



Department  
for Environment  
Food & Rural Affairs

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

## **Executive summary**

**April 2019**



© Crown copyright 2019

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit [www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/) or email [PSI@nationalarchives.gsi.gov.uk](mailto:PSI@nationalarchives.gsi.gov.uk)

This publication is available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to us at:

[agriculturaltenancies@defra.gov.uk](mailto:agriculturaltenancies@defra.gov.uk)

[www.gov.uk/defra](http://www.gov.uk/defra)

## 1. Purpose of this consultation

1. We are seeking views on options for reform of agricultural tenancy law in England which could remove barriers to productivity improvements and facilitate structural change in the tenant farming sector. We are also calling 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 provide additional protections against the repossession of agricultural land for farm business borrowers who are unable to meet finance repayments under secured loans.

## Who will be affected by these proposals

2. This consultation on proposals for changes to agricultural tenancy law are directed at tenant farmers and agricultural landlords with Agricultural Holdings Act (AHA) tenancy agreements and Farm Business Tenancy (FBTs) agreements. It will also be of interest to the professions who advise tenants and landlords, including agricultural valuers, surveyors, lawyers, arbitrators and tenancy dispute resolution experts. The call for evidence questions are directed at farm businesses, agricultural landowners, professional advisors and financial organisations (banks and lenders) with interests in agricultural land.

## What we want to achieve

3. The aim of the proposals in this consultation is to ensure that the policy framework for agricultural tenancies is fit for the future, and will enable tenant farmers and agricultural landlords to thrive as we move away from the Common Agricultural Policy (CAP) and implement a new domestic agriculture policy. We want to ensure tenancy law does not stand in the way of tenants' and landlords' ability to adapt to changes, access new schemes, improve productivity and enable structural change. Specifically we aim for agricultural tenancy policy and legislation to:
  - Provide an enabling environment for sustainable productivity improvements and investment;
  - Facilitate structural change and support new entrants and next generation farmers so the sector has the skills and talent needed to thrive in the future; and
  - Enable tenant farmers to access new agricultural and land management schemes.

We want to collect evidence and hear views on whether the proposals for changes to tenancy policy, legislation, and industry culture and practice will deliver this ambition.

## Why are reforms needed?

4. Most data show that productivity growth in our farming industry has failed to keep up with that of our major competitors. Low productivity growth reduces our industry's long-term ability to compete, grow new markets, have a prosperous farming sector and

improve our environment. In recent years the rate of growth in total factor productivity<sup>1</sup> for UK agriculture has averaged only 0.9% a year as opposed to 3.5% in the Netherlands, 3.2% in the USA and 2.5% in France (average annual growth rates from 1964 to 2014)<sup>2</sup>.

5. A key driver for improving productivity performance is having people with the skills and entrepreneurial drive to implement new ideas in the sector. Barriers to entry and exit in the agriculture sector mean there is very little structural change, resulting in an ageing profile of farmers and limited opportunities for new entrants, who can bring new skills, ideas and innovation into the sector.
6. In 2017 Defra asked industry representatives on the Tenancy Reform Industry Group (TRIG)<sup>3</sup> what changes might be needed in future to help improve productivity growth and structural change in the tenanted sector. TRIG identified several areas of agricultural tenancy legislation which may present barriers to productivity and structural change, including:
  - Succession provisions in the Agricultural Holdings Act 1986 (the 1986 Act) may be preventing skilled farmers from taking over a holding. Older AHA tenants with no successor have limited options to realise value from their tenancy agreement to help them retire, and so remain on the farm. Providing mechanisms to enable older AHA tenant farmers to retire or move on could make land available to be farmed by a more productive new tenant.
  - Some landlords may be discouraged from offering longer-term lets because of the lack of provision in the Agricultural Tenancy Act 1995 (the 1995 Act) to enable breaches of tenancy agreements (such as non-payment of rent) to be remedied quickly, rather than through complex and costly forfeiture procedures.
  - Some landlords may be discouraged from investing in AHA holdings (e.g. investing in fixed equipment and infrastructure) due to the risk that any agreed interest payments by the tenant for the landlords investment may be lost in the next rent review.
  - Some tenants may be prevented from accessing future agricultural and land management schemes and undertaking activities that could lead to productivity and environmental improvements due to restrictive clauses in their AHA tenancy agreement which were often written decades ago.
7. The proposals for reforming tenancy law are summarised in the table below and are aimed at tackling these problems to deliver our policy aim of creating an enabling environment for sustainable productivity improvements, facilitating structural change, and ensuring that tenants are able to access future schemes. However, in proposing

---

<sup>1</sup> Total factor productivity (“productivity”) is a measure of how well inputs (e.g. land, labour, capital, machinery, supplies such as animal feed) are converted into outputs (e.g. crops, livestock, fruit and vegetables)

<sup>2</sup> AHDB Horizon report Driving Productivity Growth Together, January 2019 [https://cereals.ahdb.org.uk/media/1336355/Horizon\\_Driving-Productivity\\_WEB.pdf](https://cereals.ahdb.org.uk/media/1336355/Horizon_Driving-Productivity_WEB.pdf)

<sup>3</sup> TRIG is an industry advisory group to Defra, comprising representatives from the main tenant farming and landlord industry organisations as well as from professions that advise tenants and landlords.

any changes to legislation, we must also ensure that there continues to be necessary fair protection in the legal framework for both tenants and landlords, and that flexibility and confidence in the let sector remains.

## 2. Summary of consultation proposals

The table below summarises the proposals we are consulting on. The full consultation document (see how to respond below) includes more background information and detail about the proposals and the consultation questions that we would like views on.

<b>Summary of consultation proposals and call for evidence</b>		<b>Pg no. in the consultation document</b>
<b>Proposals to help facilitate structural change in the tenanted sector</b> The proposals below focus on reforms to the Agricultural Holdings Act (AHA) 1986 (the 1986 Act)		
<b>Assignable AHA. Proposals 1 and 1a</b>	The aim of these proposals is to help facilitate structural change in the AHA sector by enabling older tenants who want to retire to realise financial value from their tenancy by enabling them to assign their interest in the AHA tenancy agreement for payment to a new third party tenant, unlocking the land for new tenants. This would be subject to a right for the landlord to prevent assignment by negotiating to buy out the tenant’s interest and thereby terminate the tenancy. In addition the assigned tenancy would be subject to a right for the landlord to issue an incontestable notice quit 25 years after assignment, and would be subject to open market rent.	Pg 12–14
<b>Changing AHA succession rights. Proposals 2 and 3</b>	The aim of these proposals is to encourage earlier retirement and succession planning on AHA holdings, so that where appropriate they are passed on sooner to the next generation. This includes removing the minimum age of 65 for when succession on retirement applications can be made, so that AHA tenants can decide to retire and apply to hand over to their successor at any age, rather than having to wait until 65. Also consideration of removing succession rights when the current tenant reaches 5 years past the state pension age. So if the state pension age is 67 succession rights would no longer be available for family successors when the current tenant reaches age 72. The aim is to encourage behaviour change towards earlier succession planning to help unlock potential productivity	Pg 17-18

	improvements through the new skills and ideas that the next generation of tenant farmers can bring to the AHA sector.	
<b>Council farm retirement tenancies. Proposal 4</b>	The aim of this proposal is to ensure that the provisions in the 1986 Act that apply to council farm retirement notices are up to date with current state pension policy.	Pg 20
<b>Changing succession eligibility criteria: the Commercial Unit Test and the Suitability Test. Proposals 5 and 6</b>	The aim of these proposals is to ensure that commercially successful and skilled tenants can succeed to AHA holdings by removing regulatory barriers and modernising the succession eligibility criteria of the 1986 Act. Including removing the commercial unit test (which currently prevents tenants that already occupy a commercial farm from succeeding to an AHA tenancy agreement). Also replacing the 'Suitability Test' (which sets the standard that an applicant must meet in order to be eligible to succeed) with a more up to date 'Business Competence Test'.	Pg 21-22
<b>Modernising and extending succession rights. Proposals 7 and 8</b>	The aim of these proposals is to modernise and consider extending the category of close family relatives eligible to succeed to an AHA tenancy agreement in future so that relatives from a younger generation might have an opportunity to continue the family business. Including clarifying provisions for the treatment of a cohabitating partner of the tenant and their children and exploring the case for extending the definition of a close relative to include nieces, nephews and possibly grandchildren.	Pg 24-25
<b>Proposals to facilitate productivity, investment and environmental improvements in the tenanted sector</b>		
<b>Restrictive clauses in AHA tenancy agreements. Proposal 9</b>	Most AHA tenancy agreements were written and agreed twenty to thirty years ago in a different commercial environment and many include standard restrictive clauses to prevent the tenant or landlord from undertaking certain activities (that might change the fixed equipment or land use on the holding) without first gaining agreement from the other party. Therefore, this proposal aims to provide tenants and landlords of AHA agreements with a new dispute resolution mechanism to apply to vary clauses that restrict their activity on a case by case basis, where either party feels they present an unreasonable barrier to business development, productivity or environmental improvements or to accessing future agricultural or land management schemes.	Pg 28
<b>Barriers to landlord</b>	The aim of this proposal is to help unlock landlord investment in the AHA sector helping to drive productivity	Pg 30

<b>investment in AHA holdings. Proposal 10</b>	improvements by removing the current risk that the return on a landlord's investment in the holding could be lost through future rent reviews.	
<b>Introducing short notices to quit for new Farm Business Tenancies of ten years or more. Proposal 11</b>	The aim of this proposal is to encourage more landlords to offer longer-term Farm business Tenancies (FBTs) of ten years or longer by providing them with shorter and more certain termination (notice to quit) procedures in the specific circumstances of: non-payment of rent by the tenant, death of the tenant, or when the landlord has planning consent to develop land on the holding for non-agricultural use. The aim is to de-risk longer-term agricultural lettings and increase their availability so that more tenants have the security they need to invest in productivity and environmental improvements.	Pg 32
<b>Proposals to update and improve the operation of agricultural tenancy law</b>		
<b>Third party resolution in rent reviews. Proposal 12</b>	The aim of this proposal is to make a technical change to the 1986 Act so that third party determination is a useable alternative to arbitration in AHA rent review disputes.	Pg 35
<b>Updating prescribed fee for arbitration appointments. Proposal 13</b>	The aim of this proposal is to update the prescribed fee (which has not changed since 1996) that the Royal Institution of Chartered Surveyors (RICS) can charge for the service of appointing an arbitrator to resolve disputes under the 1986 Act from the current level of £115 to £195. This will help to ensure that the costs RICS incur from delivering the service can be recovered more adequately in future.	Pages 37
<b>Procedural reforms. Proposal 14</b>	The aim of this proposal is to take forward technical and procedural changes recommended by industry experts to improve the practical operation of the 1986 Act succession provisions.	Pages 38-39
<b>Non-legislative options</b>		
<b>Non legislative options. Section 4</b>	The consultation recognises the importance of relationships between landlords and tenants and also the role of professional advisors in delivering many of the policy aims we want to deliver. Therefore, there may be a role for non-legislative actions, such as disseminating industry best practice, guidance, training, and developing model agreements as an alternative to, or to complement, legislative reforms. These non-legislative options are detailed in section 4 of the full consultation document.	Pages 41-42

Call for evidence		
<b>Call for evidence on the impact of mortgage restrictions over let land.</b>	This section aims to explore the impact of current provisions of the Agricultural Tenancies Act 1995 which restrict the ability of a landowner with a mortgage over their agricultural land to grant tenancies on that land without first gaining permission from their mortgage lender. We are interested in evidence of why such restrictions are necessary for banks and lenders and the extent to which they might be a barrier or disincentive to letting out agricultural land.	Pages 43-44
<b>Call for evidence on procedures relating to repossession of agricultural land.</b>	Due to the volatility that farm businesses often face, and changes as we start to move out of the CAP and into our future farming policy, we want to explore whether existing repossession procedures of agricultural land are appropriate and fair for both parties and whether there is any need to consider in future additional protections to give farmers more opportunity to meet repayment requirements before the commencement of possession proceedings of their agricultural land.	Pages 44-47

### 3. How to respond

You can respond using the online survey at: <https://consult.defra.gov.uk/ahdb-sponsorship-and-agricultural-tenancies/agricultural-tenancy-consultation>.

Written responses can be emailed to [agriculturaltenancies@defra.gov.uk](mailto:agriculturaltenancies@defra.gov.uk) or posted to:

Defra  
Agricultural Tenancies, Innovation, Productivity and Science Team  
Second Floor, Seacole Block  
2 Marsham Street  
London  
SW1P 4DF

The consultation period will commence on **9 April 2019** and will be open for responses for a period of 12 weeks. **The consultation period will close at midnight on 2 July 2019.**