

Supplementary written evidence submitted by the Tenant Farmers Association (AB54)

Suggested Amendments to Agriculture Bill – House of Commons Committee Stage

Amendment TFA1

This amendment adds two important but missing criteria against which the Secretary of State may provide financial assistance (Page 2 line 3)

Insert the following after Part 1, Section 1 (1) (g):

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

Amendment TFA2

This amendment improves the criteria against which the Secretary of State may provide assistance for productivity by taking the corresponding Section from Schedule 3 setting out the provisions relating to Wales. (Page 2 line 9)

Delete Part 1 Section 1 (2) and replace with the following:

- (2) The Secretary of State may also give financial assistance for or in connection with any of the following purposes—
 - (a) supporting businesses or communities in rural areas;
 - (b) starting, or improving the productivity of, an agricultural, horticultural or forestry activity;
 - (c) supporting persons who are involved in the production, processing, marketing or distribution of products deriving from an agricultural, horticultural or forestry activity.

Amendment TFA3

This amendment ensures that financial assistance stays within the agricultural industry and is only paid to active farmers and land managers. (Page 2 line 24)

Following the words "Secretary of State considers appropriate" in 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."

Amendment TFA4

This amendment ensures that any lump sum payment in respect of future direct payments can be made only to those within the agricultural industry that are active farmers. (Page 6 line 16)

Following Part 1 Section 7 (8) insert after the words "greening payment element of direct payments" insert the following:

"Any payment of a lump sum under paragraph (7) must be only to an individual who at the time the payment is granted meets the criteria in Section 2 (2) (b)".

Amendment TFA5

This amendment ensures that we can protect our standards of production in relation to animal welfare and environmental management both in relation to domestically produced food and imports. (Page 16 line 16)

Following Part 5 Section 20 (4) insert after the words "involving the exercise of a discretion) on a person" insert the following:

"(5) When applying the provisions of this section the Secretary of State shall apply the same provisions to products wholly or partially produced within the UK and those wholly or partially produced in other countries:"

Amendment TFA6 (supported by the members of the Groceries Code Action Network)

This amendment ensures the confidentiality of any complaints made by producers against first purchasers. (Page 20 line 8)

Delete Section 25 (5)(a) and replace with the following:

"for complaints relating to alleged non-compliance to be kept confidential and to be referred to a specified person with a responsibility for ensuring that confidentiality;"

Amendment TFA7 (supported by the members of the Groceries Code Action Network)

This amendment expands the criteria to be used when considering investigations for supply chain irregularities. (Page 20 line 15)

After Section 25 (5)(d) add a new Section 25 (5)(e) as follows:

"for investigations to either be based upon a complaint or upon reasonable suspicion of a non-compliance having occurred;"

Amendment TFA8 (supported by the members of the Groceries Code Action Network)

This amendment clarifies the definition of a producer in looking at supply chain irregularities. (Page 20 line 30)

In Section 25 (10) include the following after the words ““producer” includes a producer outside the United Kingdom” and replace with the following:

“, and also includes both individual producers, and those entities which sell agricultural products after they have been aggregated from several producers. For the avoidance of doubt producers include those businesses operating a packhouse;”

Amendment TFA9

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

27a 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.

27b corrects the error made within the Deregulation Act 2015 which prevents the practical use of expert determination for rent reviews.

27c 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.

27d 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.

27e to 27j removes the commercial unit test for succession as recommended by TRIG.

28a 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.

28b 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.

(Page 22 line 17)

Following part 7 after the words "signed at Marrakesh on 15 April 1994" insert the following:

Part 7A

Agricultural Tenancies

(27) 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.

(28) 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."

Amendment TFA10 (originally from the NFU)

This amendment provides for a multi-annual budgetary framework to give certainty to future funding of Government policy implemented by the Bill. (Page 24 line 39)

In Section 33 add the following after the end of paragraph c:

“(d) The Secretary of State must make regulations to implement a multi-annual financial framework determining the monies available under this section.

(e) Regulations under subsection (33)(d) must be made before the beginning of the agricultural transition period.”

November 2018