Defra Tenancy Consultation
NFYFC Response

The National Federation of Young Farmers' Clubs (NFYFC) represents a diverse group of people who share an interest in a vibrant and sustainable countryside. YFC members have a keen interest in future food production, farming and land management, as well as future career opportunities within these and allied industries.

A change in policy necessitates optimum working and productivity conditions for existing and next generation farmers and our members welcome an opportunity to be part of Defra's tenancy review. The NFYFC Agriculture and Rural Issues steering group, made up of regional representatives within England, are responding on behalf of the YFC members they represent having gathered views, requests and concerns during work undertaken since policy change was announced in 2016. The group appreciates the aim of creating an enabling environment for sustainable productivity improvements, facilitating structural change, and ensuring that tenants are able to access future schemes, but with the caveat of preventing unintended consequences that reduce opportunities. Our organisation has taken an active part in the Tenancy Reform Industry Group (TRIG) to raise next generation issues which have been considered within the review process.

Summary

Next generation issues raised and discussed include:

- New farming business models that offer solutions to unresolved succession issues
- Business progression opportunities for established new entrants to grow their business
- Retention of viable county council estates that offer a range of opportunities for new entrants
- Future business opportunities for food and farming businesses from private landlords
- Consideration for private landlords' businesses to maintain future tenancy provision
- Considerations for adaptation to new emerging policy
- Consideration for unintended consequences regarding changes to legislation
- Availability of finance to aid start-up, business development and business growth
- Improve business knowledge for all in a rapidly changing agricultural market
- Clarity on taxation and APR considerations for landowners and agreements for working with new entrants

Issues identified from the consultation:

There is a clear understanding that landlord and tenants' businesses are co-dependent and agricultural law must enable both parties to operate successfully without unintended consequences from a change in legislation. A question posed in isolation may initially appear attractive, but on close inspection of the suggestions, the consultation should not be responsible for creating a situation that will unintentionally hamper productivity or a future vibrant business culture. Any changes made must ensure that landlords have confidence to continue to let land and we are mindful that the Defra consultation document states that in 2017 there were approximately 20,500 AHA tenanted farms in England covering 1.4 million hectares.

Concerns have been raised regarding the feasibility of this consultation when future trading conditions and systems are as yet unknown. We acknowledge that Defra has pointed out that responses will help during a transition period, but we reiterate the over-arching worry of unintended consequences.

With a small proportion of 'log-jammed' AHA tenants we propose that existing methods of negotiation are used for those tenants who need to, but cannot afford to, leave the tenanted residence. Existing methods seem preferable to a wide-scale change in legislation. A practical example for providing affordable rural housing is as follows: landlord obtaining planning permission for local housing (on estate, farm or within the local rural community) with tax relief considerations, providing a 'public good' in the form of a new social housing offer. The tenant would be housed in a familiar rural location with affordable (subsidised) rent having vacated a feasible future farming business opportunity. This satisfies the productivity, sustainability and public goods aims of the Agriculture Bill and the need for a change in business culture. As previously mentioned, the co-dependence of landlord's and tenant's business interests is paramount.

It is generally accepted that the AHA system is now not fit for modern purpose, but does not require legislative changes for a system that is not only time-limited but generally sparse. There are no guarantees from the suggestions made within the consultation that next generation farmers will benefit from changes (as established farmers will also have access) and opening up succession opportunities (beyond co-habiting couples' family members) could create more problematic succession issues. The consultation has raised debate as to whether the proposed changes are needed or will achieve the intended policy aims. The next generation is not a 'silver bullet' for future policy ideas and rhetoric. There must be a viable system that works for those providing opportunities and those who will take them and succeed in a future business environment.

Two significant points noted from the consultation include: the age of succession should be reduced and not increased; there seems to be some confusion in the outcome of proposed change. Secondly, landlords understand what drives their businesses and will look to the future for their business arrangements without relying on legislation. It is important that the future business relationship between tenant, landlord and agent is recognised as a key component of the success of a viable tenancy sector. Rogue cases that have become untenable should not necessitate a change of legislation which could threaten the availability of future opportunities.

Main points for considerations by next generation farmers

It is noted that aims of the review include:

- Facilitating structural change and supporting new entrants and next generation farmers
- Enabling tenant farmers to access new agricultural and land management schemes (which will be necessary to accommodate a future Environment Land Management (ELM) system)

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- Fair protection for both tenants and landlords with necessary flexibility and confidence in the let sector

As our organisation represents a range of young people with an interest in farming, there will be a mixture of owner occupiers/farming family business tenants, next generation tenants and those aspiring to forge future business arrangements. For this reason, the success of a future tenanted sector is reliant on the considerations both for landlords and tenants, but with realistic concessions or adaptations that ensure opportunities and progress without creating unforeseen or detrimental consequences to the sector. NFYFC has already highlighted members' requests for:

-new farming models and ways of working especially when considering succession

- financial support and advice for setting up of joint ventures for both parties (*NFYFC acknowledges Defra support to develop and deliver regional business and tenancy training*)

-opportunity for diversification and to optimise new systems offered in a new policy regime

-long-term investment for tenants but also protection for landlords to ensure opportunities remain.

Support for councils who want to rejuvenate their farm estates is welcomed, but with recommendations from industry via TRIG and considerations for business viability (on county farm estates) regarding size of holding for both start-up and progression. This calls for careful consideration by all parties - as much as is possible during a time of uncertain political and trading climate - for robust business planning, available and sustainable finance, training, advice and capacity for business growth. Requirements for entry should include a resilient business plan, but also offer realistic start-up opportunities, progression, joint ventures or share farming.

We understand that Defra has met with council county estates to discuss how they can persuade retention of estates. (The most successful county council estates do sell poorer pockets of land or viable land for development to reinvest in a vibrant county estate). There is a good argument for the estate to consider delivering other services (health and wellbeing, environmental benefits) which promote a public good.

YFC members have highlighted that a transition from county farm tenancy to short-term FBT does not provide security for business progression. In particular regarding an enterprise such as dairy farming, a longer tenancy term is needed. A council tenant with an agreed 10-year tenancy has no guaranteed agreement for a progression farm.

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Theme 1: Facilitating structural change in the AHA sector

Assignable AHA - enabling an AHA to be assigned to a new tenant (subject to conditions)

The aim is to make sure the best tenant is awarded a tenancy (under succession rights), to assign tenancy to a successor within the family. Communication and planning (between all parties including landlord, tenant and professional services) plays a key role which could be more pertinent and practical than legislation. Additional guidance from TRIG is an option for consideration.

Inadvertently, a leasehold market could be created for AHA leases with the following issues to consider – how would a tenant secure funding, especially a new entrant? There would be more chance of 'marriage' value and capital with an established farmer and this isn't helping a new entrant. Land agents will negotiate with two willing parties to broker selling the lease which is a preferable option to a change in legislation. It must also be acknowledged that the landlord can refuse if approached with an offer. (With no successor, some estates are bringing land back into the estate and therefore removing land from the tenanted sector.)

A substantial farmhouse is an issue for both tenants and landlords a) for its potential market value that is lost with nominal rent with a farm tenancy and b)expense of running for the tenant. The problem of affordable accommodation being the issue for not relinquishing a tenancy could be solved by a combination of further relaxation of planning (and tax incentives) for landlords to build suitable 'retirement' social housing in a rural/familiar location.

Questions and suggestions raised include:

- Assessment of value – is the tenant being paid for the tenancy or freehold of tenancy? There is an understanding of the intention but it is questionable if this is the best mechanism
- The principle of facilitating structural change is correct, but have all the practicalities and unintended consequences been thought through?
- Issue of open market rent
- If there is no successor, a landlord or agent could produce a rental formula ie **£x/acre** – a formula from which a landlord could base borrowing upon to accrue a future annual income
- If you apply for succession/retirement, rather than waiting for death for a natural succession, there is a risk that landlord could refuse
- There is scepticism about AHA disposal - setting an unintended trap for next generation

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Bar on succession rights when the tenant reaches a certain age:

- Tenant can retire at 65 and nominate a successor to the tenancy but this doesn't meet the needs of modern business practices and more radical suggestions could be proposed.

Succession rights – enabling earlier succession on retirement, barring succession after tenant reaches 5 years past state pension age

Again, communication, business planning and provision of affordable housing play their part in the removal of some 'log jams' in the system. To reiterate, a practical example for providing affordable rural housing includes: landlord obtaining planning permission for local housing (on estate or within the local community) with tax relief considerations, providing a public good from a new social housing system. The tenant would be housed in a familiar rural location with affordable (subsidised) rent having vacated a feasible future farming business opportunity. This satisfies the productivity, sustainability and public goods aims of the Agriculture Bill and the need for a change in business culture. As previously mentioned, the co-dependence of landlord's and tenant's business interests is paramount.

The suggested age of succession is not progressive.

Succession eligibility:

- Removing the Commercial Unit Test and Improving the Suitability Test

Suggestions include:

- Revise the "Suitability Test" to recognise the skills required to manage and run a modern productive farm-based business or businesses which go well beyond the traditional agricultural training and experience.
- Look at the tests differently – if he/she fails the test, there could still be options to obtain an FBT – a guideline is needed but this does not need to be too prescriptive. (Landlord could facilitate taking a debt from the tenant.)
- Succession eligibility criteria is not popular as it creates a hybrid tenancy and could easily open a 'succession can of worms'.
- Eligibility criteria – include working with (alongside) a potential successor. Innovative businesses could adopt this practice with discussion and planning with landlord/agent. This offers an opportunity for business entry and a change of business culture.

- Modernising and extending close relative definitions to include nieces, nephews and grandchildren

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Opening up succession opportunities (beyond co-habiting couples' family members) could create more problematic succession issues. The intention is laudable but the practicality could be complex in many situations and create more not less succession problems.

Theme 2: removing barriers to productivity, investment and environmental improvements

- **Enabling restrictive clauses to be challenged through dispute resolution**
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- **New shorter notices to quit (in specific circumstances) for FBTs of 10 years or more**
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- **Ensuring landlord return on investment in AHA holdings is excluded from rent review considerations**
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An industry mechanism already exists for dispute resolution and further TRIG guidance would be more practical than a change in legislation. It is important not to inadvertently penalise landlord or tenant. AHA tenants can apply to change terms when he/she succeeds which is a preferable arrangement to changing AHA legislation. Issues that have not been included in the questions ie insolvency, lack of repair, disturbance can also be successfully negotiated. We reiterate that enhanced professional advice is preferable to 'clumsy' legislation. There is no confidence that these proposals will encourage landlords to let land for longer periods.

Shorter notice to quit provisions need to be carefully thought through against the benefits of longer term agreements particularly for livestock based farms due to the length of certain production cycles. One solution might be to allow for early resumption provisions to apply to just part of the holding, such as those areas which realistically might come forward for development in the short to medium term, leaving the balance of the farm with longer security.

Proposals

- Enabling landlord restrictive clauses to be challenged through dispute mediation (when parties disagree)
- FBTs – de-risking long-term lets (10 years or more) through new shorter notices to quit (eg for non-payment of rent or planning for non-agriculture use)

Suggestions include:

- Discuss more radical proposals and 'blue sky' thinking as an alternative for the suggestions.

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- Tax breaks to help landlords build houses in a rural community resulting in structural change and social benefits.
- A different matrix for rent reviews to reflect consent having been given for a wider use or uses taking place on the holding might help to achieve the aim of increasing productivity with benefits for all concerned.
- Rent to reflect the assessment of farmhouse (or lose the farmhouse).
- To achieve structural change there is a need for landlord and tenant to work together for agreed business benefits.
- It is accepted that the legality of partnership arrangements can be problematic for all parties as share farming is a complex, collaborative model with every model having a unique specification. With a change from BPS to an ELM system, agroforestry may well become a consideration for all, with a considered awareness of best land use and environmental incentives.
- Increased productivity requires: robust business culture, trust, share farming agreements, contract farming and joint ventures.
- Consider the Welsh government-funded Venture service (Farming Connect).
- There will be increased awareness of future TRIG advice and recommendations due to enhanced communication (social media) platforms.
- Earlier succession plan discussions between landlord and tenant.
- 'Landlord restrictive clauses' pose particular concern as we move towards an ELM system, but the practicality (despite any examples of consent being held unreasonably) is to negotiate with the landlord/agent, with an awareness of the new industrial business use if diversifying for a future rent review.
- The house rent is a fraction of the open market value. Any rent review should be passive and balanced.
- One year lets aid rotation and soil husbandry
- Although the AD rental market distorts rent prices, it is extreme to legislate against market conditions.

Conclusion

We would like to see a thriving future tenancy sector with consideration, encouragement and support for new business arrangements. Landlords' and tenants' businesses are co-dependent and agricultural law must enable both parties to operate successfully without unintended consequences from a change in legislation.

The consultation has prompted consideration for useful and progressive discussion regarding future business considerations. This includes advice and support for all parties but we reiterate that any changes made must ensure that landlords have confidence to continue to let land and provide the next generation with future business opportunities.

NFYFC AGRI Steering Group

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