



Department  
for Environment  
Food & Rural Affairs

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

## **Government response and summary analysis of responses**

**17 March 2020**



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# Introduction

Between April and July 2019, the government consulted on a range of options for reforming agricultural tenancy law in England. The proposals aim to remove barriers to productivity improvements and facilitate structural change in the tenant farming sector. The consultation document also incorporated a call for evidence and views on two financial matters: whether current restrictions on agricultural mortgages are a barrier to landowners wanting to let, 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. This report summarises the responses received and sets out the government's next steps on each of the proposals.

We received 147 responses to the consultation (120<sup>1</sup> responses to the online survey, and 27 email responses). In addition, we worked with industry organisations to deliver eight regional consultation events around the country attended by over 190 people including a mixture of tenant farmers, agricultural landlords, and professional advisors. The regional consultation events gathered feedback on many but not all the consultation proposals (see Annex 2 for more detail on the events). Where event feedback was gathered this is reported separately under the relevant proposals below.

We welcome the broad range of views and interest in the consultation and would like to thank everyone who contributed.

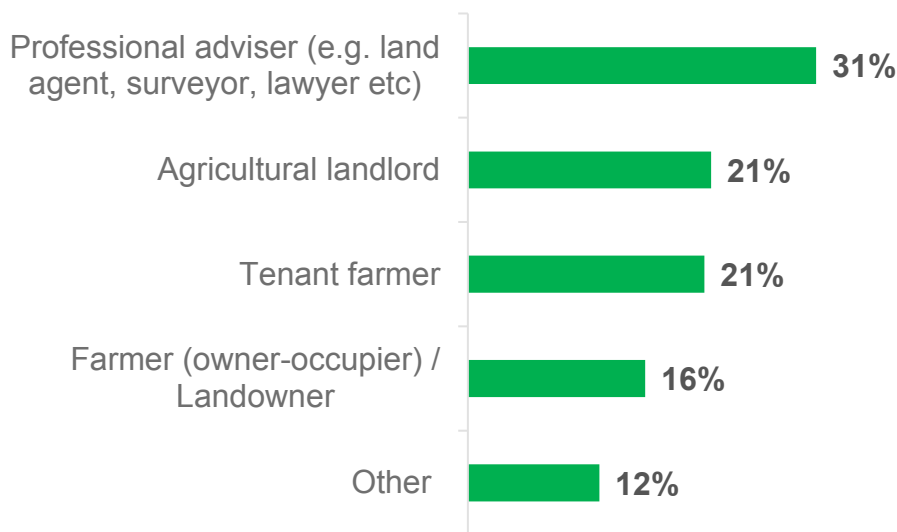
## About the respondents

Where responses included the name of an organisation these are listed in Annex 3. The largest number of responses came from respondents who identified as a 'professional adviser'. We received a broadly similar number of responses from those identifying as 'a tenant' and 'a landlord'. We also received a broadly similar number of responses from respondents who had Agricultural Holdings Act (AHA) agreements and Farm Business Tenancy (FBT) agreements. It should be noted that respondents were able to select multiple demographic categories.

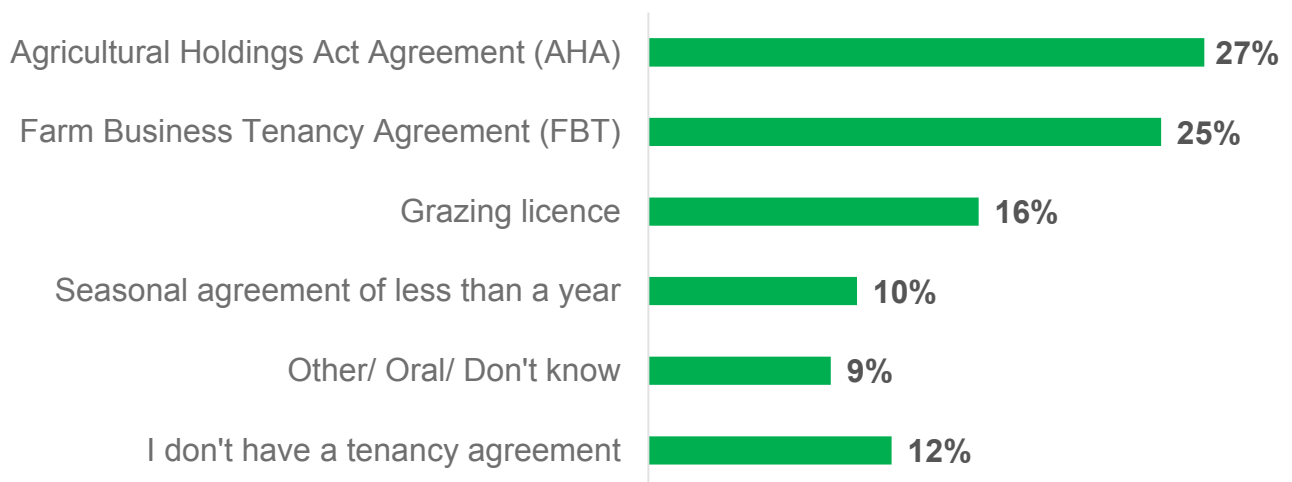
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<sup>1</sup> 105 responses were submitted via the online survey plus 15 email responses that provided answers to the survey questions in the same format as the online survey were transferred across to the online survey. The quantitative analysis tables in this government response include the 120 responses from the online survey. The qualitative narrative analysis includes all responses where comments were submitted through the online survey and email submissions.

## Proportion of respondents in each category (online survey responses)



## Proportion of respondents with each type of tenancy agreement (online survey responses)



It should be noted that respondents were able to select multiple demographic categories

## Summary of key themes

An analysis of the responses for each of the consultation proposals is detailed in the chapters below together with the government's response and next steps for each proposal. The key overarching themes emerging from the responses are summarised below.

There was broad agreement to most, but not all, of the consultation proposals to modernise and update the Agricultural Holdings Act 1986 (the 1986 Act) to remove barriers to productivity growth and enable greater flexibility for tenants to adapt to a changing economic and policy landscape. A few respondents questioned the timing of changes to tenancy law, given the significant upcoming change to agricultural policy.

There was a predominant view that in taking forward any changes to tenancy law it is important that confidence in the let sector is maintained, and any changes achieve a fair balance between the interests of tenants and landlords.

For some proposals there was agreement in principle that change is needed, but alternative proposals and approaches were suggested as more effective ways of achieving the policy aim.

There was a general view that reforms to tenancy law alone are unlikely to drive significant change, and that they should form part of a wider package of measures to achieve the policy aims.

# Chapter one: proposals where there is broad agreement for legislative reform

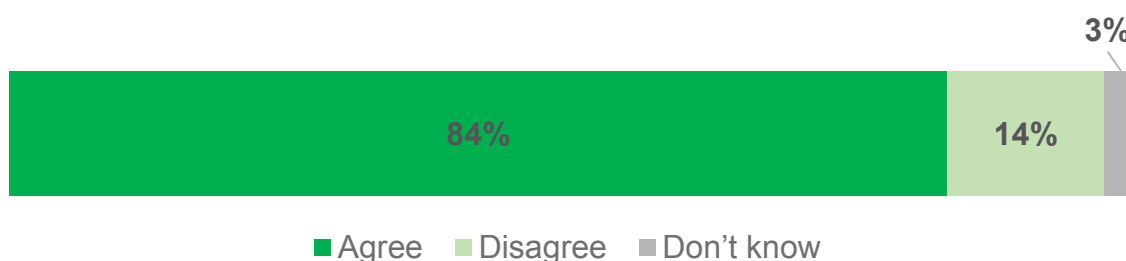
This chapter includes an analysis of responses and a description of next steps on the proposals where the consultation responses show that there is broad agreement for legislative reform.

## 1. Proposals on AHA succession rights (succession on retirement, consultation proposal 2)

The aim of this proposal is to give AHA tenants more freedom to decide when to retire and hand over the holding to their successor. The proposal is to amend the 1986 Act by repealing section 51(3) to remove the minimum age of 65 for when succession on retirement applications can be made to the First-tier Tribunal (Property Chamber) Agricultural Land and Drainage (the Tribunal).

### Consultation questions and responses

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



Question response rate 97%

The majority of respondents agreed with this proposal. Many commented that it would be a positive change giving tenants more flexibility making it easier for those who wish to retire earlier and hand over to the next generation. Some respondents noted that whilst tenants and landlords can already negotiate and agree earlier retirement successions, there are circumstances where applications to the Tribunal are necessary, and so changing the legislation to enable earlier applications will be helpful.

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<sup>2</sup> All the quantitative analysis tables in this government response include the 120 responses from the online survey.



A few respondents disagreed with the proposal and were sceptical whether the reform would have much impact, as they felt it would be unlikely that many tenants would seek to retire before the age of 65 unless they suffered from ill health.

## Conclusions and next steps

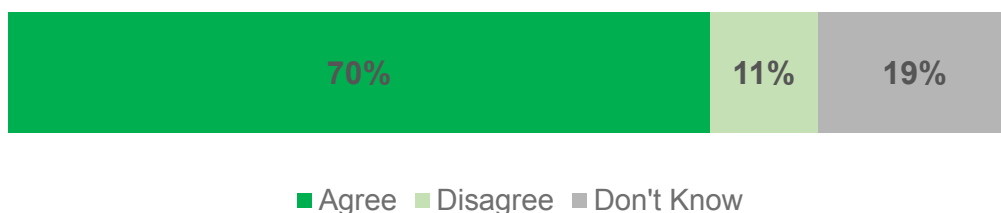
The consultation responses show very strong support for this proposal. The government has included provisions in Schedule 3 of the Agriculture Bill<sup>3</sup> to amend the 1986 Act as proposed.

## 2. Council farm retirement tenancies (consultation proposal 4)

The aim of this proposal is to update the 1986 Act to ensure the provisions that apply to council farm retirement notices are kept in line with current state pension policy. The proposal is to amend Schedule 3 Case A<sup>4</sup> of the 1986 Act so that retirement notices to quit can only be served by a smallholding authority landlord when the tenant has reached the earliest age that they can be in receipt of the state pension.

### Consultation questions and responses

**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?**



Question response rate 78%

<sup>3</sup> <https://services.parliament.uk/Bills/2019-21/agriculture/documents.html>

<sup>4</sup> Case A applies to council farm retirement tenancies and only applies where the tenancy agreement specifically refers to it and where the holding is a smallholding as defined by Part III of the Agriculture Act 1970.

The majority of respondents agreed with this proposal and many commented that it would be a sensible updating measure to align tenancy law with recent changes to state pension age. Some responses from Local Authorities noted that in practice many councils already follow a policy of waiting until a tenant has reached state pension age before issuing retirement notices.

A few respondents disagreed, commenting that tenants should be able to choose when to retire. Others suggested that as council smallholdings were meant to be for new entrants, established tenants should be encouraged to move on before they reached state pension age.

**Are there any operational or other implications of this proposal, for example joint tenancies, that we need to consider? (open question)**

Most respondents who provided comments on this open question suggested that joint tenancies are very rare. Where there are joint tenancies most responses suggested that the practical approach would be to link the retirement notice to quit to age of the youngest joint tenant, so that a notice can only be issued when both tenants reach state pension age. However, a few felt that they should be linked to the average age of the younger and elder tenants or to the lead tenant's age.

Some respondents raised additional concerns with the Case A<sup>5</sup> process. A few suggested that local authorities can find it difficult to find suitable alternative accommodation and this can be a barrier to helping their tenants retire. Others noted that sometimes tenants do not get enough time to review whether the alternative accommodation is suitable, and the process should change so that local authorities are obliged to give the tenant more notice of the alternative accommodation being offered.

## **Conclusions and next steps**

The consultation responses show strong support for this proposal. The government has included provisions in Schedule 3 of the Agriculture Bill to amend Schedule 3 Case A of the 1986 Act, as proposed.

## **3. Changing AHA succession eligibility tests: repeal of the 'Commercial Unit Test' and updating the 'Suitability Test' (consultation proposals 5 and 6)**

The aim of these two proposals is to ensure that commercially successful and skilled tenants can succeed to AHA holdings. The proposal is to repeal section 36(3)(b) and

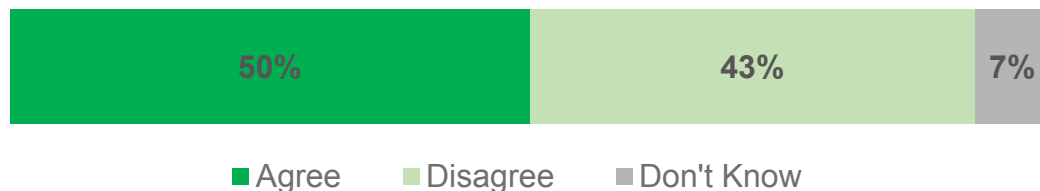
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<sup>5</sup> Case A applies to council farm retirement tenancies only.

section 50(2)(b) of the 1986 Act to remove the 'Commercial Unit Test' (CUT) from succession provisions so that a close family relative of the tenant who already occupies a commercial holding would be eligible to succeed to an AHA holding in future (if they meet the other eligibility tests). Alongside this the proposal is to replace the current 'Suitability Test' provisions with a new Business Competency Test by amending section 39(2) and section 39(8) of the 1986 Act so that the Tribunal must consider certain matters when deciding if the applicant is competent and suitable to succeed the tenancy.

## Consultation questions and responses

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



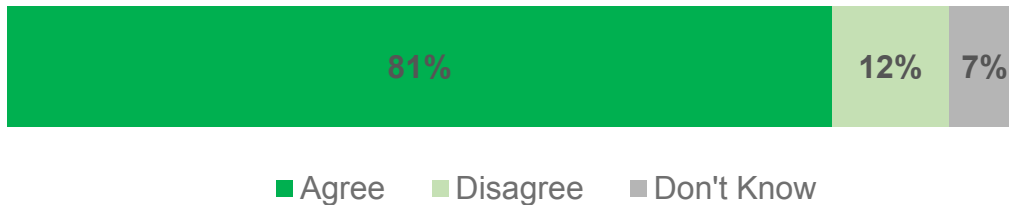
Question response rate 93%

Broadly equal numbers of respondents agreed and disagreed with this proposal. Amongst those who agreed, there were frequent comments that the test is outdated and ineffective, causing unnecessary cost and distortions to business structures. It was often suggested that well-advised tenants can find a way around the rules, so the test is ineffective and should be repealed. Several respondents held the view that the CUT is out of date with policy aims of improving productivity as it hinders growth and progression for succession tenants. Others noted that, as it can be difficult to earn a living from smaller holdings, repealing the CUT would enable amalgamation of farm holdings, which would improve the viability and productivity of farm businesses. Many respondents noted that if the CUT were to be repealed, the Suitability Test should be improved at the same time, and that one should not be done without the other. A few respondents suggested that if the CUT is repealed there should be a mechanism for the landlord to remove the farmhouse from the tenancy in situations where the successor does not need it.

Those who disagreed with repealing the CUT were predominantly concerned that it would extend the longevity of AHA tenancies for some landlords who are either waiting to take the land back in hand or re-let it as an Farm Business Tenancy (FBT). Some commented that repealing the CUT would give relatives of AHA tenants who are already farming preferential access to an AHA holding at below market rent, when the holding could otherwise be re-let on a competitive basis potentially to a new entrant. Some suggested that the CUT should be improved, rather than repealed, to make it a more effective test to

prevent established tenants of larger holdings taking over smaller AHA holdings that might be suited to new entrants.

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

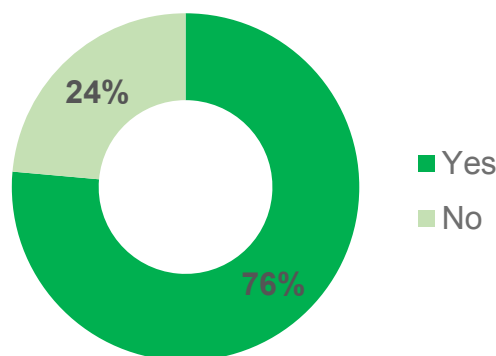


Question response rate 94%

The majority of respondents agreed with this proposal. Those who agreed felt that the current test sets the standard too low and an improved test could help deliver improved productivity through increased professionalism in the sector. Many responses noted that more work is needed with industry to develop the criteria for the new test, so it is clearly defined and consistently applied. A few responses commented that practical farming experience is very important and should be judged equally alongside education and business skills and experience, whilst others suggested that there should be more of a focus on encouraging environmental and soil management skills.

Those who disagreed with the proposal suggested that the current test is effective and there is no need for change. A few were concerned that the proposal for a new test might limit the pool of eligible tenants and interfere with genuine successions. A few were also concerned that judgements in determining the test could be subjective and inconsistent.

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



Question response rate 88%

Most respondents agreed that 3 years provides adequate time for tenants to prepare for the changes. A few commented that any longer would risk tenants putting off preparing for the change as it would seem too far into the future. Of those who disagreed, most suggested a longer time should be given of between 5 and 10 years to enable successors to gain the education, training and experience that might be needed.

## **Regional consultation events**

Consistent with the online and email responses, attendees at the events were evenly split between agreeing and disagreeing with the proposal to remove the CUT, offering very similar comments as have been noted above. The proposal to improve the Suitability Test was welcomed in all discussions and there were many suggestions of what the new test might include, such as a business plan, cash flow, proof of capital, bank referees, farming experience and skills, education and qualifications, business management skills, productivity improvement plans and a willingness to contribute to environmental outcomes.

An additional issue raised frequently in discussions across the events focused on concerns with the current Livelihood Test which requires the applicant successor to derive their main source of income from working on the holding. It was often suggested that this test should also be reviewed because it acts as a disincentive for next generation tenants to gain valuable experience and skills working off the farm in other careers or through diversified businesses.

## **Conclusions and next steps**

Whilst the responses show mixed views on the proposal to repeal the CUT, there was more support for the combined proposal of repealing the CUT and improving the Suitability Test as a package, and very strong support for replacing the Suitability Test with a more robust test that encompasses agriculture and business management skills.

The government has included provisions in Schedule 3 of the Agriculture Bill to repeal the CUT and provide powers for the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to make regulations to set out the criteria to be used in determining a person's suitability to become a tenant of an AHA holding. The government will develop the new suitability regulations in consultation with industry including representatives of tenants and landlords. The provisions repealing the CUT will not commence until the new suitability regulations come into force.

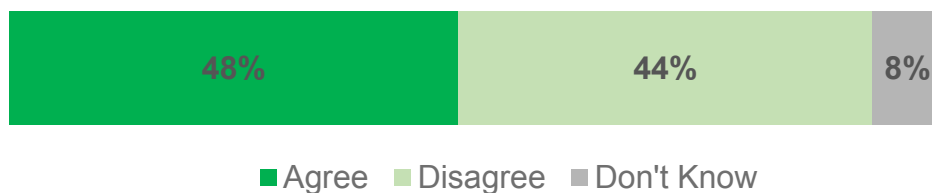
## **4. Restrictive clauses in AHA tenancy agreements (consultation proposal 9)**

The aim of this proposal is to provide tenants and landlords of AHA agreements with a new mechanism to challenge and vary clauses that restrict their activity on a case by case basis, where either party considers they present an unreasonable barrier to business

development or to accessing future schemes. In addition, the consultation asked for views on whether restrictive clauses are an issue for Farm Business Tenancy (FBTs) agreements. The proposal is to insert a new provision in the 1986 Act to enable either party (tenant or landlord) whose activity is restricted by a clause in their tenancy agreement to serve a notice on the other party referring that restriction to dispute resolution (either arbitration or third party determination) in order to vary it. Any disputes will be settled according to whether the proposed variation to the tenancy agreement and activity to be undertaken is reasonable.

## Consultation questions and responses

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

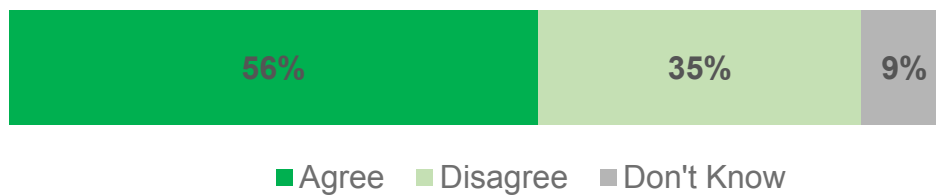


Question response rate 88%

Broadly similar number of respondents agreed and disagreed with the proposal. Of those who agreed, most noted that restrictive clauses are a problem for tenants and not landlords. Some respondents provided examples of how restrictions can prevent the tenant from adapting and growing their business, including: not allowing the tenant to erect or alter buildings, which would prevent a change in agricultural production; barring diversification into added-value activities; undertaking environmental improvements; or meeting new regulatory requirements. Many respondents suggested that restrictive clauses could become more of a problem for AHA tenants after we leave the Common Agricultural Policy (CAP) and introduce new policies and schemes.

Those who disagreed commented that negotiated agreements are often reached between landlords and tenants to vary restrictions. Some said that it is in the interest of landlords to work with their tenants to ensure the tenant can adapt and develop a successful business and most landlords are willing to consent to requests to vary restrictions, especially if the restriction is out of date and is no longer a concern for the landlord.

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



Question response rate 92%

Many respondents agreed with this proposal, although it was noted that the reform is mainly needed for tenants and not both parties, because restrictive clauses mainly apply to tenants rather than landlords. Those who agreed felt that the new provision is needed as a legislative backstop for tenants whose landlord is either not willing to negotiate, or may make consent conditional on unreasonable demands, such as unsustainable increases in rent or altering security of tenure. Some respondents felt that having a legislative backstop in place will act as a trigger for more informal negotiated solutions. Some respondents who agreed in principle felt that the government should work with industry to define the details of any new dispute process, including the circumstances in which a tenant should be able to apply for a variation and the criteria that will govern a test of reasonableness which otherwise might be too subjective. In addition, it was often noted that the application of the new provision needs to achieve a balance between the interests of both tenants and landlords.

Many of those who disagreed with the proposal commented that tenants and landlords have entered into agreements freely and can negotiate contract changes when needed. Some respondents said that landlords may have valid reasons for refusing consent to vary a restriction, for example, where the variation might have significant financial and tax implications or is not in line with the landlord's wider estate management and environmental plans. A few raised concerns that consent to variations may not be possible where the land has specific designations such as for military use or Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty.

### **Are restrictive clauses in Farm Business Tenancy agreements a problem that might also need to be addressed? (open question)**

The majority of respondents who provided a comment on this open question indicated that they did not think restrictive clauses are a problem for FBT agreements. Most commented that FBTs are commercial agreements that have been negotiated more recently than AHAs in a more modern farming environment and so do not need updating in the same way as many AHAs might. Many respondents also noted that as FBTs have a shorter term length than lifetime AHAs, so restrictive clauses can be more regularly re-negotiated to

reflect any changes to the commercial and policy environment. In addition many respondents noted that tenants of FBTs have entered into the terms of the agreement freely, so there should be no need for them to be varied through a dispute process. Some respondents raised concerns that extending the proposal to include FBTs could undermine landlord confidence in the let sector and lead to landowners offering fewer agricultural tenancies in favour of other arrangements, such as contract farming, or farming in hand.

However, a few respondents answered 'yes' or 'probably', commenting that this might be more of an issue for FBTs that were negotiated several years ago and where the terms have rolled over and not been reviewed and updated recently.

## **Regional consultation events**

The views expressed at the consultation events on this proposal were mixed and similar to the online survey and email responses noted above. As with the online and email responses most participants at the events felt that this is only an issue for AHAs that were agreed years ago in a different environment and are in need of updating, and not for FBTs that have been more recently negotiated. Common themes raised across all the events included the need to define more clearly the criteria that would govern any test of 'reasonableness', and concerns about the impact of any variation on the value of the landlord's asset and tax implications. Other issues raised included concerns that dispute resolution can be complicated and costly and that there can be a lack of experienced arbitrators able to take on agricultural tenancy disputes. Questions were also raised about the implications that variations might have on the rent payable and for end of tenancy compensation.

## **Conclusions and next steps**

The consultation responses show broad support for this proposal in relation to tenants of AHA agreements but disagreed that there is a need for a mechanism for landlords, as they do not face restrictions on their activities in the same way. There was also broad consensus that a dispute mechanism is not required for FBTs which are shorter-term and more regularly reviewed and re-negotiated.

The government has included provisions in Schedule 3 of the Agriculture Bill to deliver this reform. In response to feedback gathered through the consultation, the provisions are now specifically focused on AHA tenants, so they are not unreasonably prevented from accessing future financial assistances schemes or meeting statutory obligations. The provisions will be implemented through regulations, which we will develop through further consultation with industry, including representatives of landlords and tenants, so that the interests and views of both parties are taken into account.

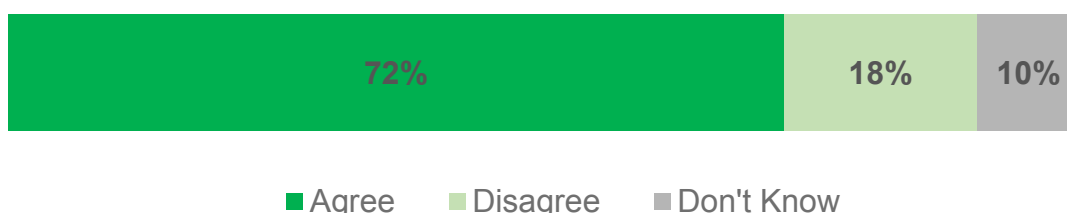


## 5. Removing barriers to landlord investment in AHA holdings (consultation proposal 10)

The aim of this proposal is to remove a barrier to landlord investment in AHA holdings by ensuring that the return on a landlord's investment in the holding is explicitly excluded from rent review considerations. The proposal is to amend section 3 of schedule 2 of the 1986 Act (the statutory rent review provisions) to add new provisions that direct the arbitrator or third party expert to explicitly disregard landlord investments (under written agreement with the tenant) from the rent review determination process.

### Consultation questions and responses

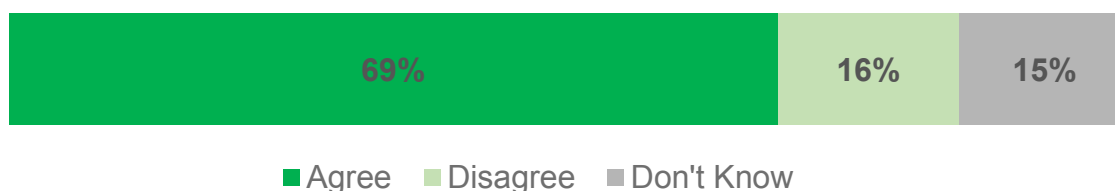
**Do you agree that the risk of a landlord losing any return on investment through the next rent review is a barrier to landlord's investing in AHA holdings?**



Question response rate 88%

The majority of respondents agreed that the risk of losing investment returns at the next rent review is a barrier to landlord's investing in AHA holdings. Some of those who disagreed suggested that it is the lower than market rent levels that is the main barrier to landlords investing in AHA holdings, rather than the rent review process.

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



Question response rate 88%

The majority of respondents agreed with the proposal, commenting that it would give landlords more certainty which would help to encourage more landlord investment. Some

respondents agreed but suggested that any new provision should only apply to investments to which both parties have agreed in writing. Some respondents also suggested that the benefit of the investment to the tenant should be excluded from rent review considerations until the agreed rate of return payments no longer apply to remove the risk that the tenant may have to pay an increased rent as a result of the improvement whilst they are also paying the landlord a rate of return for the investment. A few responses suggested that the proposal should also apply to Farm Business Tenancies.

Those who disagreed with the proposal commented that the proposal would not resolve the core issue of AHA rents being below market rate, and that this is the main barrier to landlord investment in AHA holdings.

## **Regional consultation events**

Consultation event attendees were very positive and supported the proposal. Some tenant farmer attendees suggested that the proposal could be expanded to cover tenants' investment as well as landlords' investments. There were also wider discussions and comments made at events attended by professional advisors on how to encourage more tenant investments in AHA holdings. Some suggested that additional industry guidance and examples of best practice could improve understanding of valuing tenant improvements for end of tenancy compensation provisions and could help to encourage more tenant investment.

## **Conclusions and government response**

The consultation responses show strong support for this proposal. The government has included provisions in Schedule 3 of the Agriculture Bill to amend the 1986 Act, as proposed. In response to feedback from the consultation the new provisions also state that any benefit from the improvement to the tenant is to be disregarded from rent considerations whilst the tenant is still making payments for that improvement. These new provisions remove the risk that a landlord could lose their economic return on investment at rent review whilst also protecting the tenant from paying twice for the benefit of that investment.

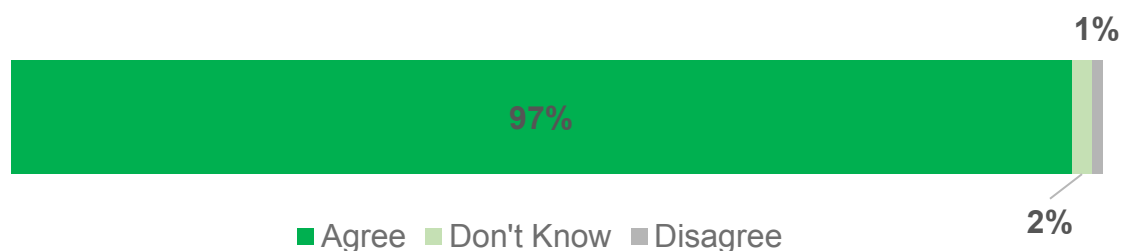
## **6. Timetable for using third party dispute resolution in AHA rent reviews (technical correction) (consultation proposal 12)**

The aim of this proposal is to make a technical correction so that the original policy intention of the 2015 reforms, to enable third party resolution as an alternative and lower-cost option to arbitration in rent review disputes, can be used effectively by industry in the future. The proposal is to amend section 12 of the 1986 Act to remove the requirement that a third-party expert has to be appointed 12 months ahead of the rent review date.

Instead, it will enact a procedure so that where both parties agree to use a third party, the appointment can take place at any point in time prior to the rent review date.

## Consultation questions and responses

**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?**



Question response rate 88%

Almost all respondents agreed with this proposal. Many respondents commented that this would be a welcome technical correction to the timetable for appointing a third-party expert. Some respondents commented that as rent reviews are the most frequent cause of disputes, ensuring third-party determination can be used effectively as an alternative to arbitration is very important in establishing the wider use of this process.

## Conclusions and government response

The consultation responses show very strong support for this proposal. The government has included provisions in the Agriculture Bill to amend section 12 of the 1986 Act, as proposed.

## 7. Updating the agricultural holdings (fees) regulations and the appointment of arbitrators (consultation proposal 13)

The aim of this proposal is to update the prescribed fee (which has not changed since 1996) that can be charged for the service of appointing an arbitrator to resolve disputes under the 1986 Act. The proposal is to update the Agricultural Holdings (Fees) Regulations to increase the prescribed fee that the Royal Institute of Chartered Surveyors (RICS) can charge for the service of appointing an arbitrator or person to make records under the 1986 Act to £195. The consultation also asked for views on whether other qualified professional organisations should in future be able to provide services for appointing independent arbitrators alongside the RICS.

## Consultation questions

**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 ■ Disagree ■ Don't Know

Question response rate 84%

The majority of respondents agreed with the proposal to update the prescribed appointments fee to £195. Those who agreed felt that the level of £195 is a fair increase given the fee has not been updated for many years. Some respondents suggested that if the fee is to be increased the quality of the appointments service should also be reviewed and, if needed, improved.

Those who disagreed with the proposal either felt that no fee should be applied, or that the current fee was at the right level or should be reduced rather than increased. There were several other suggestions including a blended approach of an initial fee of £115 to lodge a request and an additional £80 if an arbitrator is required, varying the fee dependent on the complexity of the case, and linking the fee to the Retail Price Index.

**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 (open question).**

Most respondents who provided comments to this open question held the view that other organisations should be able to provide an appointments service if they had suitable professional accreditations and experience. Many commented that opening the service to other organisations could help to widen the pool of skilled arbitrators making the process more effective for tenants and landlords. Many respondents suggested it would be appropriate to enable the Central Association of Agricultural Valuers (CAAV) and the Agricultural Law Association (ALA) to provide an appointments service alongside RICS.

A few respondents were against the suggestion of other organisations providing a service, noting concerns that it might compromise the impartiality, standards and quality of the arbitrators appointed. A few raised concerns that opening the service up might lead to an increase in the numbers of disputes.

## Conclusions and government response

The consultation responses show broad support for increasing the prescribed appointment fee to £195 and for enabling the CAAV and the ALA to provide an appointments service alongside RICS. The government has included provisions in the Agriculture Bill to amend the 1986 Act and the Agricultural Tenancies Act 1995 to include the President of the CAAV and the Chair of the ALA as persons able to appoint arbitrators alongside the President of RICS. The provisions provide powers for, the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to make regulations to amend the list of persons able to appoint arbitrators so that the list can be updated as needed from time to time.

The government will also take forward work to update the secondary regulations prescribing the statutory appointment fee to £195 and ensuring the statutory fee applies to the wider list of persons able to appoint arbitrators in future.

## 8. Procedural reforms to AHA succession law (consultation proposal 14)

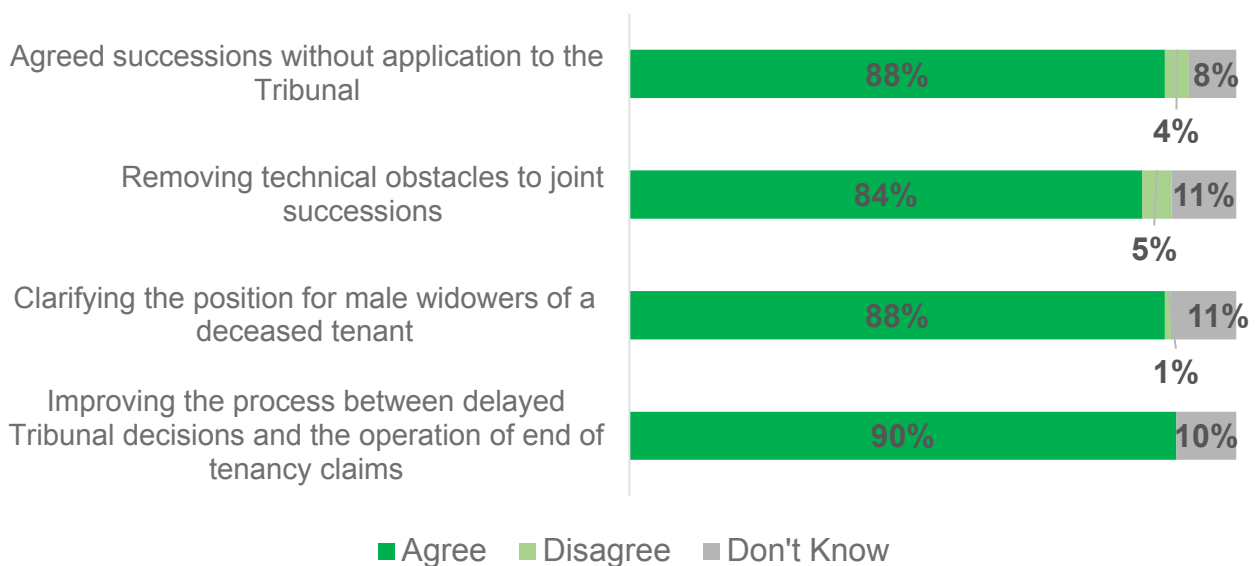
The aim of this proposal is to make procedural changes to assist the practical operation of succession provisions which are set out in Part IV and Schedule 6 of the 1986 Act. The proposal is to amend the 1986 Act in the following ways:

- **Enabling agreed successions without an application to the Tribunal** (amend section 37 of the 1986 Act so that in future where both parties agree to a succession and record it as such (without an application having been made to the Tribunal for that succession) that it should be protected as a succession and count as a succession)
- **Removing technical obstacles to joint successions** (amend section 37 of the 1986 Act so that in future the provisions expressly recognise that the previous tenant may be a joint tenant in the succession tenancy)
- **Clarifying the position for male widowers of a deceased tenant** (amend section 36(4) of the 1986 Act which makes express provision for a deceased tenant's wife so that in future it refers to all surviving spouses (i.e. wife or husband) and civil partners)
- **Improving the process between delayed Tribunal decisions on succession and the operation of end of tenancy claims** (amend section 43 (restrictions on the operation of a notice quit on death of the tenant) and section 44 (provisions for the landlord to obtain the Tribunal's consent to operation of notice to quit) of the 1986 Act. Where there is a late Tribunal determination to a succession application, the following circumstances would apply:
  - Where the Tribunal has refused a succession application, the provisions should allow the Tribunal to be able to determine a period of time in which the applicant

- can remain on the holding solely in order to affect an orderly departure (where the applicant requests this)
- In the event of a delayed tribunal decision, parties will still be able to make enforceable end of tenancy claims and the time limits for the procedures for tenant's fixtures can still work.

## Consultation questions and responses

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



Question response rate 85%, 86%, 85%, 84%

The majority of respondents agreed with all of the proposals and many noted that the changes will help to speed up succession and encourage constructive relationships between tenants and landlords.

However, some respondents raised concerns about certain unintended consequences, and suggested that some of the proposed changes may not be needed.

On the issue of enabling agreed successions without an application to the Tribunal, concerns were raised about how this might impact on the rights of other potential successors. It was suggested that agreed successions should only go ahead if no other applications had been made by other potential successors, or if the agreed successor had been expressly nominated by the deceased tenant.

A few responses commented that the proposal to remove technical obstacles to joint successions is not needed, as this is already provided for in the current legislation.

## **Conclusions and government response**

The consultation responses show very strong support for the proposed procedural changes to improve the operation of AHA succession provisions. However, responses have also suggested that further work is needed to confirm that the proposals would work effectively, and without unfairly favouring one potential successor over another. The government will take forward work with industry to clarify these technical points and refine the proposals.

## Chapter 2: Proposals which require further work

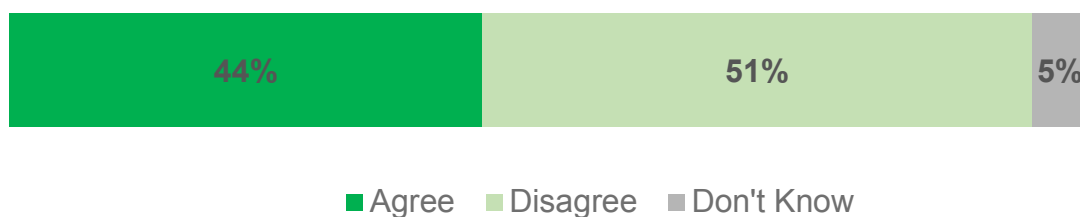
For some of the proposals, consultation responses indicated that further work is needed either to ensure that the proposals would work effectively, or to explore alternative ways of achieving the policy aim. For these proposals, this chapter includes an analysis of responses and sets out the next steps for this work.

### 9. A new provision for an assignable AHA tenancy (consultation proposal 1 and 1a)

The aim of the proposals is to help to facilitate structural change in the AHA sector by enabling older tenants who want to retire to realise financial value from their tenancy by allowing them to assign their tenancy for payment (subject to certain conditions) to a new third-party tenant, unlocking the land for new tenants. Proposal 1 is to insert new provisions in the 1986 Act to enable the tenant to assign their tenancy (for payment) to a new tenant, subject to certain conditions. Proposal 1a is a sub option of proposal 1 which gives the landlord a greater role in the selection of the new tenant.

#### Consultation questions and responses

**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?**



Question response rate 95%

Broadly similar numbers of respondents agreed and disagreed that this proposal would help deliver structural change in the AHA sector, with slightly more disagreeing than agreeing.

Respondents and industry stakeholder organisations that disagreed with the proposal including the Country Land and Business Association (CLA) and the National Trust, were sceptical that the proposal would deliver structural change or productivity benefits. It was suggested by some respondents that the proposal would only be relevant to a few larger



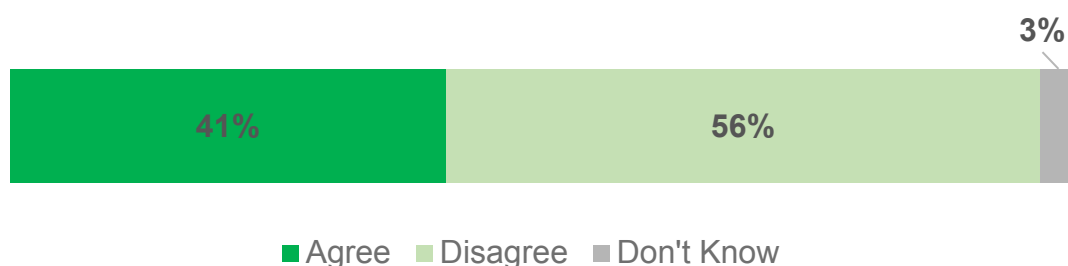
AHA holdings (it was suggested that this may be about 10% of the AHA sector), and as larger holdings are more likely to have a nominated successor they would be unlikely to use an assignment mechanism.

Many respondents and stakeholder organisations commented that alternative housing is the main barrier to retirement for AHA tenants and helping the parties to find alternative housing solutions for the outgoing tenant would have a more significant impact than a new assignment mechanism. Some respondents suggested that direct payments are enabling some older tenants to stay in farming longer and suggested that if direct payments are phased out that would have a greater impact on structural change. It was frequently suggested that providing examples, guidance and advice on negotiated retirement solutions and retirement housing could be a simpler and more effective alternative to legislative change.

Respondents and industry stakeholder organisations who agreed with the proposal, including the National Farmers Union (NFU) and the Tenant Farmers Association (TFA),

felt that an assignment mechanism would help deliver structural change by giving some tenants more options to retire, either through assignment to relatives who are not currently eligible to succeed (such as grandchildren), or to a new tenant looking for progression.

**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?**



Question response rate 96%

Respondents were broadly split, with a slightly higher proportion of respondents disagreeing with the proposal.

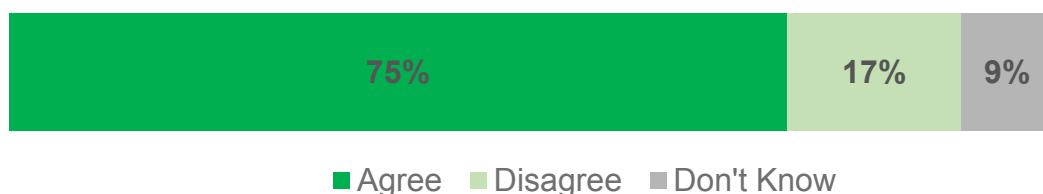
Most respondents who disagreed with the proposal commented that it would be unfair to landlords because it could extend the length of the AHA agreement beyond current expectations. It was frequently noted that this would be particularly unfair on landlords that are waiting to farm the land themselves, or to re-let land under an FBT potentially to a new entrant. Many respondents also noted that it would be unreasonable to impose a new tenant on a landlord because their approach to farming may not be in line with the landlord's wider estate management strategy. Many suggested the proposal would not work in practice because it would be unlikely to provide sufficient funds for the outgoing tenant to retire. Concerns were also raised about the potential for the proposal to affect the

value of the landlord's asset over the long term, and that it may impact on the landlord's and tenant's tax position. For example, it was noted that there could be associated changes to the rate of Agricultural Property Relief (APR) that would be applied in the circumstance of an assigned lease, and Stamp Duty Land Tax and Capital Gains Tax could affect the financial viability of the proposal for tenants.

Most respondents who agreed with the proposal, commented that assignment was a good idea in principle, as it could help contribute to retirement funds, help to unlock AHA land for new tenants, or provide opportunities for family members that are not eligible for succession. However, many of those who supported the proposal in principle had concerns about how it would work in practice and noted several technical and operational issues that would need to be addressed before the proposal would be ready to be implemented. Many respondents noted that, as proposed, the mechanism would not offer an affordable opportunity for an incoming tenant, because they would need to pay a more expensive 'market rent' for the tenancy, as well as a capital sum to the outgoing tenant for the rights to the tenancy. This was unlikely to be an affordable option for most prospective tenants. Some respondents suggested the assigned agreement should remain on regulated AHA rent to make it a more viable opportunity for the incoming tenant.

Some respondents and organisations including the Central Association of Agricultural Valuers (CAAV), Countryside Solutions, and DJM Consulting suggested alternative proposals and options that might be more effective in achieving the policy aim of facilitating structural change in the AHA sector. These alternative proposals included converting the assigned AHA tenancy into a fixed term FBT tenancy, creation of a new statutory exit landlord buy-out mechanism, and developing case studies, guidance and signposting of advice to support exit and retirement negotiations between landlords and tenants.

**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?**



Question response rate 95%

The majority of respondents agreed that if proposal 1 is taken forward then the landlord should have a role in reviewing the suitability of the new tenant. Many noted that this is important as it will provide additional assurance for the landlord that the new tenant will farm the land in a way that fits with the overall estate management strategy. Some

respondents commented that without such a role for the landlord, there is a risk that the outgoing tenant would choose to assign the tenancy to the highest bidder, without much consideration of the suitability of the tenant or their plans for the land. This was mentioned as being particularly important for land that has special status such as for military training or protected designations. However, some respondents disagreed with the proposal, because they were concerned that landlords might block any new tenant, however competent and well-qualified they are, to stop an assignment taking place.

## **Regional consultation events**

Consultation event attendees had mixed views on the proposals. Those in favour felt that the proposal could help to trigger discussions about succession and retirement between tenants and landlords and would give older tenants more flexibility to retire and assign to a family member. Those against the proposal felt that it would be unfair to potentially extend the length of an AHA tenancy and impose a new tenant on the landlord. Many discussions also focused on the complexity of the proposal and a common theme emerging from most discussions was that, as currently proposed, the mechanism is unlikely to work in practice and would need further development before being ready for implementation.

## **Conclusions and next steps**

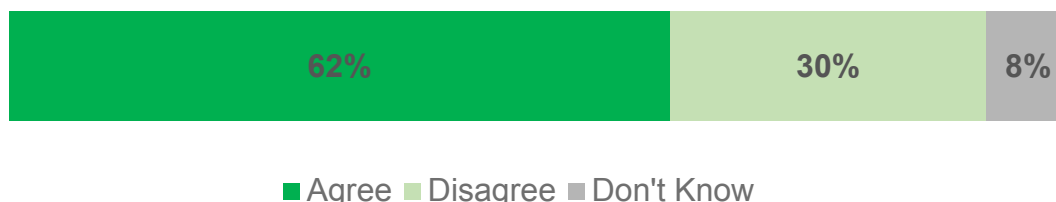
The consultation responses suggest that the current proposal is unlikely to achieve the policy aim effectively. There were some concerns about how the mechanism would work in practice, whether it would disproportionately benefit one party over the other, and whether it would result in an affordable proposition for an incoming tenant. There were also a number of alternative suggestions and proposals to deliver the policy aim. As a next step we will work with industry organisations to explore the alternative proposals and options for amending the original proposal to make it more effective.

## **10. Removing AHA succession rights 5 years after state pension age (consultation proposal 3)**

The aim of this proposal is to encourage earlier succession planning so that holdings are passed on sooner to the next generation, where appropriate. The proposal is to amend the 1986 Act to remove the right for close family relatives to apply to succeed to an AHA tenancy once the current tenant reaches 5 years past the state pension age.

## Consultation questions and responses

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

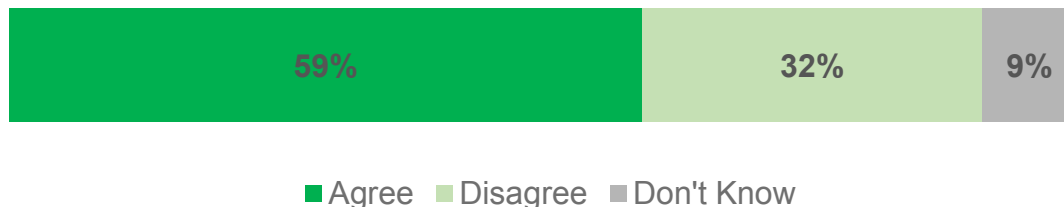


Question response rate 95%

Overall, most respondents agreed with this proposal. When split by respondent type, respondents identifying as landlords, farmers and professional advisors were more likely to agree with the proposal, while those identifying as tenants were more likely to disagree with the proposal. Many of those who agreed with the proposal, commented that it would prompt more timely discussions on succession, focusing minds by taking away the option of allowing the issue to drift until death. There were some suggestions for changes to the proposal, including that the cut-off age should be much older (some suggested 10 years past state pension age), and that if the process of succession had started by the cut-off age but not completed, then succession rights should not be lost.

Nearly a third of respondents disagreed with the proposal. Many of those who had concerns about the proposal commented that decisions on when to retire and hand over the family business are unique and personal to each individual and family situation, and therefore should not be interfered with by government through legislation. Some respondents suggested that providing guidance and advice to encourage earlier succession planning could be more effective and fairer than forcing change through legislation. Some respondents expressed concerns that the proposal is 'ageist' and commented that many older farmers are very capable and productive, and it is common practice these days to work later in life in many sectors. Others were concerned that the proposal could have negative unintended consequence for tenants who have had children later in life, or a second family, where the successor may not be old enough or ready to take over. Several responses suggested that the proposal might only lead to a name change on the tenancy agreement but no real change in how the farm is managed, so it might have little impact. A few respondents raised concerns that this change could cause stress and mental health illness for some farmers. A few alternative approaches were suggested including providing tax incentives to the tenant to handover to the next generation earlier.

**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?**



Question response rate 94%

Most respondents agreed that if this proposal was implemented then 8 years would be an appropriate time delay before any change to succession rights came into effect. But a third of respondents disagreed, with many suggesting that 8 years is too long, and 5 years or fewer would be enough time for tenants to prepare for the change. However, a few felt that a longer time was needed suggesting ten years or more.

**How should the 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 rights cease to be available) be linked to the age of the youngest successor? (Open question)**

Most respondents who commented on this open question indicated that for joint tenancies the cut off age should be linked to the age of the youngest joint tenant. However, a few said it should be linked to age of the oldest tenant or the average age of the younger and older tenants, or that the tenants should be able to agree an approach between them. A few raised concerns that the proposal could be complex to implement for joint tenancies.

## **Regional consultation events**

There were mixed views at the consultation events on this proposal. Participants at events attended by tenant farmers expressed more concerns about potential negative consequences of the proposal than were raised at the events attended by professional advisors and landlords/landowners. Tenant participants flagged potential unintended consequences such as the successor not being ready to take over the holding or the successor dying early after succession. Landlord and professional advisor participants often commented that the proposal could be a helpful trigger for change prompting more timely family discussions about retirement and succession. Housing was frequently raised at all the consultation events as the key to unlocking retirement and succession for AHA tenants rather than legislation. Many participants also noted that there are other more significant economic and cultural barriers to retirement that impact on succession decisions such as tax, housing, personality and family relationships.

## Conclusions and next steps

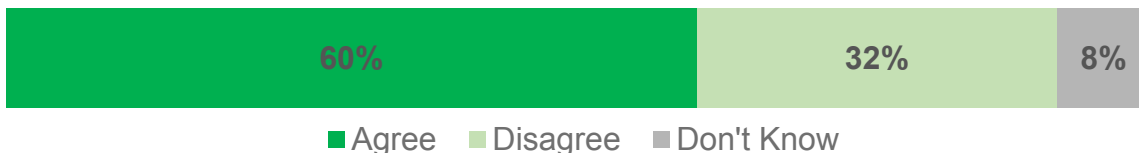
Whilst many of the consultation responses supported this proposal, significant concerns were also raised. Considering the range of views, the government has decided not to take forward this legislative proposal. As a next step we will work with industry organisations to explore how case studies, guidance and better signposting of advice and support can help encourage earlier succession planning in future.

## 11. Modernising and extending succession rights (to include cohabitation, consultation proposal 7)

The aim of this proposal is to make children (or those treated as children) of cohabiting partners eligible to apply to succeed to an AHA holding (subject to them meeting the other eligibility tests set out in the 1986 Act). The proposal is to 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 cohabitation.

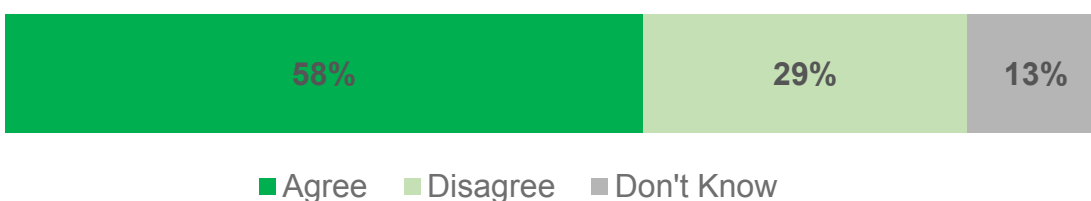
### Consultation questions

**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?**



Question response rate 93%

**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?**



Question response rate 93%

Many respondents agreed with the proposals, commenting that the changes would update the 1986 Act and make it more applicable to modern family life. However, whilst supportive in principle, many respondents raised concerns that cohabitation needed to be evidenced and clearly defined to avoid uncertainty or misuse of any change. Some respondents suggested there should be a specified period of co-habitation to enable eligibility alongside the requirement for the cohabiting partner to be actively working on the holding. A few respondents suggested that the requirements of the current Livelihood Test might be enough to ensure the cohabiting partner has a genuine connection to the family business.

Of those who disagreed with the proposal, some commented that because there is not a consistent legal definition of a cohabitation, any change might be open to abuse and could lead to more confusion and uncertainty amongst landlords who are waiting to take the land back in hand.

## **Regional consultation events**

Discussions at the consultation events indicated broad support for proposal 7. However, a common theme raised at all events focused on concerns and questions over how cohabitation might be defined legally so that there is clarity and certainty for all parties.

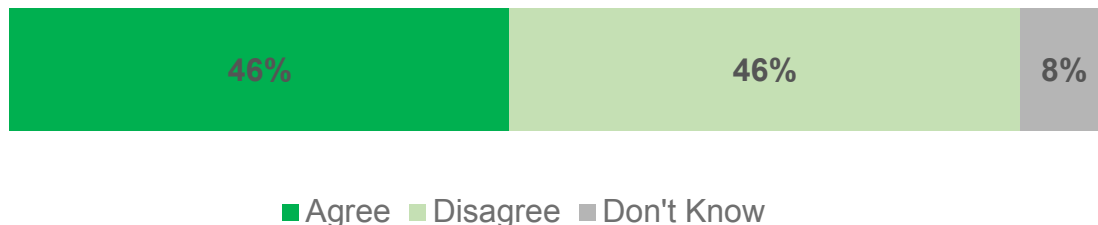
## **Conclusions and next steps**

Whilst the consultation responses are supportive of the consultation paper proposal, they have demonstrated that further work is still needed to determine the details of how any change might work in practice. The government will take forward further discussions with industry and across government to explore the proposal further.

## **12. Modernising and extending succession rights (to include nieces, nephews and grandchildren, consultation proposal 8)**

The aim of this proposal is to extend the definition of close relatives eligible to succeed to an AHA tenancy by amending and extending section 35(2) and section 49(3) of the 1986 Act to include nieces, nephews and grandchildren of the tenant in relation to marriage and civil partnership so that they would be eligible to apply to succeed to an AHA holding in future. However, to ensure that the length of the tenancy is not extended for another generation the proposal included conditions that if succession is extended to grandchildren the term of the tenancy should then be limited to 25 years and subject to market rent.

**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?**



Question response rate 93%

Overall responses were split on this proposal with equal numbers in favour of it and against it. Respondents identifying as tenants were mostly in favour of the proposal and respondents identifying as landlords were mostly against it. Of those identifying as professional advisors or farmers around a third supported the proposal and around two thirds disagreed with it.

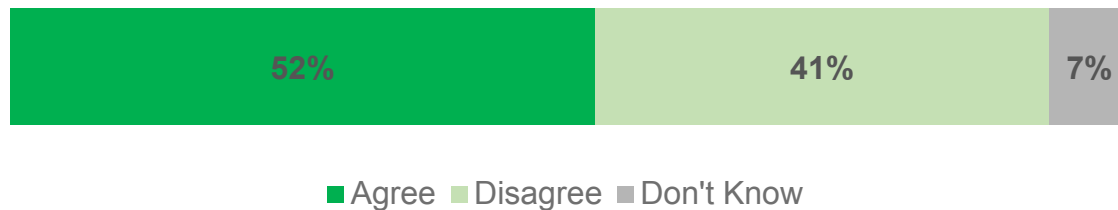
Those who agreed with the proposal commented that it would give family businesses greater flexibility to choose the best successor helping business continuity and boosting productivity through the new ideas and skills that the next generation can bring to the holding.

Those who disagreed with the proposal frequently commented that it is unfair to landlords to extend succession rights to more relatives of the tenant when many landlords are waiting to take back possession, so they can farm the land themselves. Others who disagreed noted that the proposal was anti-competitive favouring established tenant families at the expense of potential new entrants.

Others suggested that the proposal is not necessary because where nieces and nephews have a strong connection to the farm business and the landlord does not want to farm it themselves, they will be in a good position to negotiate with the landlord to take on the tenancy as either an agreed succession or as an FBT, and they are also more likely to be successful in an open market competition.



**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?**



Question response rate 93%

Responses were split on this proposal with respondents identifying as tenants mostly in favour and respondents identifying as landlords mostly against and those identifying as professional advisors or farmers broadly equally split between those against the proposal and in favour of it.

Those who agreed with the proposal frequently commented that it will help some older AHA tenants to retire if their children are not interested in farming but their grandchild is, particularly where the landlord is not interested in negotiating an agreed succession. Others felt that widening the pool of relatives will help to keep the family connection which can be good for productivity and the environment, as they know the business, the soil and local environment better.

Those who disagreed often commented that the proposal is an unfair interference with the landlord's property rights potentially extending succession rights for another generation. It was noted that this could have significant valuation impacts for the landlord and would weaken the confidence of landowners in the stability of tenancy law, potentially leading to landowners moving away from tenancies into contract agreements instead.

### **Regional consultation events**

There were mixed views on this proposal at the consultation events with very similar comments raised on the positives and negatives of the proposal as are noted above. A common point made at many of the events was that if the proposal is taken forward and succession allowed to skip a generation then that should be the last succession. Another common suggestion was that if succession is to be extended to other relatives then it should be conditional on the tenancy moving to market rent as this is fairer to landlords and provides a better driver for tenants to build a commercially focused business. A common point made in relation to nieces and nephews was that this should only be considered in the context of joint tenancies, and that going any wider than that would be unfair to the landlord's interests. It was also frequently suggested that negotiated successions are the better solution and should be encouraged through industry guidance and best practice examples.

## Conclusions and next steps

Broadly similar numbers of respondents agreed and disagreed with this proposal, but there were significant concerns that the proposal would disproportionately benefit one party over the other, and could negatively affect landlords' property rights. Taking into consideration the range of views, the government has decided not to take this proposal forward. Instead we will work with industry organisations to explore how guidance and examples of best practice could encourage negotiated solutions to succession to aid business continuity.

## 13. Introducing short notices to quit for new Farm Business Tenancies of ten years or more (consultation proposal 11)

The aim of this proposal is to encourage more landlords to offer longer term tenancies of ten years or longer by providing them with more certain and shorter termination procedures in specific circumstances.

The proposal is to insert provisions into the Agricultural Tenancies Act 1995 to give landlords that let new FBTs for a period of ten years or longer, and without a landlord break clause, new rights to issue shorter notices to quit (as an alternative to, but not a replacement for, forfeiture) in the specific circumstances of: non-payment of rent by the tenant (a 3 month notice to quit process), death of the tenant (a 12 month notice to quit process), and when the landlord has planning consent to develop land on the holding for non-agricultural use (a 6 month notice to quit process).

### Consultation questions and responses

**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?**



■ Agree ■ Disagree ■ Don't Know

Question response rate 91%

Most respondents agreed with the proposal, commenting more longer-term tenancy opportunities are needed for tenants to be able to invest in their business and in improving

soil health. However many of those who agreed also suggested that fiscal incentives would be a more effective policy tool to encourage landlords to offer longer term tenancies than complex short notice to quit provisions. Some respondents commented that landowner concerns over political uncertainty and the risk of right to buy policies being implemented is why many prefer lower risk and more flexible shorter-term agreements or contract farming arrangements.

Many of those who disagreed with the proposal commented that it would have little impact on encouraging landlords to offer longer term tenancies. It was noted that other factors have a greater influence over this decision, such as the size and location of land, the farming sector, tax, and the landlord's personal motives for holding land. Some respondents felt the current flexibility for tenants and landlords to negotiate the length of term to suit business needs is working well and no change is needed. A few respondents suggested that uncertainty over trade and farming economics means that many tenants do not want to be tied into longer term tenancies.

**Are there other options that would encourage landlords to let for longer terms that we should consider? (Open question)**

Most respondents to this open question suggested fiscal changes would be a more effective incentive for landlords to offer longer terms than legislative change. A variety of tax reforms and incentives were suggested including:

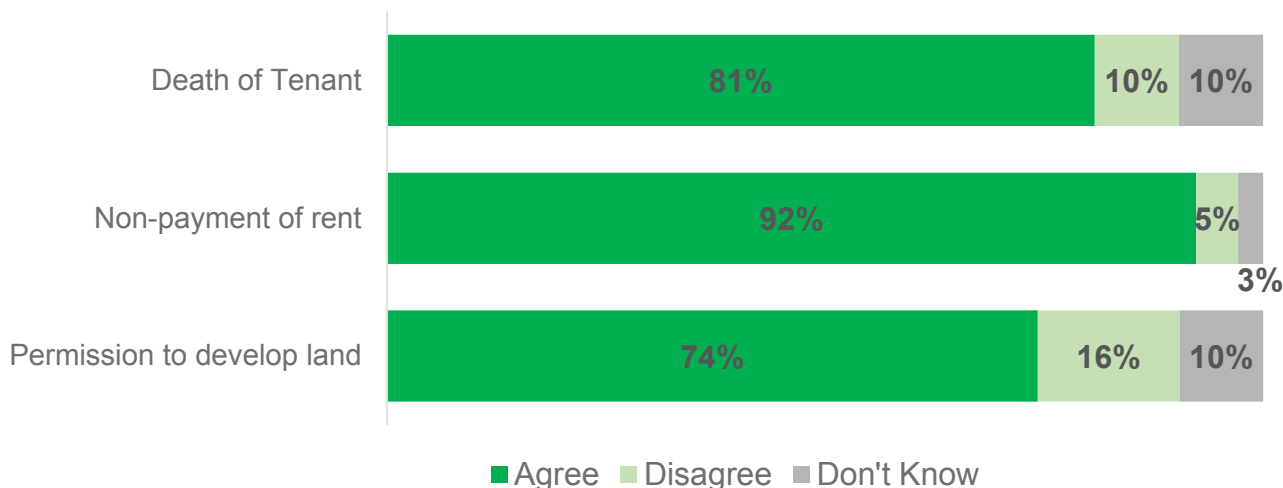
- The Irish model of providing income tax relief on rents from agricultural lettings linked to the length of term.
- Linking the availability of Agricultural Property Relief (APR) to land let for 10 years or more.
- Reforming Stamp Duty Land Tax (SDLT) to remove the current discrimination against longer tenancies.
- Treating rental income from agricultural lettings as 'other business income' for tax purposes.

Many respondents suggested industry guidance and best practice might help encourage longer term agreements and could be more effective in driving a culture change than legislation. Those who suggested this felt that currently there is a tendency for land agents to use off the peg 5-year FBT contracts because they are easier rather than exploring the potential benefits of longer-term agreements for both parties.

Some respondents suggested the current requirement on tenants to register their FBT lease with HM Land Registry if it has a term of 7 years or more should be removed as it is an unnecessary burden and cost for the tenant and a disincentive to entering leases of 7 years and over. A few responses suggested that linking payments from future agricultural

and environmental schemes to longer-term agreements might encourage more tenants and landlords to negotiate longer terms.

**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 below?**



Question response rate 87%, 88%, 88%

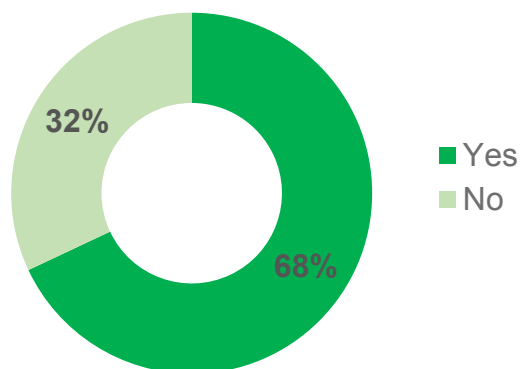
The majority of respondents agreed with the proposals to introduce shorter notices to quit in the specified circumstances. However, many respondents commented that whilst they supported the proposals as a better process than forfeiture to regain occupation of the holding, they were sceptical that it would result in more long-term tenancy opportunities because other factors are more important in landowner’s decisions. Many respondents commented that if shorter notice to quit provisions are introduced they should apply to all new FBTs of two years or more. However, a few respondents and industry stakeholders including the Tenant Farmers Association said that their support for the proposal is conditional on it only applying to new FBTs of ten years or more with no landlord break clauses.

Of those who disagreed with the proposal, most felt there was no need for the change or it would not deliver the desired outcome of longer term tenancies. Some raised concerns that tenants may need more time than 3 months to pay rent owed due to circumstances outside of their control, for example, if they have not received their direct payments or environmental scheme payments on time, or if there is an unexpected weather or animal health related emergency. Others suggested that consideration would be needed for special provisions to assist tenants who are under livestock movement controls. A few responses disagreed with the proposal of a 6 month notice to quit if the landlord has planning permission for non-agricultural development, suggesting that this should be 12 months’ notice if the landlord is giving notice on the whole holding. A few responses disagreed that a new short notice to quit provision in the circumstance of the death of the tenant is necessary and suggested that the current provisions are sufficient. It was also frequently suggested that industry guidance and model long term agreements could be

more effective in delivering change than complex legislation for short notice to quit provisions.

An alternative proposal was suggested by the Central Association of Agricultural Valuers (CAAV) in relation to planning permission for non-agricultural development focusing on an early resumption clause to be voluntarily negotiated and agreed between the parties including agreeing an appropriate notice period. It was suggested that this would help address the issue of landlords creating complex arrangements (such as quarterly periodic tenancies) where land is likely to go for development.

**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?**



Question response rate 88%

Most respondents agreed that if this proposal is progressed then other serious breaches of the agreement should be included, with many suggesting bad husbandry and environmental breaches as key issues that could be addressed. Other suggestions included: criminal offences, fraud and insolvency, sub-letting without permission, all breaches that a tenant has failed to remedy within a reasonable period and when unauthorised waste has been brought onto the holding.

Many of those who disagreed commented that the current process works well and there is no need for change.

**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? (open question)**

Most respondents to this open question suggested compensating the tenant for loss of income from lost production and the loss of direct payments. Several respondents proposed that tenants should be compensated for improvements they have made to the land that will be taken out of their holding, such as soil improvements, fertiliser

applications, or any capital works. A few respondents felt the tenant should share in the profit of the uplifted land value.

## **Regional consultation events**

Feedback from the consultation events on this proposal was mixed. Many participants were supportive of the need to encourage more longer-term tenancies, but others suggested the current system is working well and there is no need for change, or that the proposal is unlikely to make much difference to landlords offering longer terms. A common theme across all events focused on taxation being a better policy lever to encourage longer term tenancies than legislative change. Another key topic of discussion at the events focused on the need for better education and awareness amongst professionals advising landlords and tenants of the benefits of longer-term agreements and the potential to use the FBT framework more strategically rather than defaulting to a standard 5 year FBT contract. Many participants suggested that industry guidance, model long term contracts, best practice examples and studies on the benefits of longer terms for both parties could be very helpful in driving culture change in the sector.

## **Conclusions and next steps**

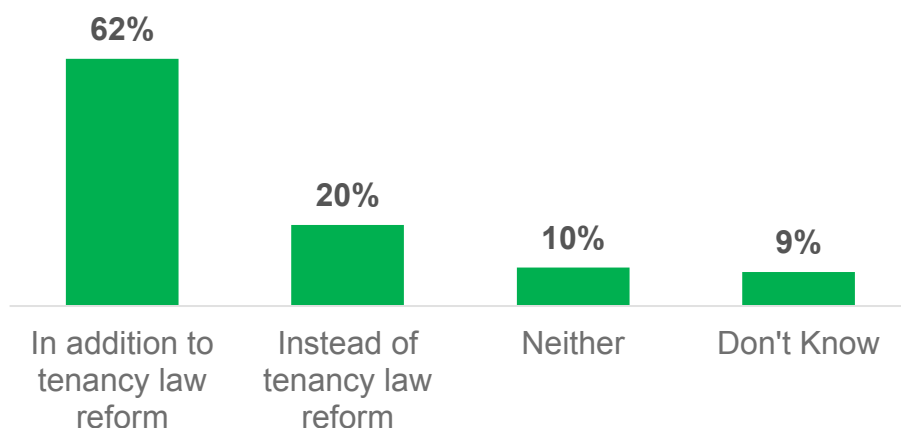
Whilst respondents were supportive of the policy aims of this proposal, responses suggested that the proposed changes may not actually have a significant effect in encouraging more landlords to offer longer term tenancies. Taking account of views expressed, the government has decided not to take forward this proposal. Instead we will take forward further discussions with industry and across government to explore the alternative suggestions for achieving the policy objective of encouraging more landlords to let longer term tenancies.

## **14. Proposals on non-legislative options**

The consultation asked for views on non-legislative actions that could be delivered as an alternative to, or alongside legislative change, to enhance the delivery of policy aims, such as disseminating industry best practice, guidance, advice, education and developing model agreements.

## Consultation questions and response

**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?**



Question response rate 78%

Most respondents commented that non-legislative options should be considered in addition to tenancy law reform and were generally supportive of more guidance being made available to enhance legislative change. It was often suggested that this would help to encourage best practice and improve tenant/landlord relationships, whilst maintaining the ability to use legislation as a backstop when needed. It was frequently suggested that the Tenancy Reform Industry Group (TRIG) could play an important role in providing updated guidance on several issues such as tenants diversifying and entering into environmental schemes, on retirement and succession planning and on encouraging longer term tenancy agreements.

Some respondents felt that issues between tenants and landlords are best solved through negotiation and therefore updated guidance for landlords and tenants should be pursued instead of changing legislation. A few respondents were wary of more guidance, they were concerned it might be drafted with less balance or would not have the desired impact. A few suggested that as advice is already available from professional advisers' further guidance is unnecessary. A few suggested that all policy levers (legislative, fiscal and guidance) are needed to deliver change.

## Conclusions and government response

The consultation responses show that there is broad support for developing non-legislative proposals, such as industry-led guidance, to enhance and support the delivery of policy aims to facilitate structural change and productivity improvements in the tenanted sector.

The government will take forward discussions with members of the Tenancy Reform Industry Group (TRIG) to identify the areas where guidance, examples of best practice and signposting advice is most needed, and agree plans for taking this forward.



## Chapter 3: Call for evidence

The response rate to the questions in these two calls for evidence sections was lower (at 62% and 63%) than the response rate to the consultation questions on agricultural tenancy reforms (where the response rate ranged from 78% to 97%). This is probably due to the different nature of the issues being discussed and the focus on financial questions. However, more detailed responses were received from stakeholder organisations representing the financial sector, professional advisors and from farming and landowner organisations.

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

The call for evidence explored issues relating to current provisions in the Agricultural Tenancies Act 1995 (the 1995 Act) 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. Respondents were asked to provide views and evidence on the following questions.

#### Consultation questions and responses

**Please provide evidence or examples of why it might be important for mortgage lenders to restrict the ability of a landowner to grant agricultural tenancies on mortgaged land without the permission of the mortgage lender? (Open question)**

Most of those who responded to this open question noted that consent from mortgage lenders is necessary and important for loan security and risk management reasons. Some responses highlighted that this is commonplace in lending agreements secured by land or property, and noted that if the requirement was removed from the 1995 Act, then lenders would make the obligation to obtain consent a lending condition by contract anyway. A few respondents suggested that consent from lenders may not always be necessary for seasonal short term lets and grazing licences, as these do not impact on the value of the land in the same way as longer term tenancies do.

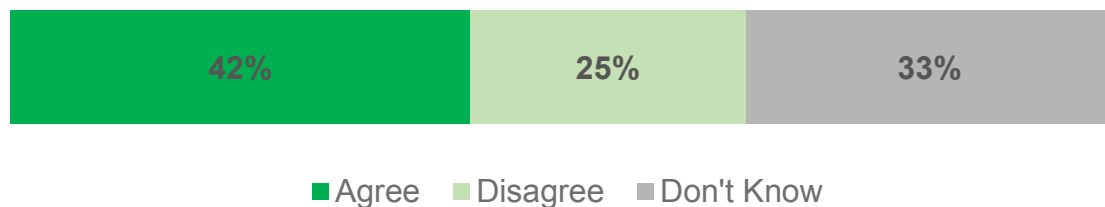
However, an alternative view suggested that the requirements of the 1995 Act for lenders to consent to agricultural tenancies on mortgaged land is not necessary because section 99 of the Law of Property Act 1925 (the LPA 1925), which states that a tenancy granted without permission from the bank is only effective if best rent is achieved, provides sufficient protection for the lender if they are lending on the ability of the borrower to service the debt.

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

Most of those who responded to this open question commented that the process of gaining consent from lenders to agricultural lettings is not a barrier to letting land, and suggested it provided a necessary check and balance. Evidence provided by UK Finance highlighted that within performing loan portfolios there are very few cases (c.5 per cent) where landowners are seeking to enter long term leases with third parties on part of their land which is held as security. UK Finance also noted that when a landowner does make a request to let their land, approval rates are nearly 100 per cent. Some responses suggested that Stamp Duty Land Tax, which applies to longer term tenancies, is a more significant barrier to longer term lets than the requirement to gain consent from lenders to let land.

However a few responses indicated that, whilst requests for consent from lenders are rarely declined, the process can take a long time and for short term or seasonal lets it can seem like a disproportionately burdensome process

**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?**



Question response rate 63%

There was a mix of responses to this question, with over a third of respondents indicating that they did not know. Those who were in favour of considering a change suggested that it could improve flexibility and remove a burdensome process for landowners. This could be particularly helpful now as the industry is going through a period of change and some older farmers, who are approaching retirement, may be considering renting their land to new entrants. Others suggested that consideration could be given to linking the consent process to the length of tenancy term. It was suggested that shorter lettings should not require consent from the lender, because they are low risk, whereas longer lettings should still require consent because of the higher impact on loan security and asset value.

Those who disagreed commented that change is not necessary because the process of gaining consent to let land is not causing a problem in the sector. Many industry stakeholders, including UK Finance and the National Farmers Union, were against repealing s31 and provided evidence that requests to let land are rarely declined by lenders. They were also concerned that any changes might reduce the availability of lending to the sector, or lead to higher interest rates. Evidence from UK Finance highlighted that if lenders are unable to maintain an accurate value of the assets held as security this could affect lenders' willingness to lend to the agriculture sector, and the supply of lending facilities. It could also lead to increased costs of borrowing. Some respondents suggested that removing lender consent may result in lenders requiring more security up-front to protect asset values. Others noted that removing the consent process may increase the risk of mortgage fraud.

## **Regional consultation events**

Feedback gathered from across the consultation events indicates that gaining consent from lenders to let land is not currently a widespread concern for landowners. Most participants noted that they had not experienced lenders refusing to give consent to agricultural lettings, and suggested that it was not unreasonable to be required to ask lenders for consent as it could affect the security of their loan. As with the online responses participants at the events were concerned that any changes might change the willingness of banks to lend to landowners, or increase the cost of loans to the sector. However a few participants raised concerns about the time it can take to gain consent from lenders, and would like to see a quicker process, especially for short term lets which are low risk for lenders.

## **Conclusions and government response**

The evidence and views submitted suggest that overall the requirement for lenders to consent to agricultural lettings does not currently present a barrier to landowners offering agricultural tenancies. However some noted that it can take a long time to gain consent, and others questioned whether it is a necessary requirement for shorter term lets. Overall, evidence does not suggest that there is a need for legislative change at present, but we will continue to monitor whether there is any change in the situation.

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

The call for evidence asked for views and evidence on whether existing repossession procedures of agricultural land are appropriate and fair for both parties. It also asked if there could be a need for additional protections to give farmers more opportunity to meet repayment requirements before the commencement of possession proceedings of their

agricultural land. Respondents were asked to provide views and evidence on the following questions.

## **Consultation questions and responses**

### **Do you have examples or evidence of how farmers may be particularly vulnerable to repossession of their agricultural land now or might be in the future? (Open question)**

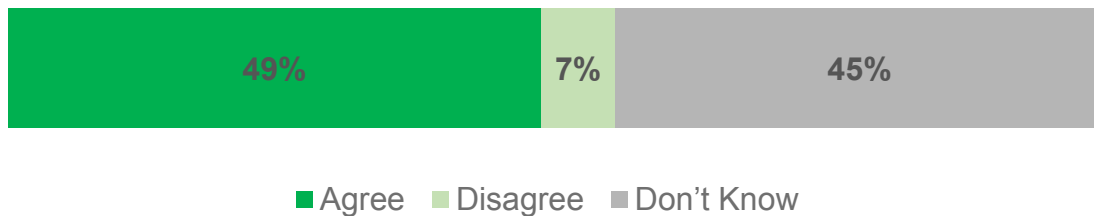
Most of those who responded to this open question commented that repossessions are very rare in the farming sector. Evidence provided by UK Finance indicates that farm businesses are less likely to face repossessions than businesses in other sectors, highlighting that the numbers of agricultural insolvencies are consistently low; there were 48 new insolvencies in 2018, the same as in 2010. Some responses noted that well-managed farms are no more vulnerable to repossession than well-managed businesses in other sectors. However, some respondents commented that changes in trade and the phasing out of direct payments could increase the possibility of financial difficulties and repossession for some farmers in the future.

### **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? (Open question)**

Most respondents who commented on this open question noted that a key difference between farm businesses and businesses in other sectors is that for many farmers the business is also their home. Other key differences noted included farm businesses' vulnerability to weather events and animal disease outbreaks, and the inflexibility to be able to raise funds immediately due to the time it takes to move livestock and to harvest crops. However, many respondents also commented that in their experience most lenders understood the volatility that farmers face, and work proactively with farm businesses to address problems early. Some respondents highlighted that there are practical barriers to repossessing agricultural land compared to other sectors, such as dealing with livestock and crops, and therefore lenders have an incentive to avoid repossession and often take a softer approach to managing defaults in the agricultural sector compared to other sectors. Evidence provided by UK Finance indicates that agricultural businesses entering a business support (turnaround) unit have a high 'return to good book' success rate.

An alternative view noted that it is possible for lenders to separate mortgages over the farmhouse from mortgages over agricultural land, so that the mortgage over agricultural land would not be subject to the requirements of section 36 of the Administration of Justice Act.

**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?**



Question response rate 62%

Of those who responded to the question, nearly half thought that additional protections should be considered, and a similar number did not know. A few thought that additional protections should not be considered. Many of those who agreed commented that more protection might be helpful, especially where the circumstances had arisen due to events outside the farmers' control, such as weather events and animal disease outbreaks. A few respondents suggested that extending section 36 of the Administration of Justice Act to include agricultural land would be beneficial during the agricultural transition period, when more farmers may need the additional protection that this would provide. However, some of those who agreed also expressed concerns that a court possession order might not be appropriate, because most farmers would not want to face the public process of court proceedings publicising the business failure and putting further downward pressure on the value of the asset. Some respondents also noted that court proceedings can take considerable time and the farmer would need to defend their position against an application for a possession order, placing additional pressure on them at what would already be a difficult time. The farmer would also incur legal costs, which they may not be able to afford.

The response from the Association of Property and Fixed Charge Receivers suggested alternative options for improving the current process. For example, increasing the use of professional mediators before the appointment of a receiver to work with the parties to find fresh solutions to address non-performing loans. It was suggested that this can avoid the imposition of a receiver on the borrower and is lower cost and less stressful for all parties. But it was noted that the right to appoint a receiver would still be needed in the event that mediation fails to find a solution. They also suggested giving the borrower a defined period in which to appeal (to an appropriate financial regulator or Tribunal) against the appointment of a receiver in specific circumstances, such as a failure to follow due process by the lender or a breach of covenant by the lender. It was suggested that this would provide additional protection for borrowers who face a genuinely inappropriate enforcement from a lender (although it was noted that this is very rare) in a low-cost and fair way for both parties.

Those who disagreed felt that additional protections for farmland are not needed because most lenders work with their farming customers to find solutions to financial issues. Some respondents suggested that if there are particular issues with some secondary lenders, then this should be handled through monitoring and regulation, and not through changes to legislation that would risk undermining the confidence of primary lenders in financing the agricultural sector. The response from UK Finance highlighted the benefits of the current process and role of the Law of Property Act Receiver (LPAAR) for farmers, noting that the LPAAR acts as an agent of the borrower and not the bank. This means that their role is to support the farmer with independent, professional advice to find solutions that will often lead to restructuring and the continuation of a more sustainable business. The response from the National Farmers Union raised concerns that any legislative changes could negatively affect the availability of finance to the agricultural sector if lenders felt that access to justified enforcement of their security was unfairly prejudiced.

## **Regional consultation events**

The majority of the feedback gathered through the consultation events indicated that repossession procedures are not currently causing any notable problems for farmers, and repossessions are very rare. Most felt that the current process is working well and that most lenders only take forward receivership when they have explored all other options with the farm business. However, some participants commented that issues with secondary lenders and high interest loans might be more of a problem where lenders are not lending with caution. Some participants suggested that future changes to agricultural policy and the trading environment might increase the risk of financial difficulties for some farmers. Some participants suggested that this should be addressed by ensuring farmers have adequate time to adjust through a long transition period and are offered help to become more resilient.

## **Conclusions and government response**

Most of the comments and evidence gathered suggests that repossessions in the farming sector are rare, and that the current procedures are not causing widespread problems. However, it was also noted that the significant changes ahead may put some farmers at a higher risk of repossession in future. Overall the evidence suggests that there is not a need for any immediate change to current arrangements, but the government will continue monitor whether the situation changes as the future farming policy is introduced.

## Annex 1: About the analysis

It is important to keep in mind that public consultations are not necessarily representative of the wider population. Since anyone can submit their views, individuals and organisations who are more able and willing to respond are more likely to participate.

Because of this likelihood for self-selection, the approach of this analysis has not only been to count how many respondents held a certain view but also to include qualitative analysis of the additional comments provided to understand the range of key issues raised by respondents, differences in views and the reasons for them holding their view.

In presenting the results, we have aimed to provide a broad picture of all views and comments. Therefore, a range of qualitative terms are used, including 'most' 'many' 'some', and 'a few'. 'Most' refers to a significant majority, 'many' refers to when a substantial number of respondents have a similar view, 'some' refers to when there is a reasonable number of respondents with a similar view and 'a few' refers to a small number of respondents. Interpretation of the balance of opinion must be taken in the context of the question asked, as not every respondent answered all the questions, and not every respondent who provided an answer to a closed question provided additional detail.

In this respect, qualitative terms are only indicative of relative opinions to questions based on who responded. Therefore, they cannot be assumed to relate numerically back to the total number of people and organisations.

## Annex 2: Types of responses

### Online survey

Respondents were encouraged to submit an online response by completing an online survey hosted on Defra's consultation website, Citizen Space<sup>6</sup>.

The online survey followed the questions asked in the consultation paper: featuring both closed (for example, tick box questions), and open questions (asking for respondents to detail their views or provide further evidence or examples). Respondents were able to answer as many or as few questions as they wanted.

For the closed questions statistics are provided on the responses to each proposal. For open questions, a summary of the main themes emerging from the responses is provided.

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<sup>6</sup> <https://consult.defra.gov.uk/ahdb-sponsorship-and-agricultural-tenancies/agricultural-tenancy-consultation/>

## Email and post

Responses could be submitted directly by email or post. Some but not all of these responses answered the consultation questions directly – some related to issues not covered by the consultation document or provided additional information and more general views on topics relevant to the consultation proposals.

Where responses answered the specific consultation questions, these have been included in the analysis of each proposal. Where responses provided additional information or general views on related topics, we have reflected these in the summary of key themes that emerged from additional comments in the most relevant section.

## Organisational responses

Organisations and stakeholder groups were able to submit responses to the consultation on behalf of their members. The key arguments raised in these organisational responses are included alongside individual responses in each of the relevant sections. A list of organisations who submitted a response is included in Annex 3.

## Regional consultation events

Defra worked collaboratively with several industry organisations to facilitate eight regional stakeholder events during the consultation period. Approximately 192 people attended these events, including a mixture of tenant farmers, agricultural landlords, landowners and professional advisors. The events were held with the following co-hosts:

- The Agricultural Law Association
- The Central Association of Agricultural Valuers
- The Country Land and Business Association
- The National Federation of Young Farmers Clubs
- The Tenant Farmers Association

The events included facilitated group discussions enabling participants to share their views on the most of the proposals in the consultation document as listed below, however limited time meant not every proposal in the consultation was discussed.

Proposals discussed at the events included:

- Creating a new provision for an AHA tenancy to be assigned (proposal 1 and 1a)
- Removing succession rights when the tenant reaches 5 years past state pension age (proposal 3)
- Repealing the Commercial Unit Test and replacing the Suitability Test with a new Business Competence Test (proposals 5 and 6)



- Widening the definition of close relatives eligible to succeed to an AHA tenancy to include cohabitation, nieces, nephews and grandchildren (proposals 7 and 8)
- Enabling tenants to apply to vary restrictive clauses (proposal 9)
- Protecting landlord return on investment in AHAs (proposal 10)
- Shorter notice to quit provisions for farm business tenancies of 10 years or more (proposal 11)
- Call for evidence on mortgage restrictions and repossession procedures for farmland

Notes on each of the group discussions were taken and have been analysed and summarised separately in the relevant sections of this response.

## Annex 3: List of responding organisations

This list of responding organisations is not exhaustive. Rather, it is based on those that declared their organisation. This may include responses from individuals who are members of specific organisations and therefore does not necessarily reflect that organisation's views. This list also does not include those that asked their response to be kept confidential.

- Association of Chief Estates Surveyors Rural Branch
- The Agricultural Law Association
- Apley Estate
- Balfours
- Batcheller Monkhouse
- Brown & Co
- Burgess Salmon
- Burgess Salmon LLP
- Central Association of Agricultural Valuers
- Carter Jonas
- Country Land and Business Association
- Clinton Devon Estates
- Cornwall Council
- Countryside Solutions

- Dee Atkinson & Harrison
- DJM Consulting
- DJM Farming
- Estates Business Group
- First Acre
- Fisher German
- Ford & Etal Estates
- Frank Dakin & Son
- Game and Wildlife Trust
- Herriard Estates
- Hovingham Estate and Hovingham Farms
- Institute for Chartered Accountants in England and Wales
- Laurence Gould Partnership Ltd
- Lincolnshire County Council
- Martin Agricultural Services
- Messrs JR Jackson
- Michelmores
- Ministry of Defence
- Moore Blatch
- The Association for Property and Fixed Charge Receivers (NARA)
- National Sheep Association
- National Trust
- National Farmers Union
- National Federation of Young Farmers Clubs

- Northern Farmers & Landowners Group
- Poplar Farm
- R Lamb & Son
- Raby Estate
- Robert Bell and Company
- Robson & Liddle (Rural) Limited, Chartered Surveyors and Land Agents
- Royal Institution of Chartered Surveyors
- Rural Arbrix
- Scottish Tenant Farmers Association
- Soil Association Land Trust
- Strutt and Parker
- Sustainable Soils Alliance
- Swain Estate Management Ltd
- Tenant Farmers Association
- The Crown Estate Commissioners
- The Ernest Cook Trust
- Trustees of the Chatsworth Estate Settlement
- UK Finance
- Wright Hassall
- Wrigleys Solicitors LLP

## **Annex 4: Member organisations of the Tenancy Reform Industry Group (TRIG)**

Independent Chair, Adkin

Agricultural Law Association

Association of Chief Estate Surveyors  
Central Association of Agricultural Valuers  
Country Land and Business Association  
Department for Environment, Food and Rural Affairs  
Farmers Union of Wales  
Fresh Start Land Enterprise Centre  
National Farmers Union  
National Federation of Young Farmers Clubs  
Royal Institution of Chartered Surveyors  
Tenant Farmers Association  
Welsh Government