

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Newid Hinsawdd,  
Amgylchedd a Materion Gwledig  
MCD mewn perthynas â Bil  
Amaethyddiaeth y DU  
NHAMG (5) AB05a  
Ymateb gan Cymdeithas Tir a  
Busnesau Cefn Gwlad

National Assembly for Wales  
Climate Change, Environment and  
Rural Affairs Committee  
LCM in relation to UK  
Agriculture Bill  
CCERA(5) AB05a  
Evidence from Country, Land and  
Business Association

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## **CLA position on tenancy reform**

The CLA does not see this Bill as the right mechanism for tenancy reform. The Tenancy Reform Industry Group (TRIG) has been reviewing tenancy issues and there is still more work to be done to reach a workable consensus especially in the light of the ongoing development of the public goods model. The key to effective reform is to build on a partnership approach that is flexible and works well for the tenant and the landowner. This is particularly important in a context of considerable uncertainty in terms of what transition away from direct payments will look like in practice, and in terms of future trading relationships and land management schemes.

Tenancies cover 12% of the farmed land in Wales with Agricultural Holdings Act (1986 Act) Tenancies accounting for 8% and Farm Business Tenancies (Agricultural Tenancies Act 1995) accounting for approximately 4% of the utilisable agricultural land in Wales holdings in England and Wales. The proposed tenancy legislation changes in the Bill may harm confidence resulting in a reduction in land availability as has been the case in Scotland. The CLA wants to see a buoyant tenancy sector. In-hand farming does not suit everyone's business model and tenancies are one way that opportunities can be provided for new entrants as well as other well established farming models (share/contract farming, and joint ventures. But in times of uncertainty, it's important to avoid changes that might make landlords more risk-averse and might lead to a reduction in land being let out. Reforms in Scotland have significantly affected the rented sector and we need to be careful not to do the same in Wales by adding rushed amendments, which could lead to major infringement of property rights, onto this Bill.

Addressing agricultural productivity growth is not simply about tenure. Defra's recently published balance sheet analysis demonstrates that the tenure of farm is not the key determinant of

the success or stability of the business<sup>1</sup>. Looking at gearing ratios, liquidity and Return on Capital Employed (ROCE) the key determinant of viability is how well a farm business is managed.

Schedule 3 of the Agriculture Bill sets out seven proposals of legislative reform for agricultural tenancies. We understand that the intention was to support productivity growth in the agriculture sector but none of these measures will achieve the desired step change and instead they risk spoiling relations. All except one relate to tenancies under the 1986 Agricultural Holdings Act (AHA - secure tenancies for up to 3 generations) which are by their post war nature highly regulated and the other applies to both AHA and Agriculture Tenancy Act 1995 (ATA), with agreements often referred to as Farm Business Tenancies (FBT) which are market orientated and offer greater flexibility in times of change.

The current proposals that the CLA welcomes are:

- Provisions relating to landlord investments, which will provide protection for both landlords and tenants.
- Removal of the minimum retirement age of 65 for AHA tenants.
- The widening of the pool of potential arbitrators.

The CLA has significant concerns about:

1. Request for landlord's consent or variations in terms under 1986 Act: dispute resolution. This amendment allows for regulations to be made that would enable a tenant to challenge the landlord's refusal of consent to that are specifically restricted under the terms of the tenancy agreement. .
  - The CLA's view is that this provision should not be included in the Bill. In the overwhelming majority of cases, an agreement will be found. However, a landlord may be justified in maintaining restrictions in tenancy agreements (e.g. for landscape or environmental protection, impact on the management of the wider landholding or tax consequences). As drafted, the provision presents a fundamental risk of infringement of landlords' property rights, as irreversible long-term decisions on how their land is

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<sup>1</sup> <https://www.gov.uk/government/statistics/balance-sheet-analysis-and-farming-performance-england>

used could be imposed on them, even for short term funding.

- There is no recognition in the Bill that, in certain circumstances the landowner may be better placed than the tenant to deliver the outcomes.
- The delays, costs, and risks of arbitration, coupled with the damaged ongoing relationship should not be under-estimated, and in this proposal these costs will be imposed, not to settle a dispute but imposed on the parties directly as a cost of this Bill.
- If it is to remain in the Bill, there must be supplementary clauses within the Bill to ensure that landlord interests are taken into consideration, these are so fundamental that they should not be left to secondary legislation.
- In addition, it would be appropriate that if a decision to vary terms is taken against the wishes of the landlord, the nature of the tenancy would have fundamentally changed and therefore the rent payable should be an open market rent as defined in the Agricultural Tenancies Act 1995.

## 2. Succession on death or retirement - conditions relating to the Commercial Unit Test and the Suitability Test.

- i. Whilst an enhanced Suitability Test might succeed in raising standards (which the CLA would welcome), the abolition of the Commercial Unit Test is not appropriate.
- ii. The Commercial Unit Test means that a potential successor cannot take on the tenancy if they are farming another holding that can sustain the employment of 2 full time employees. This is an important test that should be maintained. It is not appropriate that a tenant's close relative already successful elsewhere on open market terms should be entitled to take on a 1986 Act tenancy with reduced rent and further rights of succession when they have a business elsewhere. It does not meet the stated goals of opening up the market to new entrants.

In line with TRIG recommendations, the CLA would support the introduction of an amendment of the 1995 Agricultural Tenancies Act to establish notice procedures applicable to all FBTs of more than 2 years, to allow recovery of land under certain events such as non-payment of rent, death of the tenant, breach of covenant or

conditions, and, short notice in the event of planning consent for change of use to be obtained, with compensation provisions dealt with within the tenancy agreement, not prescribed by statute.