

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Newid Hinsawdd,
Amgylchedd a Materion Gwledig
MCD mewn perthynas â Bil
Amaethyddiaeth y DU
NHAMG (5) AB01
Ymateb gan Cymdeithas y Ffermwyr
Tenant

National Assembly for Wales
Climate Change, Environment and
Rural Affairs Committee
LCM in relation to UK
Agriculture Bill
CCERA(5) AB01
Evidence from Tenant Farmers
Association

Introduction

- 1.1 The Tenant Farmers Association in Wales (TFA Cymru) is pleased to provide written evidence to the Welsh Assembly Climate Change, Environment and Rural Affairs Committee to inform its consideration of the Legislative Consent Memorandum on the UK Agriculture Bill.
- 1.2 TFA Cymru is only organisation dedicated to representing the interests of those who do not own the land they use for agriculture in Wales. Its membership comprises farms of all types and sizes but active, family farms predominate.
- 1.3 The tenanted sector of agriculture is responsible for farming at least one third of the agricultural area of Wales and approximately one quarter of that is now let under Farm Business Tenancies (FBTs). Sector by sector, the proportion of farmed tenanted land is slightly higher in the upland, livestock and dairy sectors in comparison to other sectors.
- 1.4 TFA Cymru recognises the opportunity afforded by the UK withdrawal from the European Union to put in place bespoke policies for food, farming and the countryside in the four countries of the United Kingdom and we recognise that this is a time of change, not just for agriculture but for the whole nation. We have taken note of the decision of the Welsh Government not to seek to include provisions to allow for new financial assistance schemes which will instead form part of specific legislation in Wales following the conclusion of the Assembly elections. We therefore envisage the transition to new arrangements in Wales to take somewhat longer than in England. TFA Cymru believes it is sensible to take time to ensure that new schemes are developed well rather than just quickly and therefore this additional time is to be welcomed. However, it must be used productively to ensure that new schemes properly reflect the needs of Welsh farmers and wider Welsh society

Context

- 2.1 Notwithstanding the opportunities that arise following our exit from the European Union, there are also challenges. In particular, the UK Parliament is having to consider the Agriculture Bill without fully understanding the future trading relationships between the UK and the European Union and our position within the WTO in the event of the UK failing to reach a Free Trade Agreement with the EU before the Implementation Period Completion Date (currently 31 December 2020).
- 2.2 This uncertainty will have a significant impact on the profitability, resilience and sustainability of Welsh agriculture. It must be recognised that whatever policy framework is put in place by any new legislation, there must be sufficient flexibility to respond appropriately when there is greater certainty in our international trade position, particularly with respect to the European Union. In this respect we welcome the decision of the Welsh Government to delay moving away from the existing arrangements too quickly.

General Comments on the Bill as it Impacts on Wales

- 3.1 TFA Cymru acknowledges that the Bill as presented has seen some significant change in comparison to the Bill introduced in the last Parliament. We are grateful to see several improvements including the requirement upon the UK Government to report on food security and on reform of agricultural tenancies.
- 3.2 However, there remain areas where TFA Cymru believes that the Bill needs further improvement in respect of its application to Wales and these are explained further within this written evidence. Where appropriate, TFA Cymru has drafted suggested amendments to the Bill which it would encourage the Committee to recommend that Welsh Government presses the UK Government to introduce. These can be found in Annex 1.

Multi-Annual Financial Assistance Plans

- 4.1 The TFA in England has welcomed the requirement upon the UK Secretary of State to prepare Multiannual Financial Assistance Plans, something which was entirely missing from the previous Bill. However, within the context of Devolution, TFA Cymru would wish to see a legislative commitment to the principle that the four countries of the United Kingdom are provided with at least the same level of funding as they received previously to deliver agricultural and rural development policies and that this funding must be earmarked for the delivery of the objectives set out within the Bill.

Part 2: Chapter 1 – Food Security

- 5.1 TFA Cymru welcomes the recognition of the need to consider matters of food security and that the Bill contains a requirement for the UK Government to prepare and lay before Parliament a report on food security. However, TFA Cymru is disappointed that for such an important issue this is only to occur once every five years. As this is such an important issue, TFA Cymru believes this should be an annual requirement upon the UK Government. To achieve this, TFA Cymru supports the tabled amendment **number 7** in the name of Fiona Bruce
- 5.2 TFA Cymru also believes that the Government must be required to specify food security targets and to identify any actions it needs to prioritise in consultation with the Devolved Administrations if those targets are not being met. See amendment **TFA6**.

Schedule Five Part2 – Exceptional Market Conditions

- 6.1 TFA Cymru welcomes the provisions within the Bill to allow for financial and other assistance to be made available to the farming industry at times of exceptional market conditions. TFA Cymru would wish to be assured that this will cover natural phenomena such as drought, flood and disease as well as economic phenomena that may impact upon markets.
- 6.2 TFA Cymru would also wish to have an assurance from the Welsh Government that this part of the legislation will cover not only situations of “acute” hardship or difficulty but that it will also be able to be invoked if “chronic” or long-lasting difficulties are apparent. This might involve things like endemic disease or structural changes in agricultural markets which may require farmers to undergo significant adjustment.
- 6.3 TFA Cymru offers amendment **TFA7W** as a solution to these issues.

Part 3: Chapter 1 – Collection and Sharing of Data

- 7.1 TFA Cymru welcomes this Part of the Bill as it will provide the potential for a greater degree of information to be available about the operation of supply chains that will lead to more informed negotiation between farmers, processors, retailers and food service outlets. This has important links to the provisions set out in Part 3 Chapter 2 of the Bill dealing with provisions to ensure fairness within the supply chain.

Part 3: Chapter 2 - Fair Dealing with Agricultural Producers and Others in the Supply Chain

8.1 TFA Cymru is delighted that the UK Government is proposing to reserve significant powers to regulate the operation of supply chains and, in particular, relationships between farmers and first purchasers. TFA Cymru believes that this is a vitally important role for Government in the face of significant market failure within agriculture and food supply chains. However, it is concerning that the UK Government does not see this forming part of an expanded role for the Groceries Code Adjudicator. TFA Cymru sees no reason why this responsibility should be placed anywhere else other than with the Groceries Code Adjudicator. See amendment **TFA8**.

Part 5: Marketing Standards, Organic Products and Carcass Classification

9.1 TFA Cymru welcomes the inclusion within the Bill of powers for the Government to set marketing standards for agricultural products. It will be important to ensure that these are used to protect the high standards of production evident on Welsh farms in respect food safety, animal welfare and environmental management. It will be important to see this joined up with the Government's policy on international trade such that these same standards apply to agricultural products imported into the UK from abroad. The UK Government has given an oral commitment to protect our high standards in trade and in signing new free trade agreements, but this also must be supported by clear legislation in order to sustain these arguments within the context of the World Trade Organisation. TFA Cymru supports either of the tabled amendments numbered **NC1** in the name of Luke Pollard or **NC4** in the name of Simon Hoare.

Agricultural Tenancies

- 10.1 TFA Cymru is very pleased that the Bill includes Schedule 3 with amendments to certain aspects of agricultural tenancy legislation which formed part of the consultations on tenancy reform conducted the Welsh Government in 2019. From discussions with Welsh Government, it has decided to proceed with what it considers to be the most urgent matters and those which were least contentious considering the consultation responses.
- 10.2 TFA Cymru is pleased to support all the changes that are being made but there is a need for certain aspects to be improved.
- 10.3 Whilst we welcome the new provisions which will allow a tenant the ability to object to a refusal from the landlord for consent to enter into a scheme introduced under the financial assistance

provisions of the Bill or to carry out works in accordance with a statutory obligation, currently this only applies to tenancies regulated by the Agricultural Holdings Act 1986. These provisions must be extended to tenancies regulated by the Agricultural Tenancies Act 1995. See amendment **TFA9**.

- 10.4 Also, the Bill envisages that tenants can use these new provisions only if the landlord's consent is required by the terms of the tenancy agreement or by a variation of the terms of the tenancy. However, this should be widened to include any situation where landlord's consent is required. For example, whilst a tenancy agreement itself may not require landlord's consent, a scheme under which financial assistance has been provided may by its own terms require the tenant to have obtained landlord's consent before participating. See amendment **TFA10** (also included with **TFA9**).
- 10.5 In addition, TFA Cymru believes it is opportune to look at widening this provision, as originally envisaged by the Tenancy Reform Industry Group and the Welsh Government consultation, to include the ability to counter restrictions upon tenants in tenancy agreements which would prevent either or both of the full and efficient farming of the holding or environmental improvements. See amendment **TFA10** (also included with **TFA9**).
- 10.6 TFA Cymru also believes it is necessary to make it a requirement for regulations to be brought forward to give effect to the clauses providing tenants with the opportunity of objecting to a landlord's refusal for consent. See amendment **TFA11** (also included with **TFA9**).
- 10.7 Given that Welsh ministers are not reserving powers for financial assistance schemes, there is a need to ensure that the provisions of this part of the schedule apply as and when Welsh Ministers come forward with new financial assistance schemes. See amendment **TFA12** (also included with **TFA9**).
- 10.8 There was a further legislative change which was not deemed to be contentious following the tenancy reform consultations which, inexplicably, has not been taken forward in this Bill. This was a provision to encourage landlords to consider letting for longer periods of time on Farm Business Tenancies (FBTs). The proposal was to allow landlords granting new FBTs with an initial minimum term of 10 years and without Landlords' scheduled break clauses, the ability to terminate the tenancy early in the following circumstances:
- non-payment of rent (as an alternative to forfeiture);
 - breaches by the tenant of contractual terms or conditions;
 - the death of the tenant;

- the landlord's need to remove land from the holding where planning consent has been granted for non-agricultural use.

10.9 To achieve this, the TFA is proposing amendment **TFA13**. At the same time, the Agricultural Holdings (Arbitration on Notices) Order 1987 should be updated to provide the opportunity for tenants to serve a counter notice in respect of any Notice to Remedy served by a landlord, not just those requiring work.

10.10 During the debate on Second Reading in the House of Commons, there was a call for the Bill to provide an extension to the eligibility for tenancy succession under the Agricultural Holdings Act 1986 to nephews, nieces and grandchildren. TFA Cymru would support this extension and has prepared amendments **TFA14** and **TFA15** for consideration in this respect.

Conclusion

11.1 TFA Cymru would welcome support from Climate Change, Environment and Rural Affairs Committee for the changes it is proposing to the Bill.

Annex 1 – Proposed Amendments

TFA6

Section 17, page 14, after line 32 insert the following:

- (3) As part of the report the Secretary of State must set out food security targets and specify and implement any necessary actions required to ensure those targets are met.

TFA7W

Schedule 5, Section 6, page 60 replace lines 32 and 33 with following:

- (a) there is an acute or chronic disturbance in agricultural markets or a serious threat of an acute or chronic disturbance in agricultural markets caused by economic or environmental factors, and

TFA8

Part 3, page 17 after line 33 insert the following:

Chapter 1

Groceries Code Adjudicator

(20A) The Adjudicator established by the Groceries Code Adjudicator Act 2013 shall be responsible for ensuring compliance with Part 3 of this Act.

Then renumber subsequent Chapters.

TFA9 (New Clause)

Schedule 3, Part 2 Page 56 after line 8 insert the following:

Requests for landlord's consent or variation of terms

30 Before section 28 insert—

27A Disputes relating to requests for landlord's consent or variation of terms

(1) The appropriate authority must by regulations make provision for the tenant of an agricultural holding to refer for arbitration under this Act a request made by the tenant to the landlord where—

(a) the request falls within subsection (3), and

(b) no agreement has been reached with the landlord on the request.

(2) The regulations may also provide that, where the tenant is given the right to refer a request to arbitration, the landlord and tenant may instead refer the request for third party determination under this Act.

(3) A request falls within this subsection if—

(a) it is a request for—

(i) the landlord's consent to a matter which under the terms of the tenancy requires such consent, or

(ii) a variation of the terms of the tenancy, or

(iii) the landlord's consent to a matter which otherwise requires such consent

(b) it is made for the purposes of—

(i) enabling the tenant to request or apply for relevant financial assistance or relevant

financial assistance of a description specified in the regulations, or

(ii) complying with a statutory duty, or a statutory duty of a description specified in the regulations, applicable to the tenant, or

(iii) to secure either or both of the full and efficient farming of the holding or an environmental improvement, and

(c) it meets such other conditions (if any) as may be specified in the regulations.

(4) The regulations may provide for the arbitrator or third party on a reference made under the regulations, where the arbitrator or third party considers it reasonable and just (as between the landlord and tenant) to do so—

(a) to order the landlord to comply with the request (either in full or to the extent specified in the award or determination);

(b) to make any other award or determination permitted by the regulations.

(5) The regulations may (among other things) make provision—

(a) about conditions to be met before a reference may be made;

(b) about matters which an arbitrator or third party is to take into account when considering a reference;

(c) for regulating the conduct of arbitrations or third party determinations;

(d) about the awards or determinations which may be made by the arbitrator or third party, which may include making an order for a variation in the rent of the holding or for the payment of compensation or costs;

(e) about the time at which, or the conditions subject to which, an award or determination may be expressed to take effect;

(f) for restricting a tenant's ability to make subsequent references to arbitration where a reference to arbitration or third party determination has already been made under the regulations in relation to the same tenancy.

(6) The provision covered by subsection (5)(e) includes, in the case of a request made for the purpose described in

subsection (3)(b)(i)), conditions relating to the making of a successful application for assistance.

(7) In this section—

“appropriate authority” means—

- (a) in relation to England, the Secretary of State, and
- (b) in relation to Wales, the Welsh Ministers;

“relevant financial assistance” means financial assistance under—

- (a) section 1 of the Agriculture Act 2020 (powers of Secretary of State to give financial assistance),
- (b) section 19 of, or paragraph 7 of Schedule 5 to, that Act (powers of Secretary of State and Welsh Ministers to give financial assistance in exceptional market conditions), or
- (c) a scheme of the sort mentioned in section 2(4) of that Act (third party schemes), or
- (d) a scheme of financial assistance in whatever form introduced by Welsh Ministers;

“statutory duty” means a duty imposed by or under—

- (a) an Act of Parliament;
- (b) an Act or Measure of the National Assembly for Wales;
- (c) retained direct EU legislation.

TFA10

Schedule 3 Clause 7 page 50 delete lines 25 to 36 and replace with:

(3) A request falls within this subsection if—

(a) it is a request for—

- (i) the landlord’s consent to a matter which under the terms of the tenancy requires such consent, or
- (ii) a variation of the terms of the tenancy, or
- (iii) the landlord’s consent to a matter which otherwise requires such consent

(b) it is made for the purposes of—

- (i) enabling the tenant to request or apply for relevant financial assistance or relevant financial assistance of a description specified in the regulations, or
- (ii) complying with a statutory duty, or a statutory duty of a description specified in the regulations, applicable to the tenant, or
- (iii) to secure either or both of the full and efficient farming of the holding or an environmental improvement, and

TFA11

Schedule 3 Clause 7, page 50, line 15, leave out "may" and insert "must"

TFA12

Schedule 3 Clause 7 page 51 at the end of line 34 delete ";" and replace with:

, or

- (d) a scheme of financial assistance in whatever form introduced by Welsh Ministers;

TFA13 (New Clause)

Schedule 3, Part 2 Page 56 after line 8 insert the following:

30 Before section 8 insert -

Termination of tenancies of 10 years or more

7A - (1) Where a farm business tenancy has been granted for a fixed term of 10 years or more without any provision for the landlord to terminate the tenancy on a specific date or dates during the fixed term the landlord may serve notice to quit on the tenant of the holding using the provisions of the Agricultural Holdings Act 1986 Schedule 3 Parts I and II in accordance with the Agricultural Holdings Act 1986 Schedule 4 and all Orders introduced as mentioned in that schedule in respect of the following cases -

- (i) Case B
- (ii) Case D
- (iii) Case E
- (iv) Case F
- (v) Case G

- (2) In addition to any compensation required to be paid to the tenant by the landlord following the termination of a tenancy using Case B, the landlord shall pay additional compensation to the tenant at an amount equal to ten years' rent of the holding or attributed to the part of the holding upon which notice to quit has been served at the rate at which rent was payable immediately before the termination of the tenancy.

TFA14 (New Clause)

Schedule 3, Part 1 Page 54 after line 20 insert the following:

21A The Agricultural Holdings Act 1986 Section 49(3) shall be replaced with:

- (3) In this section and sections 50 to 58 below (and in Part I of Schedule 6 to this Act as applied by section 50(4))—
- “close relative” of the retiring tenant means—
- (a) the wife husband or civil partner of the retiring tenant;
 - (b) a brother or sister of the retiring tenant;
 - (c) a child of the retiring tenant;
 - (d) a nephew or niece of the retiring tenant;
 - (e) a grandchild of the retiring tenant;
 - (f) any person (not within (b) or (c) or (d) or (e) above) who, in the case of any marriage or civil partnership or other cohabitation to which the retiring tenant has been at any time a party, has been treated by the latter as a child of the family in relation to that marriage or civil partnership or other cohabitation;

TFA15 (New Clause)

Schedule 3, Part 1 Page 54 after line 20 insert the following:

21B The Agricultural Holdings Act 1986 Section 35 (2) shall be replaced with:

- (2) In sections 36 to 48 below (and in Part I of Schedule 6 to this Act)—

“close relative” of a deceased tenant means—

- (a) the wife husband or civil partner of the deceased;

- (b) a brother or sister of the deceased;
- (c) a child of the deceased;
- (d) a nephew or niece of the deceased;
- (e) a grandchild of the deceased;
- (f) any person (not within (b) or (c) or (d) or (e) above) who, in the case of any marriage or civil partnership or other cohabitation to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage or civil partnership or other cohabitation;