

## **Introduction**

The Royal Institution of Chartered Surveyors (RICS) is pleased to respond to this consultation.

RICS is the largest organisation of its kind for professionals in property, construction, land and related environmental issues. As an independent Chartered organisation, RICS regulates and maintains the professional standards of 125,000 qualified professionals and over 10,000 firms.

We are an internationally recognised standard setter and regulator for the land, property, construction, and infrastructure sectors. Over 80,000 of our qualified professionals work in the UK, where our goal is to deliver a healthy and vibrant property and land sector as a key pillar of a thriving economy. We are not a trade body; we do not represent any sectional interest, and under the terms of our Royal Charter the advice and leadership we offer is always in the public interest.

Since 1868, we have been committed to setting and upholding standards of excellence and integrity – providing impartial, authoritative advice on key issues affecting businesses and society. RICS is a regulator of both its individual qualified professionals and those firms that have registered for regulation by RICS.

## **Responder information**

Would you like your response to be confidential?

- No

What is your name?

- Tamara Hooper

What is your email address?

- [thooper@rics.org](mailto:thooper@rics.org)

Please tell us who you are responding as, selecting from the following:

- Industry trade body

If responding for a business, trade body or other organisation please provide the name of the organisation you are responding for

- Royal Institution of Chartered Surveyors

If you have an agricultural tenancy agreement or agreements what are they, please select from the following?

- I don't have an agreement

Please indicate which location your response relates to, selecting from the following:

- England

What is your age category?

- N/A

### **Consultation Questions:**

**Q8 Do you agree that new legal provisions to enable a tenant to assign their tenancy to a third-party tenant will help deliver the policy aim of facilitating structural change in the AHA sector?**

- Agree

**Q9 Do you agree with proposal 1 to implement new legal provisions to enable a tenant to assign their AHA tenancy to a third party, subject to the conditions described?**

- Agree

**Q10 Do you agree that proposal 1a is needed in addition to proposal 1 so that landlords have a role in reviewing the suitability of the new tenant?**

- Strongly agree

**Q11 Please provide any other comments including evidence of the likely benefits and impacts of these proposals.**

It is recommended that monitoring is put in place to assess if the structural change that is envisaged in the sector as a result of the reforms is delivered. There must be an opportunity to review and flex the policy levers as required if that is not the case.

The landlord should have the ability to vet the tenant against the revised competencies required for the updated eligibility test on succession and any new tenant should be required to demonstrate that they meet the revised test. Any failure to agree whether the test has been met should be referable to either expert determination or arbitration (or to the Land Chamber of the First Tier Tribunal) as most appropriate.

RICS believes that clarity is needed to confirm that an assigned tenancy would take effect as a new tenancy and 100% APR would apply.

We would also ask for SDLT impacts to be considered and any barriers on either landlord or tenant should be addressed.

Any retrospective IHT impacts which may have prejudiced the Landlord need to be considered. In some cases, IHT may have been paid on a higher value than would be the case immediately after the legislative change that allows assignment.

There should only be an ability to assign the whole and not in part to avoid the possibility of the tenant retaining the house and assigning the land and buildings.

Assignment fees need to be considered and it would be reasonable for the Tenant to meet the Landlord's reasonable legal and professional costs.

Clarity is required to confirm that the new right to assign should only apply to AHA succession tenancies and not AHA tenancies where there are no rights of succession.

An assignment should trigger the opportunity for the review and updating of the terms of the tenancy (in the same way as for a succession tenancy currently) and to incorporate the changes arising from the proposals to amend restrictive provisions.

**Q12 Do you agree with proposal 2 to remove the minimum age of 65 for succession on retirement applications?**

- Agree

**Q13 Do you agree with proposal 3 to remove succession rights when the tenant reaches 5 years past the state pension age?**

- Agree

**Q14 If proposal 3 were implemented, do you agree that to give adequate time for succession planning it would be necessary to allow 8 years following the enactment of the legislative change before it should take effect?**

- Agree

**Q15 If you do not agree that 8 years notice is an appropriate amount of time to wait before the legislative change takes effect please indicate what time period, if any, should be given in your view.**

- N/A

**Q16 How should any removal of succession rights operate in the case of joint tenancies? For example, where joint tenants are different ages should the age limit (after which succession would cease to be available) be linked to the age of the youngest tenant?**

Any age-related notices should be referable to the age of the youngest joint tenant.

**Q17 Please provide any other comments including any evidence you have of the likely benefits and impacts of proposals 2 and 3 and whether there are alternative options that we should consider.**

No comment

**Q18 Do you agree with proposal 4 to amend the 1986 Act so that council farm retirement notices to quit can only be issued when the tenant has reached current state pension age?**

- Agree

**Q19 Are there any operational or other implications of this proposal, for example for joint tenancies, that we need to consider?**

Any age-related notices should be referable to the age of the youngest joint tenant.

**Q20 Do you agree with proposal 5 to remove the 'Commercial Unit Test'?**

- Agree

**Q21 Do you agree with proposal 6 to modernise the suitability test?**

- Agree

**Q22 Do you agree that 3 years is adequate time before this proposed change to the suitability test comes into force?**

- Yes

**Q23 If you answered 'No' to question 22, what time, if any, do you feel is needed for businesses to prepare for this proposed change?**

- N/A

**Q24 Please provide any additional comments including any evidence you have of the likely benefits and impacts of proposals 5 and 6.**

No comment

**Q25 Do you agree with proposal 7 to amend the definition of close relative so that children (or those treated as children) of cohabiting partners can apply to succeed to an AHA holding tenancy?**

- Agree

**Q26 Do you agree that a cohabiting partner of the tenant should be included in the definition of a close relative of the tenant so that they would also be eligible to apply to succeed to an AHA holding tenancy?**

- Agree

**Q27 Do you agree with proposal 8 to extend the definition of close relative so that nieces and nephews of the tenant could apply to succeed to AHA holdings in future?**

- Strongly disagree

**Q28 Do you agree with proposal 8 to extend the definition of close relative so that grandchildren of the tenant could apply to succeed to AHA holdings in future?**

- Strongly disagree

**Q29 Are there any operational implications of proposals 7 and 8 for joint tenancies that we need to consider?**

- No

**Q30 Please provide comments including any evidence you have of the likely benefits and impacts of proposals 7 and 8.**

It is considered that the prejudice that would be caused to the position of the landlord if the eligibility criteria were widened to include nephews and nieces and grandchildren cannot be justified.

Assuming the proposed assignable AHA is introduced, a tenant with no eligible successors will be able to use that option as an alternative.

**Q31 Do you agree that restrictive clauses in AHA agreements is a problem that needs to be addressed?**

- Agree

But a landlord's right to maintain a restrictive clause for genuine reasons (including non-business reasons such as landscape, amenity, visual appearance and environmental reasons) including the maintenance of the value of the reversionary interest and of the wider estate should not be unreasonably restricted.

A short form dispute resolution procedure including the ability for expert determination should be available for resolving any disputes under this measure.

**Q32 Are restrictive clauses in Farm Business Tenancy agreements a problem that might also need to be addressed?**

It is not considered that this is an issue for fixed-term agreements that have been negotiated from a modern template on a commercial basis by the landlord and the tenant.

**Q33 Do you agree with proposal 9 to enable restrictive clauses in AHA agreements to be challenged and varied through a dispute resolution process?**

- Agree

However please refer to answers to Q31 and Q32

**Q34 Please provide additional comments including evidence of the extent to which restrictive clauses may be a problem or not, and the likely benefits and impacts of this proposal.**

No comment

**Q35 Do you agree that the risk of a landlord losing any return on investment through the next rent review is a barrier to landlord's investing in AHA holdings?**

- Agree

**Q36 Do you agree with proposal 10 to exclude the landlord's return on investment from rent review considerations?**

- Agree

**Q37 Do you agree that providing new shorter termination procedures for FBTs of ten years or longer will encourage more landlords to offer longer-term lets, which would facilitate and encourage more tenants to invest in improving productivity and the environment?**

- Agree

**Q38 Are there other options that would encourage landlords to let for longer terms that we should consider?**

Fiscal mechanisms could be considered to encourage longer term lettings. These could include the equalisation of the treatment of rental income with other business income for income tax purposes and allowing the investment by a landlord in fixed equipment on a let holding to qualify for relief from capital taxes and for capital allowances which could be linked a minimum initial term of the tenancy.

**Q39 Do you agree with proposal 11 to provide shorter notice to quit procedures for**

**new FBTs of ten years or longer in each of the specific circumstances in the table below?**

- **Death of the tenant**
- **Non-payment of rent by the tenant**
- **Landlord has planning permission to develop land on the holding for non- agricultural use**

- Agree to all three

**Q40 Other than non-payment of rent should any other serious breaches of the agreement by the tenant be included in any future provisions for shorter notices to quit?**

- Yes

**Q41 If you answered 'Yes' to question 40, what other breaches do you think should be included and what notice periods should be applied in those circumstances?**

All breaches that a tenant has failed to remedy within a reasonable period of time after a landlord has served a notice to remedy, and all breaches that are incapable of remedy.

The notice to quit period should be 12 months to terminate at any time.

**Q42 What issues, principles and calculations should be taken into account when considering the issue of compensating a tenant for any loss of land resulting from a notice to quit land that has planning permission for non-agricultural use?**

It is considered that there is significant merit in adopting a simple formula in the same way as under the AHA and that a multiplier of 5 times the annual rent calculated on a pro-rata basis for the land being removed from the tenancy would be appropriate subject to the opportunity for the tenant to submit an enhanced claim in cases where a tenant's improvement (with written consent from the landlord) has been carried out and where the loss of the land from the tenancy will render the tenant's investment unnecessary or of a reduced value – e.g. where the tenant has erected a grain store with the capacity to store grain grown on 500 acres that fell within the tenancy and where the loss of 100 acres renders part of that investment unnecessary or redundant.

**Q43 Please provide any additional comments, including evidence, of the likely benefits and impacts of proposal 11.**

The proposal will introduce certainty and avoid the costs (of both landlord and tenant) involved in a contested claim for forfeiture.

**Q44 Do you agree with proposal 12 to enable a third-party expert to be appointed to resolve a rent review dispute at any time ahead of the rent review date?**

- Strongly agree

**Q45 Do you agree with proposal 13 that the prescribed fee for appointing an arbitrator or record keeper under the 1986 Act should be updated to £195?**

- Agree

**Q46 If you do not agree that the fee should be updated to £195 what level of fee do you feel is appropriate and why?**

- N/A

**Q47 Please provide views on the benefits or impacts of enabling other qualified professional organisations (alongside RICS) to provide a service for appointing independent arbitrators to resolve agricultural tenancy disputes governed by the 1986 Act and the 1995 Act in future.**

The key issues here are the consistency of arbitration decisions and the regulation of professional standards. The training, experience and quality of arbitrators is extremely important to provide consistency in the standards of competence required of appointed arbitrators and to enable users to have confidence in the arbitral process.

The fact that RICS has a strong and recognised regulatory function, alongside its function as an educator and promoter of best practice, is an essential element in maintaining the confidence in the arbitral process and in arbitration awards. RICS is the only organisation with professional members with the requisite skills and experience that also provides this regulatory function.

Alongside the above, if there were several different arbitral bodies, each with their own panels from which arbitrators could be appointed, and if the members of those panels were from different professional backgrounds and with different levels of training, qualifications and experience, it would be extremely difficult to maintain the required levels of consistency and regulatory oversight.

**Q48 Do you agree with proposal 14 to deliver each of the procedural reforms listed below to improve the operation of the 1986 Act succession provisions?**

- Enabling agreed successions without an application to the Tribunal
- Removing technical obstacles to joint successions
- Clarifying the position for male widowers of a deceased tenant
- Improving the process between delayed Tribunal decisions and the operation of end of tenancy claim

- Agree to all four

**Q49 Please provide additional comments including evidence of the likely benefits and impacts of these procedural reforms**

No comment

**Q50 Do you agree the non-legislative options outlined above in section 4 should be considered as a way of delivering our policy aims of facilitating structural change and enabling productivity improvements in the tenanted sector?**

- Strongly agree

**Q51 Should the non-legislative options outlined above be considered as an alternative to the tenancy law reform proposals set out in this consultation, or be considered in addition to tenancy law reform proposals?**

Non-legislative options should be used in addition to and in support of the legislative options and not as an alternative to them. It is considered that the legislative options are required as drivers of the structural changes that are being sought.

**Q52 Please provide any other comments including evidence of the likely benefits and impacts**

**of the non-legislative options listed and any other options you think should be considered.**

Likely benefits are greater dialogue and understanding between landlords and tenants and greater awareness of the possibilities available to them to achieve a successful relationship under the existing contractual frameworks.

**Q53 Please provide evidence or examples of why it might be important for mortgage lenders to restrict the ability of a landowner to grant agricultural tenancies on mortgaged land without the permission of their mortgage lender?**

It is important for mortgage lenders to restrict the ability of a landowner to grant agricultural tenancies on mortgaged land without the permission of their mortgage lender because the creation of a tenancy has an impact on the value of the loan security and on the ability of the mortgagee to realise its security (if necessary) and sell with vacant possession.

**Q54 Do you have evidence or examples of whether the current mortgage restrictions for letting land are a barrier to landowners offering agricultural tenancies?**

No, this is not an issue within the market

**Q55 Do you agree that consideration should be given to repealing section 31 of the Agricultural Tenancies Act 1995 so that in future landowners can grant agricultural tenancies on mortgaged land without gaining prior consent from their mortgage lender?**

- Disagree

**Q56 Please provide any additional comments including evidence of the likely benefits and impacts of considering removing mortgage restrictions over let land in future.**

One of the most likely impacts would be the withdrawal of some lenders and a reduction in funding provided to the agricultural sector.

**Q57 Do you have examples or evidence of how farmers may be particularly vulnerable to repossession of their agricultural land now or might be in the future?**

- No

**Q58 Are there any differences or impacts that should be considered in relation to the procedures and practices for repossessing agricultural land compared to the procedures and practices for repossessing assets in other sectors where businesses are unincorporated?**

- No

**Q59 Do you think that additional measures to provide owners of agricultural land with additional protections as part of repossession proceedings, possibly similar to those afforded to owners of dwelling houses, should be considered?**

- No, the current safeguards are sufficient.

**Q60 Please provide any additional comments, including evidence of the likely impacts and benefits of considering policy changes to strengthen legal protections for the owners of**



### **agricultural land in relation to repossession procedures?**

One of the most likely impacts would be a possible reduction in funding provided to the agricultural sector and the increased repossession costs that would be passed on to the borrower in the event of default and repossession by the lender.

### **Final Comments:**

RICS is happy for this response to be shared. We would welcome the opportunity to meet with Government representatives to discuss the issues raised within this consultation and our answers in more detail. We would be particularly keen to engage on Q47 and RICS regulatory processes and role within the industry.