

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.

Consultation Questions:

Q1 Do you agree new legal provisions to enable a tenant to assign their lease to a third party tenant will help to deliver the policy aim of facilitating structural change in the AHA sector?

- Agree

Q2 Do you agree with proposal 1 to implement new legal provisions to enable a tenant to assign their AHA lease to a third party, subject to the conditions described?

- Agree

Q3 Do you agree proposal 1a is needed in addition to proposal 1 so landlords have a role in reviewing the suitability of their new tenant?

- Strongly Agree

Q4 Please provide comments including evidence of the likely benefits and/or 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.

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

SDLT impacts need 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

Q5 Do you agree with proposal 2 to remove the minimum age of 65 for succession on retirement applications?

- Agree

Q6 Do you agree with proposal 3 to remove succession rights when the tenant reaches 5 years past the state pension age?

- Agree

Q7 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.

Q8 Do you agree if proposal 3 were implemented, it would be necessary or appropriate to allow 8 years following the enactment of the legislative change before it should take effect?

- Agree

Q9 If you do not agree 8 years notice is an appropriate amount of time please indicate what time period, if any, should be given in your view

- N/A

Q10 Please provide comments including any evidence you have of the likely benefits and impacts of these proposals.

No Comment

Q11 Do you agree with proposal 4 to amend tenancy law so council farm retirement notices to quit can only be issued when the tenant has reached current state pension age?

- Agree

Q12 Are there any operational or other implications of this proposal for joint tenancies

which we need to consider?

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

Q13 Do you agree with proposal 5 to remove the commercial unit test?

- Agree

Q14 Do you agree with proposal 6 to modernise the suitability test?

- Agree

Q15 Do you agree 3 years is adequate time before this proposed change to the suitability test comes into force? Yes/no? If no, what time do you feel is needed and appropriate?

- Yes

Q16 Please provide any additional comments including any evidence you have of the likely benefits and impacts of these proposals.

No comment

Q17 Do you agree a cohabitating 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

Q18 Do you agree with proposal 7 to extend the definition of close relative so children (or those treated as children) of cohabitating partners can apply to succeed to an AHA holding?

- Agree

Q19 Do you agree with proposal 8 to extend the definition of close relative so nieces, nephews and grandchildren of the tenant could apply to succeed to AHA holdings in future?

- Strongly Disagree

Q20 Are there any implications of proposals 7 and 8 for joint tenancies we need to consider?

- No

Q21 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 can not 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.

Q22 Do you agree restrictive clauses in AHA leases are a problem which 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.

Q23 Do you agree with proposal 9 to enable restrictive clauses in AHA leases to be challenged through dispute resolution?

- Agree

However please refer to answer to Q22

Q24 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

Q25 Do you agree AHA rent review provisions may act as a barrier to landlord investment in AHA holdings?

- Agree

Q26 Do you agree with proposal 10 to exclude the landlord's return on investment from rent review considerations?

- Agree

Q27 Do you agree 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,

Q28 Are there other options which would encourage landlords to let for longer terms 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.

Q29 Do you agree with proposal 11 to provide shorter notice to quit procedures for new FBTs of ten years or longer in the specific circumstances of the death of the tenant, non-payment of rent and where the landlord has planning permission to develop land on the holding for non-agricultural use?

- Agree, all three options

Q30 In addition to 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? And if you think they should be please list what breaches should be included and what notice periods should be applied in those circumstances?

- Yes

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.

Q31 What issues and principles should be taken into account when calculating compensation for tenant' who have been issued a notice to quit land which 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.

Q32 Please provide 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.

Q33 Do you agree with proposal 14 to deliver procedural reforms to improve the operation of the 1986 Act succession provisions?

- Yes we agree

Q34 Please provide additional comments including evidence of the likely benefits and impacts of these procedural reforms.

No comment

Q35 Do you agree the non-legislative options outlined above should be considered as a way of delivering our policy aims of:

- facilitating structural change in the tenanted sector?
 - Strongly Agree
- enabling productivity improvements in the tenanted sector?
 - Strongly Agree
- enabling environmental improvements in the tenanted sector?
 - Strongly Agree

Q36 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 the

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.

Q37 Please provide 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.

Q38 Please provide evidence or examples of why it is important and necessary for mortgage lenders to restrict the ability of a landowner to grant agricultural tenancies on the mortgaged land?

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.

Q39 Do you have evidence or examples of whether the current mortgage restrictions for letting land are a barrier to landowners offering agricultural tenancies?

RICS do not believe this is an issue within the market

Q40 Do you agree consideration should be given to repealing section 31 of the Agricultural Tenancies Act 1995 so in future landowners can grant agricultural tenancies on mortgaged land without the prior consent of their mortgage lender?

- Disagree

Q41 Please provide any additional comments including evidence of the likely 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.

Q42 Do you have examples or evidence of how farmers are particularly vulnerable to repossession of their agricultural land now or might be in the future?

- No

Question 43: Are there any differences or impacts which 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

Question 44 Do you think additional measures should be introduced to provide owners of

agricultural land with additional protections as part of repossession proceedings, possibly similarly to those afforded to owners of dwelling-houses?

- Disagree, The current safeguards are sufficient

Question 45 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.

Question 46 Is there evidence to suggest that farm businesses are particularly vulnerable to repossessions or might be in the future?

- No

Question 47 Do you think that there is a need to introduce additional protections for farm businesses as part of repossession proceedings?

- No

Question 48 If you think that additional protections are required, what do you think these additional protections should be?

No comment

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.

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