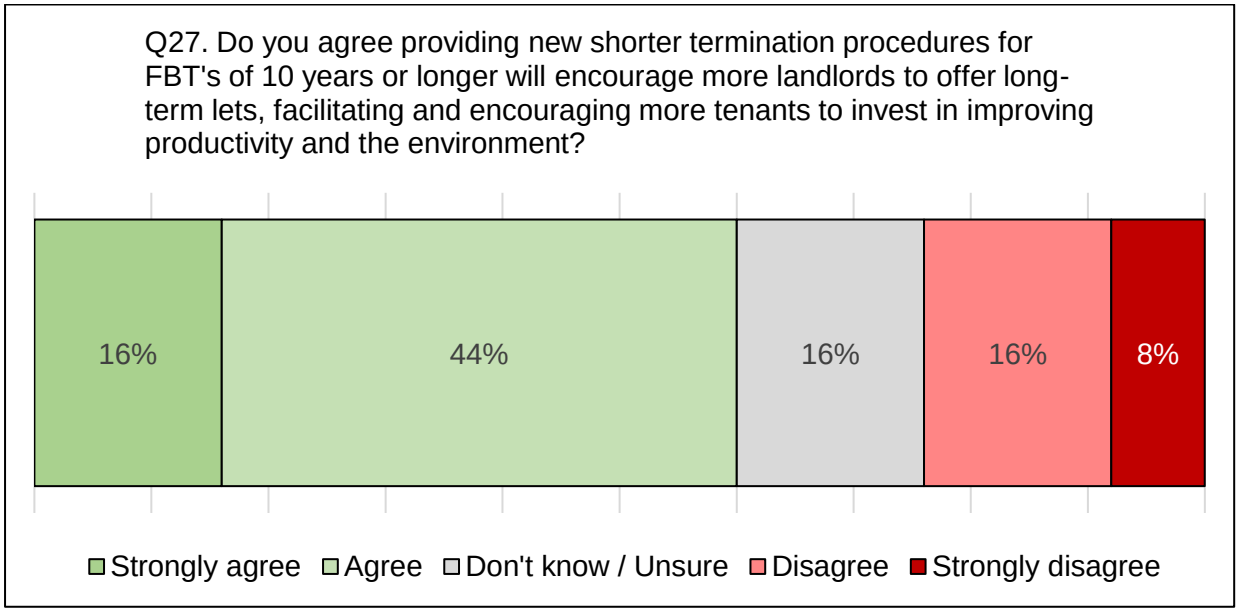
Introducing Short Notices to Quit for New Farm Business Tenancies of Ten Years or More

The aim of this proposal is to encourage longer-term lets of ten years or more in order to facilitate investment in productivity improvements and environmental outcomes. The proposal would achieve this by providing landlords with shorter termination procedures in specific circumstances.

Proposal 11 would 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 following specific circumstances:

- Non-payment of rent
- Death of the tenant
- Planning consent for non-agricultural use

Consultation questions and responses



Response rate: 76%

Many respondents (60 per cent) either strongly agreed or agreed providing shorter termination procedures for FBTs would encourage longer-term lets, whereas 24 per cent of respondents either strongly disagreed or disagreed.

There was some concern and doubt amongst those who agreed as to whether the proposal would significantly encourage landlords to let for longer periods, noting there may be other commercial reasons why parties agree a shorter-term agreement. Some suggested fiscal incentives would have a better effect. Without such incentives it was suggested landlords could continue to default to offering agreements with the maximum flexibility for themselves.

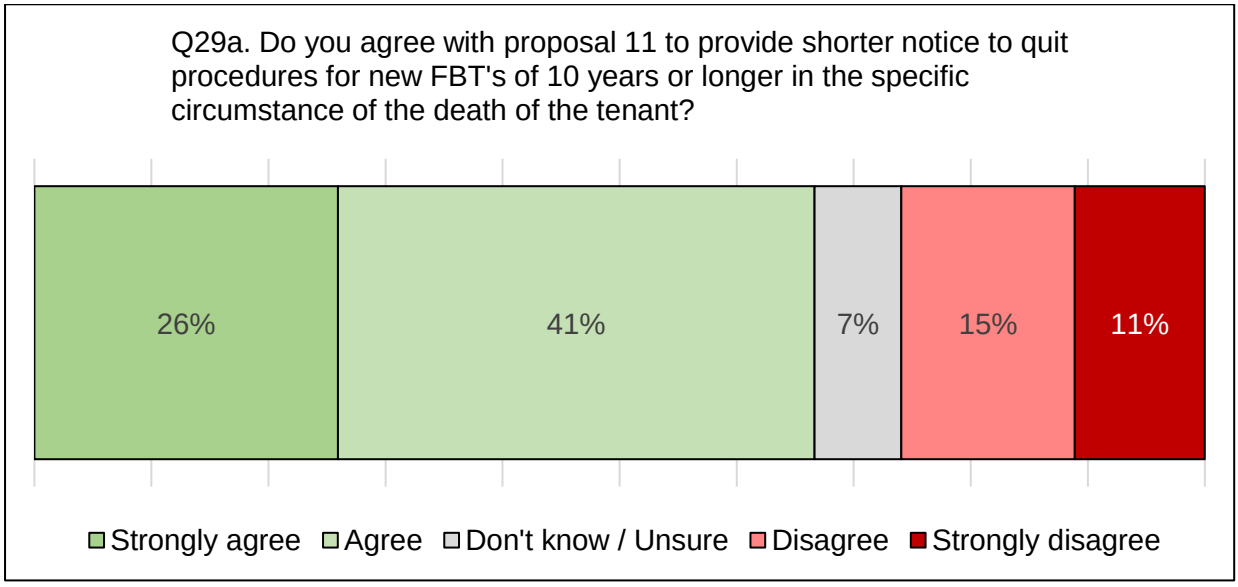
On the other hand, one industry stakeholder organisation was of the view the proposal would give landlords more confidence to let for longer periods by removing the need for complex arrangements where development for non-agricultural purposes is planned. It was also argued shorter termination procedures could increase uncertainty and restrict investment towards the end of such tenancies. There was also concern that reducing the notice to quit period to under a year, could lead to a significant increase in bankruptcies amongst tenant farmers, who are particularly vulnerable.

Many respondents who supported the proposed changes suggested the favourable option would be for the changes to apply to all FBTs of more than two years, however one industry stakeholder organisation identifying with tenants supported the proposal on condition it would only apply to new FBTs of ten years or more with no landlord break clauses.

Another respondent, identifying with landlords, said it would be much better for both parties to have a situation where there were fewer break clauses but a much easier way to bring a tenancy to an end in the event of serious defined breaches.

Additional changes suggested by respondents included:

- The equalisation of the treatment of rental income with other business income for income tax purposes and allowing the investment by a landlord in fixed equipment on a let holding to qualify for relief from capital taxes and for capital allowances which could be linked a minimum initial term of the tenancy;
- An Income Tax relief on rents for arm's length lettings, geared to the length of term, building on and learning from the positive experience of the Irish Republic since 2015 (acknowledged by TRIG in 2017); and
- A ten year rolling tenancy, which is renewed back up to 10 years at each three-year rent review.

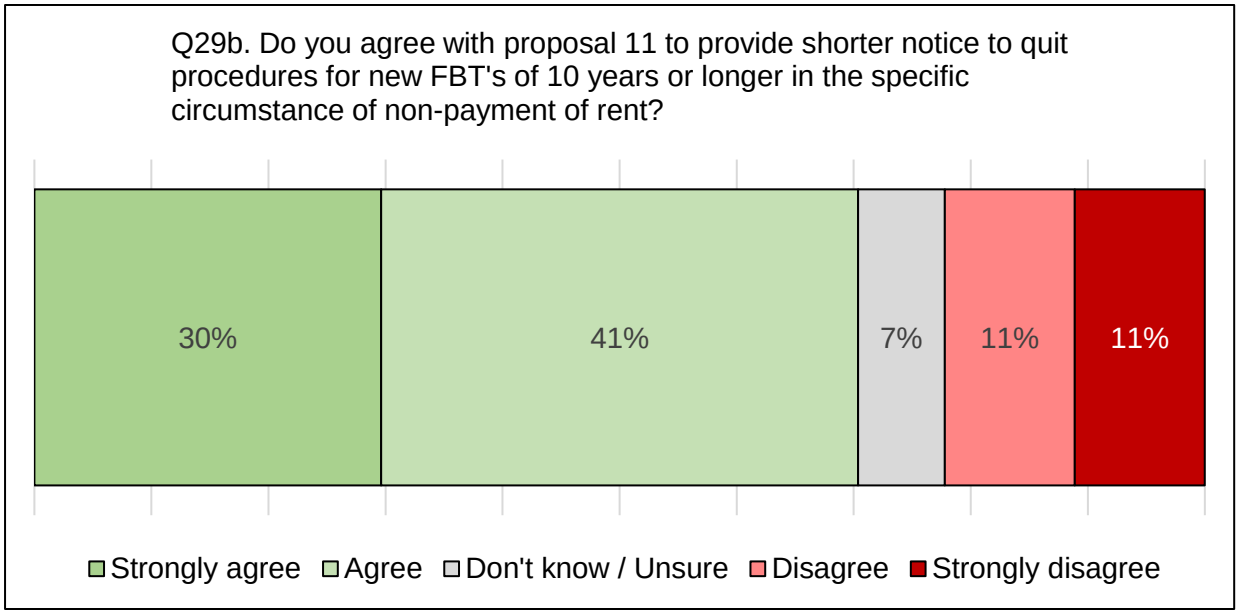


Response rate: 82%

The majority (67 per cent) strongly agreed or agreed shorter notice to quit procedures should apply after the death of the tenant. Whilst 26 per cent strongly disagreed or disagreed with the proposal.

Concerns were raised that whilst 12 months can give adequate time for the tenant's estate to be administered, probate can often take longer than this. The practical implications of bringing a farm business to a close, dispersing of livestock and deadstock could also be a challenge for a family in this position.

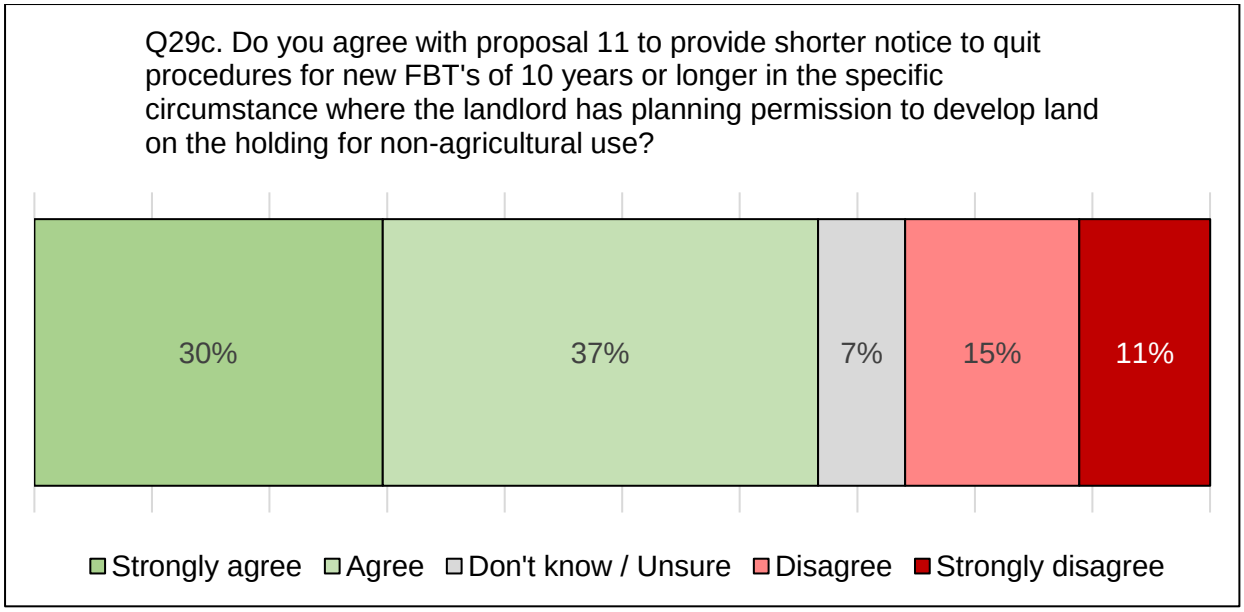
Another stated no further statutory intervention was needed as the 1995 Act already allows the agreement to provide for a relevant break clause and 12 months' notice within any fixed term agreement.



Response rate: 82%

The majority of respondents (71 per cent) strongly agreed or agreed shorter Notice to Quit procedures should apply in the event of non-payment of rent stating it will be an assurance to all potential landlords and a powerful reason for rent to be paid as a priority.

However, 22 per cent either strongly disagreed or disagreed with the proposal stating there may be genuine reasons for default, such as non-receipt of subsidy payments or factors outside the tenant's control. One industry stakeholder organisation stated the proposal to amalgamate the two month Notice to Pay and the three month Notice to Quit should not be supported as it will shorten the amount of time available to a tenant to pay the rent.



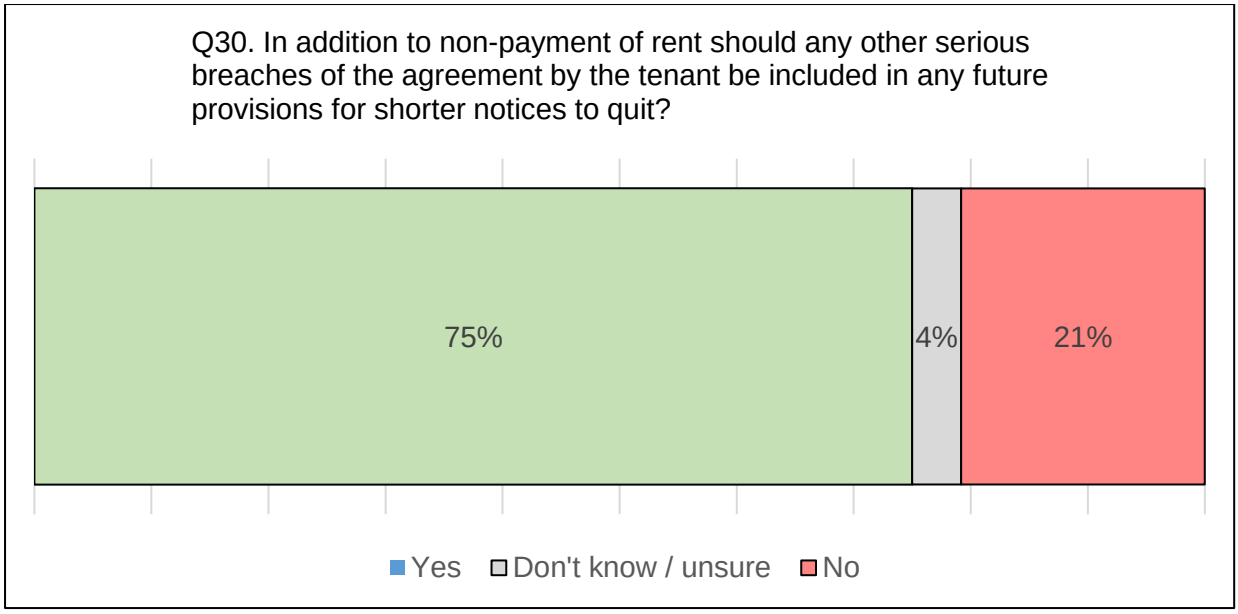
Response rate: 82%

The majority (67 per cent) of respondents strongly agreed or agreed shorter Notice to Quit procedures should be introduced where the landlord has permission to develop the land for non-agricultural purposes. One industry stakeholder organisation stated not being able to recover land for development can be a substantial problem for landowners and can take up to two years.

Some respondents (26 per cent) either strongly disagreed or disagreed with the Proposal stating it would reduce agricultural land available. Many noted where planning permission is sought over the entire holding the landlord would in all likelihood know well in advance of obtaining planning consent, therefore a 12 month notice period would be the minimum time required in this situation.

Some felt the definition of ‘non-agricultural use’ should be clarified in the event of a shorter Notice to Quit.

A limited number of respondents suggested it would be vital to introduce new provisions for tenants under livestock movement controls at the point a Notice to Quit the holding becomes effective.



Response rate: 73%

The vast majority (75 per cent) of respondents suggested there should be additional serious breaches of the agreement included in future provisions for shorter Notices to Quit and 21 per cent disagreed.

Suggestions included:

- Non-compliance with a notice to remedy;
- Breaches incapable of remedy;
- Insolvency;
- Sub-letting or unauthorised use by a third party;
- Farming practices threatening public potable water supplies in the case of Statutory Water undertaker landlords;
- Failing to actively farm the land / failure to farm to a good standard (Code of Good Agricultural Practice);
- Animal welfare conviction;
- Confirmed cases of pollution or other severe environmental harm;
- Damage to neighbouring farm crops;
- Damaging the holding intentionally;
- Failure to undertake specified works;
- Persistent poor performance of the tenant in meeting covenants or being wholly obstructive to the landlord's overall estate management objectives;
- Criminal offences; or
- Allowing unauthorised waste to enter the holding.

Whilst some respondents gave a specific notice to quit period it was generally agreed TRIG should be asked to carefully consider such suggestions and appropriate notice periods. One industry stakeholder organisation did suggest if the proposal was taken forward, it should not focus on defining relevant breaches but

assessing its effect and consequences, fitting better with the principles-based style of the 1995 Act.

Many commented on compensation to tenants, although views were varied on the subject. The two most widely held views were either the current compensation rules under the 1995 Act were adequate and should not be changed at all, or compensation should be paid to the tenant based on five times the annual rent for the land removed from the holding subject to the sum being capped at the remaining term of the lease where the remaining term is less than 5 years (as per the recommendations of TRIG). One respondent referenced the Landlord and Tenant Act 1954 which provides for a landlord to take back their commercial property for redevelopment and includes a compensation calculation mechanism.

However, many other views were expressed including:

- Compensation payable should be set at 10 times the rent passing for the land taken or the level of the tenant's real loss (whichever is the larger) subject to determination by an arbitrator or third party in the absence of an agreement between the parties, with the onus to provide the evidence to be on the tenant;
- Loss of potential net earnings from the lost area of land for the duration of the lease or a fixed time period e.g. 10 years (whichever is smaller);
- Compensation should be the repayment of the unexpired amount of rent paid for the piece of land concerned;
- Compensating for any Stamp Duty Land Tax loss incurred in taking on a 10 year tenancy;
- Compensation should take into account the quality and nature of the land taken, the location of the land and nature of the development;
- The inconvenience / ease of finding alternative land, and the proximity of the land to the main holding;
- Compensation for business interruption, recognising the costly nature of moving or closing a farm business at short notice; or
- Compensation should reflect the investments the tenants have made on the land and how it will affect the business if irredeemable.

One industry stakeholder organisation stated if the holding is rendered unviable where a landlord serves notice for non-agricultural planning permission on part of it, the tenant must be given the opportunity to surrender the remainder of the holding and be compensated as though the landlord had served notice on the whole.

Conclusions and next steps

Whilst respondents were supportive of the policy aims of this proposal, responses highlighted the need to further develop our thinking in this area. We will not take this proposal forward but continue to work with TRIG and wider industry stakeholders to explore the alternative mechanisms for achieving the policy objective.

Procedural reform to AHA succession law

The aim of this proposal is to take forward procedural reforms recommended by industry experts to improve the operation of the 1986 Act succession provisions.

Proposal 12 would:

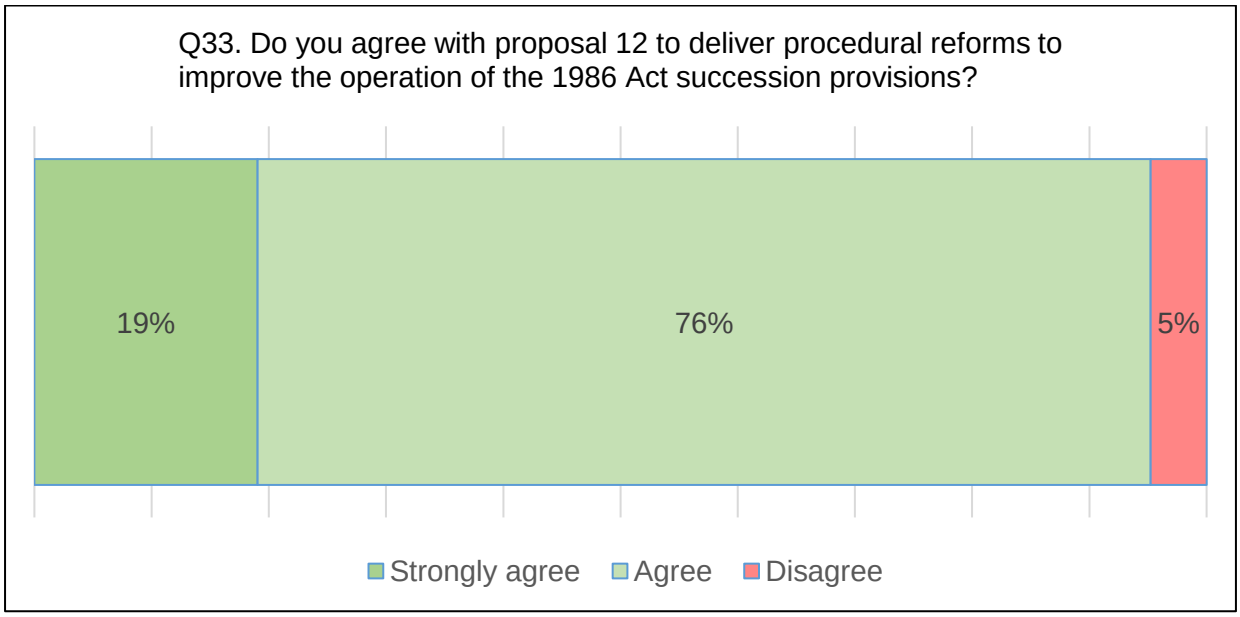
(I) Enable agreed successions without an application to the Tribunal by amending section 37 of the 1986 Act and section 4 of the 1995 Act so where both parties agree to a succession and record it as such it should be protected as a succession and count as a succession;

(II) Remove technical obstacles to joint successions by amending section 37 of the 1986 Act so the provisions expressly recognise the previous tenant may be a joint tenant in the succession tenancy;

(III) Clarify the position for male widowers of a deceased tenant by amending section 36(4) of the 1986 Act so it refers to all surviving spouses (i.e. wife or husband) and civil partners; and

(IV) Improve the process between delayed Tribunal decisions on succession and the operation of end of tenancy claims by amending section 43 and section 44 of the 1986 Act.

Consultation questions and responses



Response rate: 64%

There was a very positive response to this proposal with 95 per cent of all respondents either strongly agreeing or agreeing. Only 5 per cent disagreed. Many felt the proposal would make succession applications easier, would remove bureaucracy and would save unnecessary costs. The current timescale for resolving

disputes regarding the termination of a tenancy is seen as extremely protracted and costly.

However, some suggested the proposed changes are not needed at all as they are already provided for in the current legislation.

Those who agreed made a number of suggestions and technical points which need further consideration, including:

- concern successions may be recorded incorrectly without an application to the Tribunal;
- on enabling agreed successions without an application to the Tribunal, some questioned how this might affect the rights of other potential successors. One industry stakeholder organisation also questioned whether agreed successions should only go ahead if no other applications have been made by other successors, or if the agreed successor has been expressly nominated by the deceased tenant; and
- third party mediation as a more cost-effective method of dispute resolution.

A number also noted the need to ensure the Agricultural Land Tribunal Wales members are suitably qualified to determine applications and charges should be kept as low as possible if introduced.

Conclusions and next steps

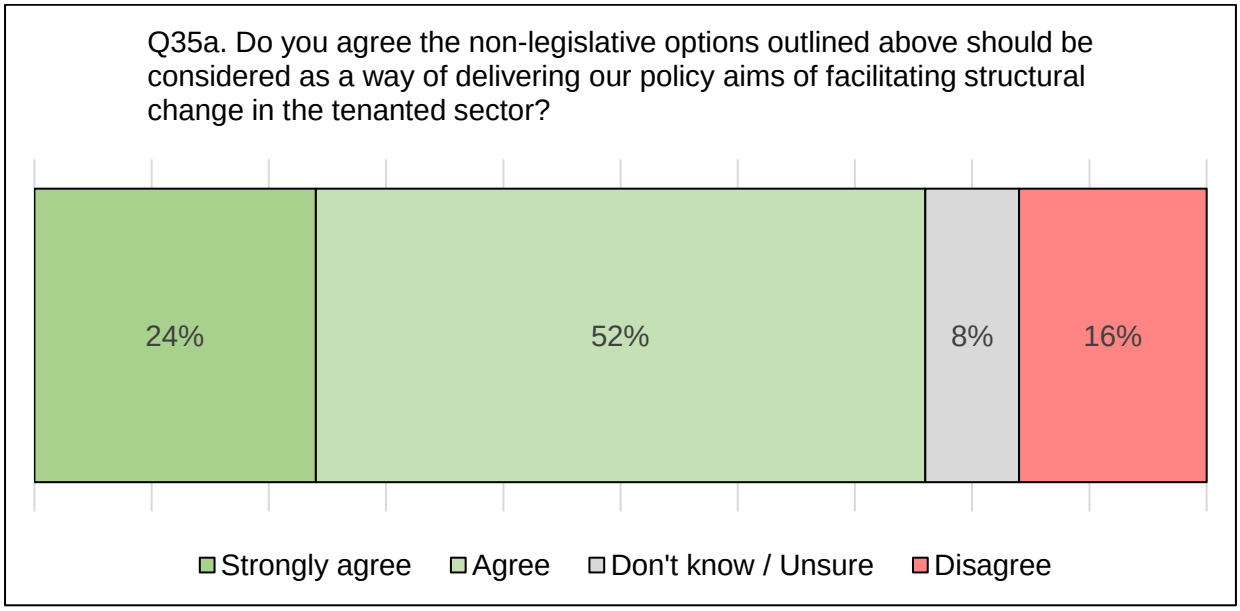
The consultation responses showed strong support for the proposals, however a number of concerns and suggestions were made which need further consideration. We will continue to work with TRIG and wider industry stakeholders to clarify these technical points and refine the proposals.

Non-Legislative Options

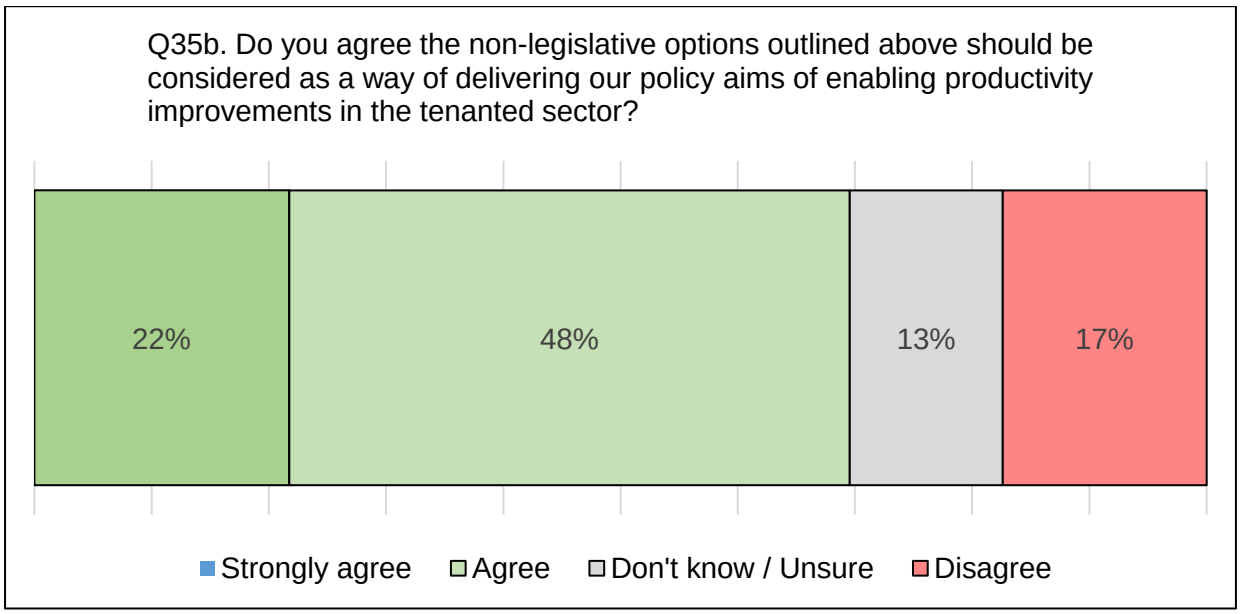
The consultation asked respondents for their views on non-legislative options to deliver the proposed policy aims, including:

- Developing guidance on Retirement and Succession Planning;
- Developing Best Practice guidance on Restrictive Clauses; and
- Raising awareness of the potential benefits of longer term FBTs

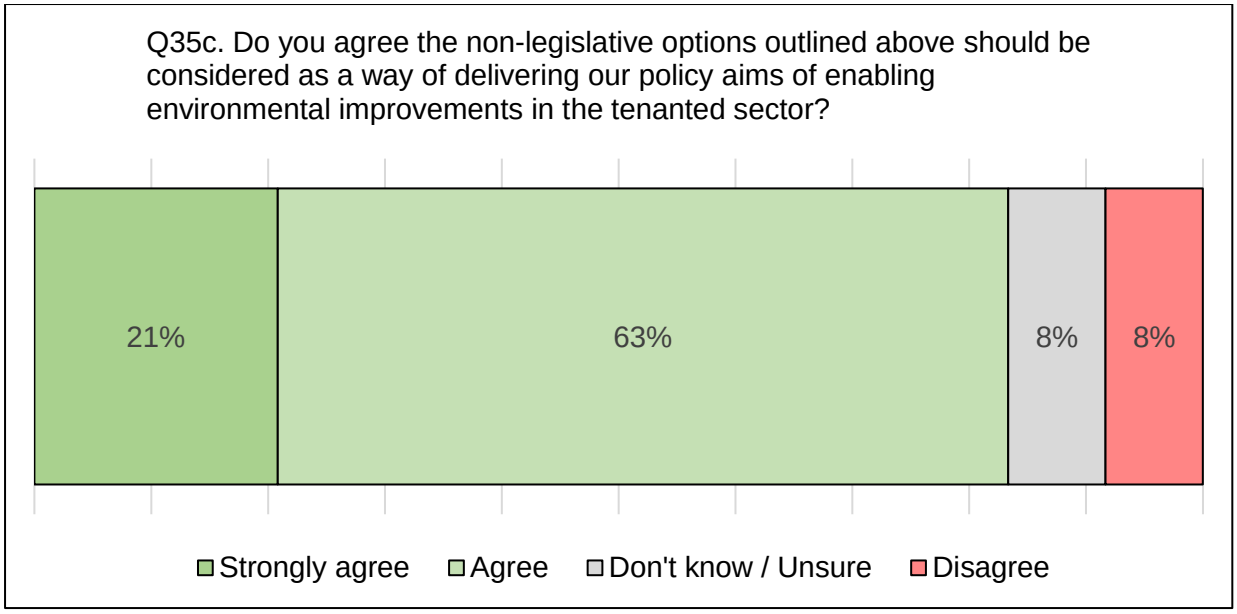
Consultation questions and responses



Response rate: 76%



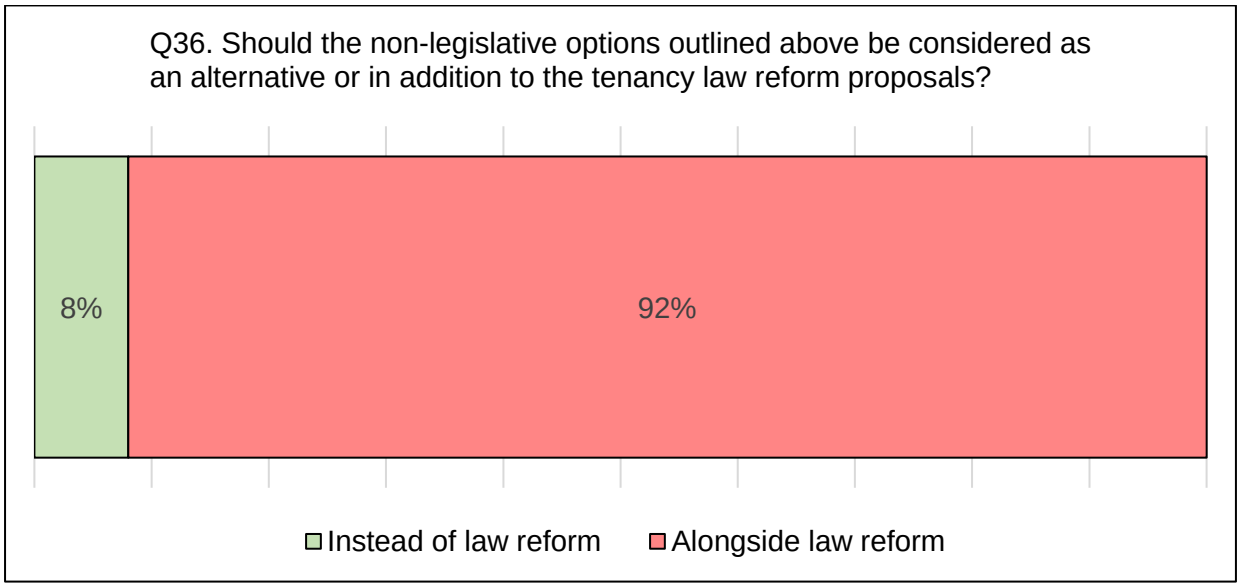
Response rate: 70%



Response rate: 73%

The non-legislative options detailed in the consultation were generally received favourably with 76 per cent of all respondents either strongly agreeing or agreeing they would help facilitate structural change, 70 per cent either strongly agreeing or agreeing they would enable productivity improvements and 84 per cent either strongly agreeing or agreeing they would enable environmental improvements within the tenanted sector.

Some respondents commented the non-legislative options would encourage a greater dialogue and understanding between landlords and tenants and greater awareness of the possibilities available to them, creating more successful relationships under the existing contractual frameworks. Some suggested guidance and best practice should be produced by TRIG.



Response rate: 76%

Nearly all respondents (92 per cent) felt non-legislative options should be considered in addition to tenancy law reform, with many stating legislative reform is not sufficient on its own to achieve the intended goals.

A small minority (8 per cent) did not support the proposals, with some concerned they may actually hinder tenant and landlord relationships. Others noted advice and support for tenant farmers is already available through Farming Connect and other organisations. It was suggested a detailed analysis and evaluation of the existing Farming Connect offer should be undertaken to establish how the current programme might be built on to help deliver some of the aims of the consultation.

Conclusions and next steps

Many respondents agreed additional industry developed support and guidance would be helpful, in addition to the regulatory improvements.

We will work with the TRIG and wider industry stakeholders to develop guidance and best practice case studies to help facilitate knowledge exchange across the sector.

Call for Evidence on the Impact of Mortgage Restrictions Over Let Land

This part of the consultation sought to explore issues created by current provisions in the 1995 Act which restrict the landowners with a mortgage over their agricultural land to grant tenancies without first gaining permission from their mortgage lender. The overall response rate to these questions was relatively low compared to the previous questions on tenancy reform.

Consultation questions and responses

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?

The overwhelming majority of the respondents felt there were many important reasons why mortgage lenders restrict the ability of landowners to grant agricultural tenancies on mortgaged land without permission, although in reality permission is rarely withheld. Some noted obtaining permission can take time, but generally it was not considered a barrier to landowners offering agricultural tenancies.

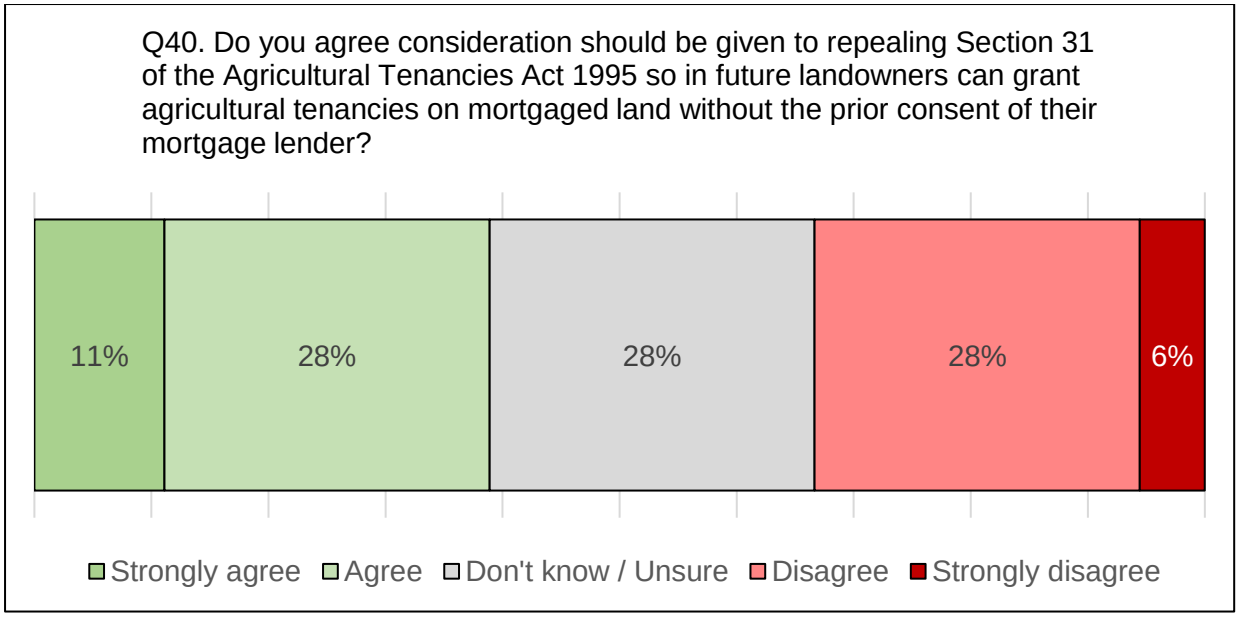
Many respondents stated the creation of a tenancy has an impact on the value of the loan security and on the ability of the mortgagee to realise its security (if necessary) and sell with vacant possession. Allowing a landowner unfettered rights to rent out agricultural land subject to a mortgage is therefore a risk to a lender. Making the land subject to a lease may:

- reduce its value, so adversely affecting the loan to value ratio, the more so the longer the terms of the tenancy granted;
- be deliberately intended to protect the borrower against the lender; or
- make the land less marketable on repossession.

Some suggested without appropriate and enforceable security lenders are exceedingly unlikely to lend, seeing the sector as too risky.

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

All of the respondents to this question said they did not have any evidence or examples of mortgage restrictions preventing landowners offering agricultural tenancies. One respondent went on to say permission is rarely denied, and another said permission is often given retrospectively and will only be denied where the landowner is already in default.



Response rate: 55%

Responses to this question were mixed with, 39 per cent either strongly agreed or agreed, 34 per cent disagreeing and 28 per cent saying they did not know or were unsure.

One professional organisation suggested additional measures would compound artificiality in the lending market. They went on to state financial management and the ability to service debts should be core to optimising productivity across a business, and suggested subscription to voluntary codes of practice for lenders and awareness raising for both parties as an alternative approach.

Those who agreed felt repealing Section 31 could increase the availability of land for farmers to rent, which would reduce one of the major barriers in access to land.

One industry stakeholder organisation commented it may increase risk for tenants if landlords defaulted on loans or loans were called in. Another organisation identifying with tenants stated it must be made a legal requirement for the owner of land subject to a mortgage to declare the fact in any letting particulars and to provide evidence to the incoming tenant of the consent granted by the mortgage provider to allow the tenancy to proceed. Sitting tenants should also be notified should the landlord take out a mortgage on the holding they are occupying at any time during the continuation of a lease.

Many respondents were concerned the proposal would increase the risk to lenders, lead to less favourable lending terms or withdrawal of some lenders from the agricultural sector.

Conclusions and next steps

The responses suggest the current mortgage restrictions do not act as a barrier to letting agricultural tenancies. Some noted it can take a long time to gain consent,

however, overall, evidence does not suggest there is a current need for legislative change. We will continue to monitor the situation for any change.

Call for Evidence on Procedures Relating to Repossession of Farm Businesses

This call for evidence explored whether existing repossession procedures of agricultural land are appropriate and fair for both parties and whether new measures to provide farm businesses with an additional opportunity to meet repayment requirements before the commencement of any repossession proceedings should be introduced.

The overall response rate to these questions was relatively low compared to the questions on tenancy reform.

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?

Most respondents commented levels of repossession in the agricultural sector are low. Many stated, the replacement of the Basic Payment Scheme (BPS) and impacts of Brexit on farming incomes could increase vulnerability in the future. Others noted vulnerabilities unique to the sector included the impacts of extreme weather events, disease outbreaks and crop failures.

Many were concerned the cessation of BPS would remove an element of stability and security keeping businesses afloat during years when markets returns alone do not deliver. Some suggested tenants are currently ineligible for many parts of the proposed new schemes and those businesses farming non-disadvantaged agricultural land will be especially vulnerable.

One respondent stated industry reports showed the adverse impacts of Brexit and changes to agricultural support on Welsh and UK farm incomes make it clear farms may become increasingly vulnerable to repossession in the future.

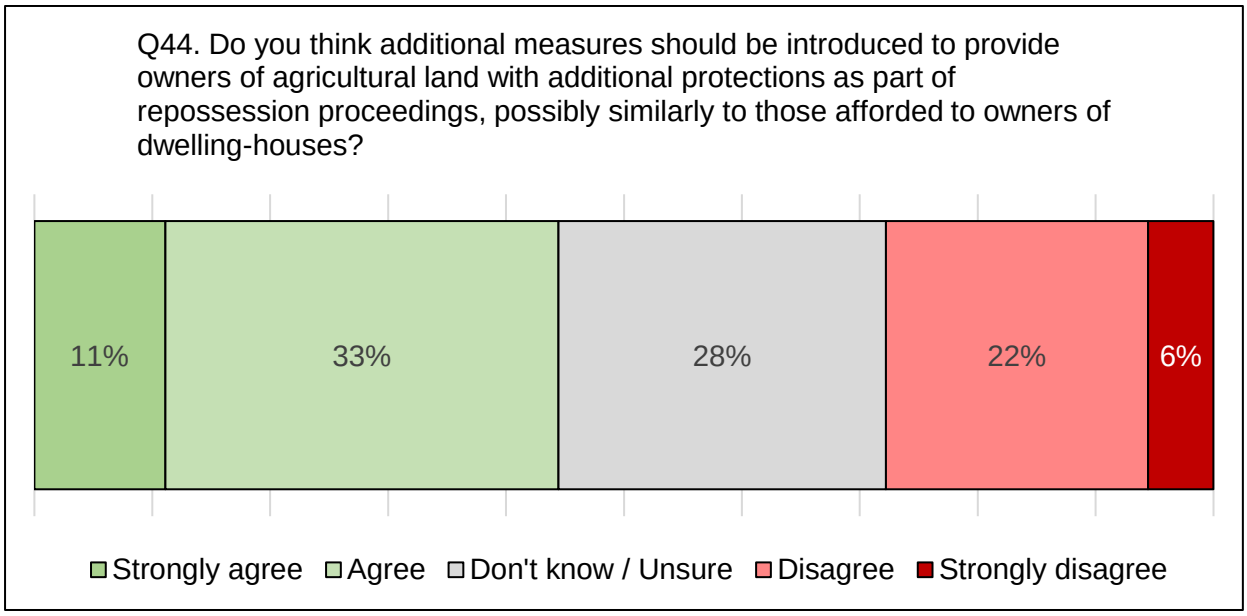
Three respondents also raised concerns when faced with enforcement, some farmers will either sell a field or seek to refinance, possibly with a sub-prime or bridging lender and without real change in the farming business. Some noted the enforcement techniques of non-primary lenders are often more aggressive than the high street banks. It was acknowledged issues with secondary lenders should be handled by better regulation of their behaviour rather than making changes proposed.

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?

There were differing views from respondents as to whether there are differences in relation to the procedures and practices for repossessing agricultural land compared to other sectors. Some stated there was no need to make a distinction and the procedures should be the same for all sectors.

Many respondents who answered the question said there were significant differences compared to other sectors including the presence of livestock and the potential for movement restrictions. Others noted parts of the economy with large numbers of unincorporated businesses do not have the value of freehold land within, or used by the business.

One professional body stated farmers are often asset-rich but cash-poor and they stand to lose not only the roof above their head but also land from which they derive their income and livelihood. Where the farm is a ‘family’ farm and has been for generations then it has been known for there to be an expectation to ‘save the farm’ at all costs. These factors often combine to put farmers in an unusually vulnerable position.



Response rate: 55%

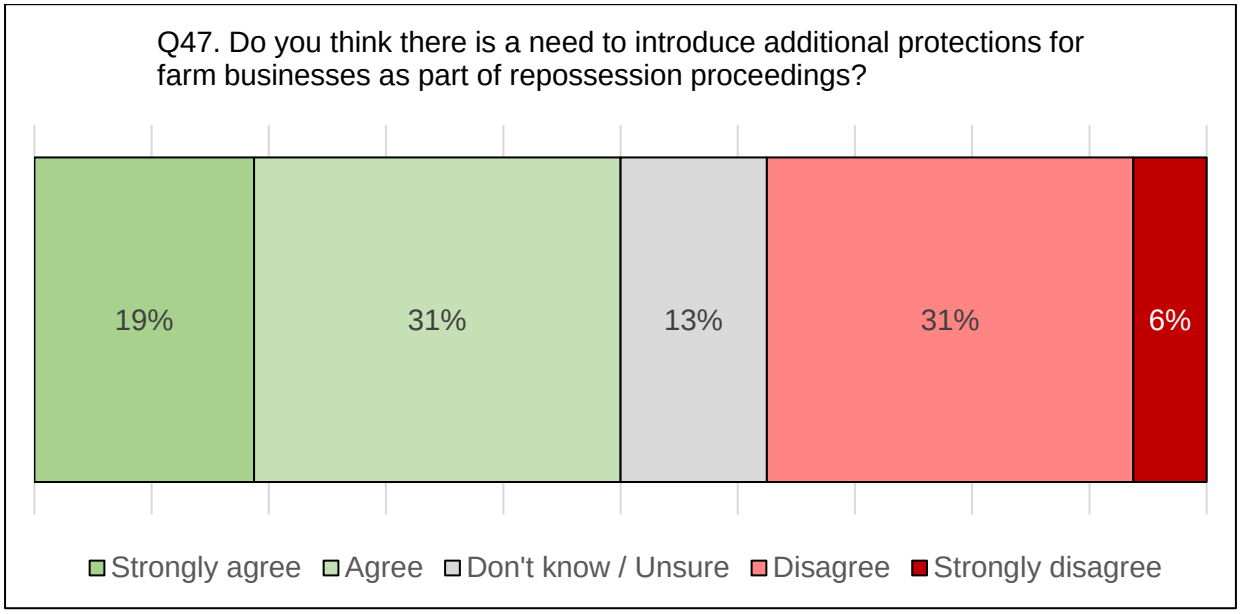
Whilst 44 per cent of respondents strongly agreed or agreed additional protections should be introduced for owners of agricultural land, 28 per cent strongly disagreed or disagreed and a further 28 per cent were unsure.

Those who did not agree felt the current safeguards are sufficient and this would not create any actual difference on the ground.

Others said additional measures would compound artificiality in the lending market and competent financial management including the ability to service debts is a key factor in the success of a business.

Two respondents stated any changes to the enforcement process would lead to a possible reduction in funding provided to the agricultural sector and there will inevitably be higher costs, which will be on charged to the borrower by way of fees and higher interest rates and shorter term lending.

One respondent also stated the industry should be encouraged to take the lead on responsible conduct through recoveries by providing training on the relevant issues of receivership and how to deal with the individuals concerned.



Response rate: 48%

Fifty per cent of all respondents strongly agreed or agreed with the proposal to introduce additional protections for farm businesses with three stating any additional protections should also ensure tenants are in turn protected, thereby providing additional stability.

However 37 per cent of respondents disagreed or strongly disagreed and a further 13 per cent were unsure.

Two additional protections were also suggested:

- Protection for tenants where the landlord is elderly or requires care, to ensure what is the tenant's home and source of income, is not re-possessed by the local authority or a charge placed over the holding, to pay care fees;
- Longer Notices to Quit being added to the repossession rules to allow sufficient time for a farmer to leave which increases the chance of them being able to find alternative more affordable land on which to continue their business.

One respondent stated it is very difficult to see what added protections could be sensibly introduced to protect farmers which would not ultimately limit or otherwise inhibit lenders willingness to lend into the sector.

Another respondent stated there is a demonstrable need for reform but many of the issues are enshrined in UK Law and not devolved to the Welsh Government.

Conclusions and next steps

Responses demonstrated repossession is rare in the agricultural sector, with some suggesting sufficient protections were already available and others advising change could lead to the reduction in funding available to the sector. It was noted the impacts of Brexit and the cessation of the Basic Payment Scheme may lead to increased vulnerability in the future.

Overall comments suggested there is no current need for immediate change, therefore we will continue to monitor the situation as the future agricultural policy framework evolves.

Annex A - List of Respondents

Agricultural Law Association
Barbara Colley
Central Association of Agricultural Valuers (CAAV)
CLA Cymru
Coleg Cambria
Dennis Matheson
Dr Christopher McNall
Dwr Cymru
Edward Perkins
Farmers Union of Wales
Landworkers Alliance Cymru
Ministry of Defence
National Sheep Association (NSA)
National Trust
NFU Cymru
Pontypool Park Estate
Royal Institute for Chartered Surveyors (RICS)
Tenant Farmers Association (TFA Cymru)
Wrexham County Borough Council
Wright Hassall LLP

There were also 13 respondents who wished to remain anonymous.