

## Response ID ANON-A9XH-HMXV-W

Submitted to **Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England**

Submitted on 2019-06-29 22:12:46

### 1.About You

1 Would you like your response to be confidential?

No

If you answered Yes to this question please give your reason. :

2 What is your name?

Name:

Phil Stocker

3 What is your email address?

Email:

pstocker@nationalsheep.org.uk

4 Please tell us who you are responding as?

Industry trade body, Non-governmental organisation / community organisation

If responding as a business, trade body or any other organisation please provide the organisation name:

National Sheep Association

5 If you have an agricultural tenancy agreement or agreements what are they?

I don't have a tenancy agreement

6 Please indicate which location your response relates to.

East of England, South East, South West, West Midlands, East Midlands, North West, North East, Yorkshire and the Humber, England, Other

If other please say where:

UK-wide

7 What is your age category?

56-65

### 2.Introduction

Section one: proposals to facilitate structural change

#### 3.Developing an assignable Agricultural Holdings Act (AHA) tenancy

8 Do you agree that new legal provisions to enable a tenant to assign their tenancy to a third party tenant will help deliver the policy aim of facilitating structural change in the AHA sector?

Agree

#### 4.Proposals for new provisions for an assignable Agricultural Holdings Act (AHA) tenancy

9 Do you agree with proposal 1 to implement new legal provisions to enable a tenant to assign their AHA tenancy to a third party, subject to the conditions described?

Agree

10 Do you agree that proposal 1a is needed in addition to proposal 1 so that landlords have a role in reviewing the suitability of the new tenant?

Agree

**11 Please provide any other comments including evidence of the likely benefits and impacts of these proposals**

Assignable AHA further comments:

## **5. Proposals to change AHA succession rights**

**12 Do you agree with proposal 2 to remove the minimum age of 65 for succession on retirement applications?**

Strongly Agree

**13 Do you agree with proposal 3 to remove succession rights when the tenant reaches 5 years past the state pension age?**

Disagree

**14 If proposal 3 were implemented, do you agree that to give adequate time for succession planning it would be necessary to allow 8 years following the enactment of the legislative change before it should take effect?**

Strongly Agree

**15 If you do not agree that 8 years notice is an appropriate amount of time to wait before the legislative change takes effect please indicate what time period, if any, should be given in your view**

bar on succession notice period:

**16 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?**

bar on succession operation joint tenancies:

Linked to the age of the youngest tenant, taking into consideration the age of the successor. For example, if grandparents are nominating a grandchild, who is maybe too young to take on full responsibilities.

**17 Please provide any other comments including any evidence you have of the likely benefits and impacts of proposals 2 and 3 and whether there are alternative options that we should consider.**

proposals 2 and 3 other info:

## **6. Council farm retirement tenancies (smallholdings)**

**18 Do you agree with proposal 4 to amend the 1986 Act so that council farm retirement notices to quit can only be issued when the tenant has reached current state pension age?**

Strongly Agree

**19 Are there any operational or other implications of this proposal for example for joint tenancies that we need to consider?**

proposal 4 council farms other comments:

Joint tenancies should apply to the age of the youngest person, and take into consideration succession plans.

## **7. Changing succession eligibility criteria: repealing the 'Commercial Unit Test' and updating the 'Suitability Test'**

**20 Do you agree with proposal 5 to remove the 'Commercial Unit Test'?**

Agree

**21 Do you agree with proposal 6 to modernise the suitability test?**

Agree

**22 Do you agree that 3 years is adequate time before this proposed change to the suitability test comes into force?**

Yes

**23 If you answered 'No' to question 22 what time, if any, do you feel is needed for businesses to prepare for this proposed change?**

proposal 6 notice suitability test period :

**24 Please provide any additional comments including any evidence you have of the likely benefits and impacts of proposals 5 and 6.**

CUT and Suitability Test other comments:

## **8.Modernising and extending succession rights**

**25 Do you agree with proposal 7 to extend the definition of close relative so that children (or those treated as children) of cohabiting partners can apply to succeed to an AHA holding tenancy?**

Strongly Agree

**26 Do you agree that a cohabiting 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?**

Strongly Agree

**27 Do you agree with proposal 8 to extend the definition of close relative so that nieces and nephews of the tenant could apply to succeed to AHA holdings in future?**

Strongly Agree

**28 Do you agree with proposal 8 to extend the definition of close relative so that grandchildren of the tenant could apply to succeed to AHA holdings in future?**

Strongly Agree

**29 Are there any operational implications of proposals 7 and 8 for joint tenancies that we need to consider?**

**proposal 7 and 8 joint tenancies comments:**

**30 Please provide any other comments including any evidence you have of the likely benefits and impacts of proposals 7 and 8.**

**proposal 7 and 8 other comments :**

## **Section two: proposals to facilitate productivity, investment and environmental improvements**

### **9.Restrictive clauses in AHA tenancy agreements**

**31 Do you agree that restrictive clauses in AHA agreements is a problem that needs to be addressed?**

Agree

**32 Are restrictive clauses in Farm Business Tenancy agreements a problem that might also need to be addressed?**

**Restrictive clauses FBTs:**

Yes we believe these should be reviewed and possibly addressed.

**33 Do you agree with proposal 9 to enable restrictive clauses in AHA agreements to be challenged through dispute resolution?**

Agree

**34 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.**

**Proposal 9 Restrictive clauses other comments:**

### **10.Removing barriers to landlord investment in AHA holdings**

**35 Do you agree that the risk of a landlord losing any return on investment through the next rent review is a barrier to landlord's investing in AHA holdings?**

Agree

**36 Do you agree with proposal 10 to exclude the landlord's return on investment from rent review considerations?**

Agree

### **11.Introducing short notices to quit for new Farm Business Tenancies of ten years or more**

**37 Do you agree that 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?**

Strongly Agree

**38 Are there other options that would encourage landlords to let for longer terms that we should consider?**

**FBT termination procedures other options :**

Fiscal measures to incentivise longer term lets that require significant investment in productivity or environmental gains

**39 Do you agree with proposal 11 to provide shorter notice to quit procedures for new FBTs of ten years or longer in each of the specific circumstances in the table below?**

**Proposal 11 FBT short notices to quit - Death of the tenant:**

Agree

**Proposal 11 FBT short notices to quit - Non-payment of rent by the tenant:**

Agree

**Proposal 11 FBT short notices to quit - Landlord has planning permission to develop land on the holding for non-agricultural use:**

Disagree

**40 Other than 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?**

No

**41 If you answered 'Yes' to question 40, what other breaches do you think should be included and what notice periods should be applied in those circumstances?**

**other breaches that should be included:**

**42 What issues, principles and calculations should be taken into account when considering the issue of compensating a tenant for any loss of land resulting from a notice to quit land that has planning permission for non-agricultural use?**

**issues for calculating compensation :**

The main principles should be:

Compensation for loss of viability

Costs to cover investment needed to regain viability

**43 Please provide any additional comments, including evidence, of the likely benefits and impacts of proposal 11.**

**FBTs short notice to quit other comments :**

No comment

**Section three: procedural reforms - updating and improving the operation of agricultural tenancy law**

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

**44 Do you agree with proposal 12 to enable a third party expert to be appointed to resolve a rent review dispute at any time ahead of the rent review date?**

Agree

**13.Updating the Agricultural Holdings (Fees) Regulations 1996**

**45 Do you agree with proposal 13 that the prescribed fee for appointing an arbitrator or record keeper under the 1986 Act should be updated to £195?**

Agree

**46 If you do not agree that the fee should be updated to £195 what level of fee do you feel is appropriate and why?**

**RICs Fees level :**

**47 Please provide views on the benefits or impacts of enabling other qualified professional organisations (alongside RICS) to provide a service for appointing independent arbitrators to resolve agricultural tenancy disputes governed by the 1986 Act and the 1995 Act in future.**

**Views on other providers of appointments service :**

## 14.Procedural reforms to 1986 Act succession law

48 Do you agree with proposal 14 to deliver each of the procedural reforms listed below to improve the operation of the 1986 Act succession provisions?

**Procedural reforms - Enabling agreed successions without an application to the Tribunal:**

Agree

**Procedural reforms - Removing technical obstacles to joint successions:**

Agree

**Procedural reforms - Clarifying the position for male widowers of a deceased tenant:**

Agree

**Procedural reforms - Improving the process between delayed Tribunal decisions and the operation of end of tenancy claims:**

Agree

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

Procedural reforms additional comments :

## 15.Non legislative options

50 Do you agree the non-legislative options outlined above be considered as a way of delivering our policy aims of facilitating structural change and enabling productivity improvements in the tenanted sector?

Strongly Agree

51 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?

In addition to tenancy law reform

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

Non legislative options other comments :

## 16. Call for evidence on the impact of mortgage restrictions over let land

53 Please provide evidence or examples of why it might be important mortgage lenders to restrict the ability of a landowner to grant agricultural tenancies on mortgaged land without the permission of their mortgage lender?

**Mortgage restrictions evidence of why needed:**

A mortgage lender is within their rights to know about actions or decisions that may affect the market value of the land they are investing in.

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

**Mortgage restrictions evidence of barrier :**

No

55 Do you agree that consideration should be given to repealing section 31 of the Agricultural Tenancies Act 1995 so that in future landowners can grant agricultural tenancies on mortgaged land without gaining prior consent from their mortgage lender?

Disagree

56 Please provide any additional comments including evidence of the likely benefits and impacts of considering removing mortgage restrictions over let land in future.

Mortgage restrictions other comments :

## 17. Call for evidence on procedures relating to repossession of agricultural land

57 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?

**Farm repossession evidence of vulnerability:**

None

**58 Are there any differences or impacts that 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?**

**Farm repossession differences in procedures:**

No comment

**59 Do you think that additional measures to provide owners of agricultural land with additional protections as part of repossession proceedings, possibly similar to those afforded to owners of dwelling-houses, should be considered?**

Don't Know

**60 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?**

**Farm repossession additional comments :**

## **18.Consultee Feedback on the Online Survey**

**61 Overall, how satisfied are you with our online consultation tool?**

Satisfied

**Please give us any comments you have on the tool, including suggestions on how we could improve it. :**