

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate
Change, Environment and Rural Affairs Committee
Ymateb gan : Cymdeithas Ffermwyr Tenant Cymru
Response from : Tenant Farmers Association in Wales

Inquiry on the Welsh Provisions within the UK Government's Agriculture Bill

1. Introduction

- 1.1 The Tenant Farmers Association in Wales (TFA Cymru) is the representative organisation for farmers who do not own the land they use for farming and is the only organisation dedicated to the tenanted sector of agriculture in Wales. TFA Cymru welcomes the opportunity of providing evidence to this Inquiry following the introduction of the Agriculture Bill to the UK Parliament and the Legislative Consent Memorandum issued by the Welsh Government in October in respect of the Bill.
- 1.2 The Agriculture Bill is a key plank of the legislative framework required as a result the UK's exit from the European Union next March. However, as much of the agricultural policy framework for agriculture is now devolved, it is necessary to ensure that appropriate provisions exist to allow for separate policies to be applied within the devolved administrations of the UK including in Wales. In this respect, TFA Cymru supports the Welsh Government's approach to secure a Schedule within the UK legislation which will be subject to the procedures for Legislative Consent in Wales whilst the Welsh Government prepares to bring forward its own legislation to implement new policy for agriculture in Wales in the post Brexit era.
- 1.3 We stand at a unique point for Wales which has never before been able to be the master of its own destiny in respect of agricultural policy until now. Previous agricultural legislation has either been at the level of the United Kingdom (including the Agriculture Act 1947 to which many are making comparisons) or has been significantly constrained by the provisions of the Common Agricultural Policy under the terms of the UK membership of the European Union.
- 1.4 Looking at the 1947 Act, it is interesting to note that its aim was to promote and maintain a stable and efficient agricultural industry, capable of delivering food security through national production. This was to be achieved whilst at the same time providing a proper level of remuneration to the farming community to ensure reasonable living standards for farmers and workers in

agriculture and an adequate return on capital invested in the industry, all in the context of good estate management.

- 1.5 TFA Cymru would argue that over 70 years later, the issues that need to be addressed for Welsh agriculture today are not dissimilar to 1947. The question that the new legislation needs to answer is how to maintain a steady supply of food products and ingredients to domestic and international markets produced to good standards of environmental management and animal welfare at prices affordable for consumers but delivering a fair return to primary producers. TFA Cymru believes that it is against these criteria that Schedule 3 of the Agriculture Bill should be judged for Wales.
- 1.6 TFA Cymru has been pleased to see the five principles articulated by the Cabinet Secretary for Environment and Rural Affairs which echoes the views of TFA Cymru set out above. These five principles she set out are as follows:
 - We need to keep farmers on the land. Welsh land must be managed by those who know it.
 - We need to ensure our agricultural sector can be prosperous and resilient in a post-Brexit future, whatever that may be.
 - Our new policy should centre on Welsh land delivering public goods for all the people of Wales.
 - Our system of support should be accessible to all. That means giving farmers the opportunity to continue to make a living from the land.
 - We must not turn our backs on food production. Where sustainable production is viable, we must help our farmers compete in a global marketplace.
- 1.7 The job at hand is to understand whether the legislation set out within the Agriculture Bill is sufficient to deliver these five principles and the wider aspirations of Welsh Government for agriculture as set out in the "Brexit and our land" consultation which closed at the end of October. However, matters are made more difficult in this regard given the uncertainty surrounding the wider context within which the new legislation will operate once in place. The UK Parliament, the Welsh Government and Welsh Assembly are having to consider the Agriculture Bill without knowing, even in outline, the nature of any Withdrawal Agreement with the EU. There is also no clarity around our future trading relationships either with the EU or the rest of the world and what World Trade Organisation status we will have in the event of being unable to reach any sort of a deal with the European Union. Another uncertainty is the impact of the UK Government's migration policy, particularly in respect of the amount of semi-permanent labour employed in agriculture and food processing which has, hitherto, come from the EU and which will no longer be available from any

non-domestic source given the UK Government's intended criteria for allowing migrant labour into the country following Brexit.

- 1.8 These unknowns will have a significant impact on the profitability, resilience and sustainability of agriculture in Wales. It would be sensible, therefore, for the new policy framework to be sufficient flexibility to take on board how those important areas emerge in the months and years which lie ahead.

2. A Scaffold Not a Building

- 2.1 Unlike the Agriculture Act 1947, which placed a number of duties on the UK Government including in respect of setting guaranteed prices and holding regular reviews, Schedule 3 of today's Bill will confer powers on the Welsh Government whilst leaving much of the detail to Regulations. To understand how the Welsh Government might intend to use the powers reserved to it, we will need to await the Welsh Government's response to the "Brexit and our land" consultation referred to previously. At this stage, there are no guaranteed directions of travel which give any confidence about the extent to which the Welsh Government will be able to adhere to the five principles set out by the Cabinet Secretary.
- 2.2 TFA Cymru has therefore described the Agriculture Bill as providing "a scaffold not a building" requiring a great deal of trust in current and future Governments to deliver an appropriate policy through the powers being reserved through the legislation. TFA Cymru believes that the legislation should contain clearer duties on Welsh Government to deliver on the principles articulated by the Cabinet Secretary.
- 2.3 TFA Cymru also needs to be assured that the Welsh Government will have sufficient time to bring forward the necessary "made in Wales" legislation required (both primary and secondary) once the Agriculture Bill has completed its stages in the UK Parliament. TFA Cymru believes it would be appropriate for the Committee to require the Welsh Government to provide the opportunity for pre-legislative scrutiny of all primary and secondary legislation the Welsh Government intends to bring before the Welsh Assembly.
- 2.4 The remainder of this written evidence will look at the specific areas of the Agriculture Bill which require legislative consent in Wales in the order they appear in the Legislative Consent Memorandum issued by the Welsh Government

3. Compliance with World Trade Organisation Agreement on Agriculture – Clause 26 of the Agriculture Bill

- 3.1 Whilst it is clearly the case that agricultural policy and legislation are devolved matters, it is the UK which holds the membership of the World Trade Organisation (WTO). During the time of devolved responsibility for agriculture

in Wales, the conduct of our membership of WTO has been expressed through our membership of the European Union. TFA Cymru does not see a way in which the four countries of the United Kingdom could operate independently within the WTO framework and therefore it will be essential for the conduct of the four countries to be coordinated at a UK level. This, therefore, will require WTO matters to be fully part of an agreed UK framework governed in partnership with a sufficiently well drawn dispute resolution facility. At a practical level, this will also provide the necessary basis to maintain the economic union between the four countries of the United Kingdom in terms of their trading relationship internally and with the rest of the world.

4. New Financial Assistance Powers – Schedule 3, Part 1

4.1 TFA Cymru welcomes the new financial assistance powers contained within Part 1 of Schedule 3 and is particularly pleased to see the provisions relating to productivity which are, in the view of TFA Cymru, much stronger and more appropriate than the provisions contained within the main part of the Bill for operation within England. However, the list of purposes set out in Section 1(1) - broadly speaking those which are considered public goods – is incomplete. TFA Cymru would like to see the following added to this section:

- protecting or improving the health, well-being and food security of UK citizens in Wales; and
- protecting or improving the management of upland landscapes and biodiversity through grazing livestock systems.

4.2 Whilst the UK Government has provided an assurance of maintaining the current level of funding at a UK level until 2022 and has begun a fair funding review under the chairmanship of Lord Bew, it is a major weakness that the Schedule does not provide a mechanism for setting a budget for the financial assistance powers into the future. TFA Cymru argues that the Schedule should contain provisions to establish multiannual budgets (at least five-year budgets) to be agreed after the end of the current guaranteed period. Also, given the size of the task ahead, we would seek a Welsh Government assurance that it will not look to diminish the current budget into the long term.

4.3 In the context of this legislation being part of an Agriculture Bill, TFA Cymru believes it is necessary to restrict the financial assistance powers such that they are available only in respect of individuals who are operating units which are predominantly agricultural in nature. We propose that the Bill and its Welsh schedule adopts the definition of agriculture as set out within section 96 (1) of the Agricultural Holdings Act 1986 as follows:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery

grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly

- 4.4 Also, there should be clear restrictions around who can be considered a beneficiary of the financial assistance available. This should be achieved by including within the Bill a requirement that beneficiaries can only be "active farmers" or "active land managers" defined as individuals who are in occupation of the land they are farming, taking the entrepreneurial risk for the decisions made in relation to the management of that land and in day to day management control. In this respect we would advocate the following amendment:

Following the words "Welsh Ministers consider appropriate" at line 34 in Schedule 3 Part 1 Section 2 (2) insert the words:

"In every case such conditions shall include the following restrictions to the eligibility of a recipient of financial assistance –

- (a) financial assistance may only be made to individuals or groups of individuals natural or otherwise operating land where the predominant use is agricultural as defined by the Agricultural Holdings Act 1986 Section 96 (1); and
- (b) financial assistance may only be made available to individuals or groups of individuals natural or otherwise who are –
 - (i) in occupation of the land for which the financial assistance is being claimed; and
 - (ii) taking the entrepreneurial risk for the decisions made in relation to the management of the land for which the financial assistance is being claimed; and
 - (iii) in day-to-day management control of the land for which the financial assistance has been claimed."

5. Financial Support After Exiting the EU – Schedule 3, Part 2

- 5.1 The seven-year transition from 2022 is welcomed by TFA Cymru. However, we need greater clarity as to how this provision will be used by the Welsh Government. The indications are that Welsh Government is looking to use a five-year transition period but TFA Cymru would argue that it should take advantage of the full seven-year period.
- 5.2 TFA Cymru also supports the concept of delinking payments and the provisions for providing a lump sum payment in lieu of future direct payments (Section 7). TFA Cymru believes that this will be of significant assistance to progress in restructuring within the industry allowing individuals to use both de-linked payments and consolidated payments to retire from the industry or invest in their businesses or to invest in other economic activities either on their holdings or off their holdings. It will be essential that recipients of these payments must

meet the active farmer test at the time they make the application for these payments to be made. It is, however, disappointing that no reference to these options was made in the Welsh Government's "Brexit and Our Land" consultation.

- 5.3 TFA Cymru notes that there has been some debate over whether there should be restrictions on how these delinked or consolidated payments should be used by recipients. TFA Cymru would not be opposed to such criteria however it is concerned that if it is considered too difficult to provide a viable framework to restrict use, that the principal idea should not be lost as a result. There is more to be gained in terms of restructuring than might be lost in a handful of cases where the funds may not be used for what they were initially intended. In any case, individuals would not be receiving money that they would not otherwise be entitled to over the period of the transition.
- 5.4 TFA Cymru notes that the Schedule contains necessary flexibility to enable the Welsh Government to extend the transition period if needed in respect of the economic circumstances prevailing at the time. TFA Cymru would like to see additional provisions to ensure that any funds saved through the transition away from direct payments are not lost to the farming industry if, for whatever reason, the new financial assistance schemes proposed are not available to the extent necessary to make full use of the available funding. TFA Cymru believes that any surplus funding identified on an annual basis should be reallocated through direct payments until sufficient schemes are available.

6. Collection and Sharing of Data – Schedule 3, Part 3

- 6.1 TFA Cymru welcomes the provisions enabling the Welsh Government to insist on the provision of information from supply chains which will provide an important lever to Welsh Government to allow for more transparency within supply chains. Concerns have been raised about contract confidentiality, but TFA Cymru believes that sufficient protection could be built in to any requirements for publication of data without needing a complicated framework to be imposed on the face of the Bill.

7. Intervention in agricultural Market Conditions – Schedule 3, Part 4

- 7.1 TFA Cymru welcomes the provisions 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.
- 7.2 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.

8. Marketing Standards and Carcass Classification – Schedule 3, Part 5

- 8.1 TFA Cymru welcomes the inclusion within the Schedule 3 to Bill of powers for Welsh Government to set marketing standards for agricultural products. TFA Cymru believes that there should be a duty placed upon all the devolved administrations through a UK framework to ensure that high standards operating in respect of domestic production are also applied equally to products entering the UK from abroad either within negotiated free trade agreements or otherwise. TFA Cymru believes that this must be made clear on the face of the Bill.

9. Agricultural Tenancies

- 9.1 The biggest disappointment for TFA Cymru is the absence of any reference to much needed changes to the legislative framework for agricultural tenancies in either the main part of the Bill or in Schedule 3. The Agriculture Bill is the obvious place to include the recommendations for legislative change presented last autumn by the Tenancy Reform Industry Group (TRIG). TRIG is a cross organisational group involving representatives from farming, landowning and professional organisations. The output from TRIG was specifically to address the legislative and wider changes that would be needed to ensure the resilience and sustainability of the let sector of agriculture in the post Brexit era. The members of TRIG were fully expecting to see at least some of the legislative changes they had recommended appear on the face of the Bill.
- 9.2 The tenanted sector of agriculture in Wales is responsible for farming just under 30% of the agricultural area of the country. One quarter of farms within Wales are either wholly or predominantly reliant upon tenanted land and two thirds of farms have some tenanted land. Tenanted holdings are also the principal way in which most individuals, who do not have the benefit of family owned land, will get into the industry.
- 9.3 There are two principal types of tenancy agreement. Firstly, those regulated by the Agricultural Holdings Act 1986 which confers security of tenure, a regulated rent and in some cases a right of succession. Secondly, those regulated by the Agricultural Tenancies Act 1995, known as Farm Business Tenancies (FBTs) which provide for a significant degree of freedom of contract so that there is no fixed term and no significant regulatory provisions around rent.
- 9.4 TFA Cymru would like to see an amendment, at least to Schedule 3, to ensure that the tenanted sector of agriculture in Wales can fully participate in the new support regime envisaged by the new legislation, both in terms of provision of public goods and productivity. A proposed, complex amendment to Schedule 3 is attached as an annex to this evidence

- 9.5 The proposed amendment is split into two sections the first relating to the 1986 legislation and the second relating to the 1995 legislation.
- 9.6 In section 1 of the amendment, part (a) concerns the ability of a farm tenant to take advantage of the new financial assistance schemes. Many tenants are restricted to use their holdings for agricultural use only and therefore would be disenfranchised if landlords did not give consent for them to access schemes to provide public goods such as listed in Part 1 of Schedule 3. There is concern that landlords will use their leverage in having to give consent to secure unreasonable demands from tenants renting under the 1986 Act. On the other hand, they may simply refuse consent making the holding less profitable and therefore more likely that the landowner will recover possession of the holding to undermine the security of tenure provisions.
- 9.7 The same is true of clauses relating to fixed equipment where tenants often must seek the consent of the landlord before they invest in new or amend existing fixed equipment on their holdings. Part (a) in this section of the amendment will provide for the ability for a tenant to seek consent which the landlord cannot reasonably deny or delay in respect of some of the new financial measures for productivity.
- 9.8 Part (b) of this section of the amendment corrects the mistake made in the Deregulation Act 2015 which means that independent expert determination cannot be used practically for farm rent review disputes, the main type of dispute that arises between landlords and tenants. The ability to use expert determination could significantly reduce the costs involved in resolving such disputes rather than having to go to arbitration hence improving efficiency.
- 9.9 Parts (c) and (d) provide a mechanism to assist older tenants with their retirement providing a route for them to be able to capitalise on the value of their occupation through the creation of a fixed term tenancy which is assignable and therefore potentially offering the opportunity to secure value from the marketplace which they can use for their retirement. This would be subject to the landlord being able to stop the assignment by buying out the tenant's life interest - so there is a balance of rights and responsibilities here. However, this would be a significant assistance to achieving Welsh Government policy to assist restructuring and new entrants.
- 9.10 Parts (e) to (j) make amendments to the tests for statutory succession to remove the requirement for the prospective successor tenant to prove that they are not in occupation of another commercial unit of agriculture. The report from TRIG indicates the benefits of repeal of this test particularly due to its capricious nature which mostly impacts upon the ill-advised or where there is an unexpected, early death within a farm family. It also penalises more suitable candidates from succession given those with other farm units will be, in the main, more progressive than the average.

- 9.11 The second section of the amendment has two parts. The first part addresses the ongoing concern about short lengths of term on FBTs . The average length of term on an FBT is now only four years and 85% are let for periods of five years or less. With approaching half the tenanted sector now covered by FBT's and with the drive to greater levels of productivity and public goods provision, these short lengths of term are wholly inadequate. One of the issues raised by landlords when considering offering a long-term tenancy is the difficulty they have in ending the tenancy where the tenant is in breach of their agreement as they have to rely only on the complicated provisions of forfeiture. This part of the amendment will provide an easier mechanism to bring a tenancy agreement to an end where the tenant is in breach of the agreement but only for those landlords prepared to let for 10 years or more.
- 9.12 Finally, part (b) extends the freedom of contract available to landlords and tenants to use the provisions of the 1986 legislation where that makes sense for good estate and farm management purposes.

Annex 1

This amendment seeks to introduce the changes confirmed by the Tenancy Reform Industry Group in its report in October 2017.

21a provides farm tenants with the opportunity to seek amendments to their tenancy agreements in cases where they are precluded from any activity which limits their ability to use their holding fully and efficiently or take part in schemes and initiatives.

21b corrects the error made within the Deregulation Act 2015 which prevents the practical use of expert Determination for rent reviews.

21c implements the recommendation from TRIG to allow tenants to convert their AHA tenancies into assignable fixed term tenancies to assist with retirement subject to landlords being able to stop the assignment by buying out the tenant's life interest.

21d provides the provision to allow the landlord to serve an incontestable notice to quit to end a tenancy created by 27c following the end of its fixed term period.

21e to 21j remove this s the commercial unit test for succession as recommended by TRIG.

22a allows a landlord who is letting a tenancy for 10 years or more the facility to end the tenancy early where the tenant is in breach of the tenancy obligations.

22b allows greater flexibility for landlords and tenants to agree to use the provisions of the Agricultural Holdings Act 1986 in new agreements as recommended by TRIG.

At Page 44 line 33:

Following Schedule 3 Part 5 part 7 after the words "negative resolution procedure." insert the following:

Part 6

Agricultural Tenancies

(21) The following amendments shall be made to the Agricultural Holdings Act 1986

(a) Following Section 6 (6) after the words "relating to the tenancy takes effect" insert the following:

"7a Where in respect of a tenancy of an agricultural holding a tenant is restricted by the terms of the tenancy agreement in respect of any activity which appears to the tenant to be desirable to assist the full and efficient farming of the holding including participation in any schemes for grants, payments, loans or financial assistance the tenant may serve notice on the landlord to request consent which the landlord cannot unreasonably withhold or delay. Any

objection by the landlord may be referred by the tenant to arbitration under this Act or, to third-party determination under this Act

7b If following the service of a notice by a tenant in accordance with section 7a there is no response from the landlord within one month, consent for the matters contained within the notice from the tenant will be deemed to have been given."

(b) Section 12 shall be deleted and replaced with:

"12 Arbitration or third-party determination of rent.

- (1) Subject to the provisions of Schedule 2 to this Act, the landlord or tenant of an agricultural holding may by notice in writing served on the other demand that the rent to be payable in respect of the holding as from the next termination date shall be referred to arbitration under this Act.
- (1A) The landlord and tenant may, after the service of such a notice, instead refer for third party determination under this Act the question of how much rent is to be payable in respect of the holding as from the next termination date.
- (2) On a reference under this section the arbitrator or third party shall determine what rent should be properly payable in respect of the holding at the next termination date following the date of the notice under sub-section (1) and accordingly shall, with effect from that next termination date, increase or reduce the rent previously payable or direct that it shall continue unchanged.
- (3) A notice under sub-section (1) under this section shall cease to be effective for the purposes of this section on the next termination date following the date of the demand unless before the said termination date—
 - (a) an arbitrator or third party has been appointed by agreement between the parties to determine the rent, or
 - (b) an application has been made to the President of the Royal Institution of Chartered Surveyors for the appointment of an arbitrator by him.
- (4) References in this section (and in Schedule 2 to this Act) with respect to the rent of any holding, to the next termination date following the date of the notice served under subsection (1) are references to the next day

following the date of that notice on which the tenancy of the holding could have been determined by notice to quit given at the date of the notice under subsection (1).

- (5) Schedule 2 to this Act shall have effect for supplementing this section."

(c) After section 24 insert a new section as follows:

" 24A conversion to a fixed term tenancy

- (1) This section applies to an agricultural holding governed by this Act and to which Case I does not apply.
- (2) The tenant may serve notice in writing on the landlord of the holding indicating that he wishes to convert the tenancy so that Case I applies to the holding unless
 - (a) a notice to quit has already been served and remains enforceable;
 - (b) the tenant is dead or insolvent.
- (3) If within two months of receiving the tenant's notice the landlord does not by counter-notice in writing served on the tenant indicate that he wishes to buy the tenant's interest in the holding sub-section (4) will apply to the tenancy.
- (4) A tenancy to which this subsection applies will:
 - (a) be subject to Case I
 - (b) not be subject to Part IV
 - (c) be assignable by the tenant who served the notice under subsection (2) subject to the consent of the landlord which is not to be unreasonably refused withheld or qualified

and the rent properly payable under section 12 will be determined in accordance with section 13 of the Agricultural Tenancies Act 1995 instead of paragraphs 1 to 3 of Schedule 2.

- (5) Where the landlord serves a notice under subsection (3) he then has six months in which to agree with the tenant on the value of the tenant's interest in the holding as at the date of the tenant's notice.
- (6) Either landlord or tenant may refer the question of the value of the tenant's interest for subsection (5) to determination by an arbitrator or if they agree third party determination.

(7) If that value has not been agreed or referred to arbitration or third party determination within those six months subsection (4) will apply to the tenancy.

(8) Where that value is so agreed or determined the tenancy will end at the next date at which a notice to quit served on the date when the tenant's notice would have taken effect, or such other date as may be agreed when that value shall be payable to the tenant.

(d) In Schedule 3 Part 1 insert the following:

"Case I

The holding is let under a tenancy to which this Case has been applied under section 24A and a notice to quit is served to take effect on a termination date at least 25 years after the service of the tenant's notice under that section".

(e) Delete Section 36(3)(b)

(f) Delete Section 50(2)(b)

(g) Amend Section 36 (5) to read:

"Part I of Schedule 6 to this Act, which supplements subsection (3) above, shall have effect".

(h) Amend Section 50(4) to read:

"Part I of Schedule 6 to this Act shall apply for the purposes of supplementing subsection (2) above".

(i) In schedule 6 paragraph 1 remove the words:

"The occupancy condition' means paragraph (b) of the definition"

(j) In schedule 6 delete paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 14, 15 and 16.

(22) The following amendments shall be made to the Agricultural Tenancies Act 1995

(a) After section 7 insert a new section as follows:

7a Notices to Remedy

- (1) A landlord may serve a notice to quit on a tenant at any time if the tenant fails to comply with a notice to remedy served by the landlord for any of the reasons set out in subsection (2).
- (2) A notice to remedy can be served by a landlord for the following reasons –
 - (a) non-payment of rent by the tenant;
 - (b) a breach or breaches of the tenancy agreement which requires the tenant to carry out work to remedy the breach or breaches;
 - (c) a breach or breaches of the tenancy agreement, other than for non-payment of rent, which does not require the tenant to carry out any work to remedy the breach or breaches.
- (3) Any notice to remedy served under sub section (2)(a) must provide the tenant with at least 3 months to remedy the breach.
- (4) Any notice to remedy served under sub section (2)(b) or (2)(c) must provide the tenant with a reasonable time to remedy the breach or breaches which, in every case, shall not be for period of less than 6 months.
- (5) Any tenant in receipt of a notice to remedy under sub section (2) can within one month of receipt of the notice serve a notice on the landlord demanding arbitration or third-party determination on one or more of the following grounds -
 - (d) disagreement with the reasons stated in the notice to remedy;
 - (e) disagreement in any way with the required remedy or remedies including the time required for their fulfilment.
- (6) Where a tenant has served a notice demanding arbitration or third-party determination any notice to remedy will be of no effect until it is determined by arbitration or third-party determination or is otherwise agreed between the landlord and tenant. The period over which any notice to remedy will have no effect will end if after a period of three months following the tenant's demand for arbitration or third-party determination no arbitrator or third party has been appointed.
- (7) Any tenant in receipt of a notice to quit under sub section (1) can within one month of receipt of the notice serve a notice on the landlord demanding arbitration or third-party determination disputing the validity of the notice to quit.

(8) Where a tenant has served a notice demanding arbitration or third-party determination under sub section (7) any notice to quit will be of no effect until its validity has been determined by arbitration or third-party determination or is otherwise agreed between the landlord and tenant. The period over which any notice to quit will have no effect will end if after a period of three months following the tenant's demand for arbitration or third-party determination no arbitrator or third party has been appointed.

(9) A notice to remedy under sub section (2) may only be served by a landlord in respect of tenancy agreements let from their commencement for a term of 10 years or more and where the landlord has no unilateral right to determine the tenancy in whole or any part at any time within the first 10 years of the agreement.

(b) Delete Section 4(1)(g) and replace it with the following:

"is granted by a written contract of tenancy indicating (in whatever terms) that the 1986 Act is to apply in relation to the tenancy."