

George Dunn, Chief Executive, Tenant Farmers Association – Written Evidence (LUE0099)

1. Introduction

- 1.1 The Tenant Farmers Association (TFA) is the only organisation dedicated to representing the interests of farmers and farm businesses who do not own the land they use for agriculture in England and Wales. TFA membership comprises farms of all types and sizes but active, family farms predominate. The core membership of the TFA are farmers occupying land under tenancies regulated by both the Agricultural Holdings Act 1986 (AHA) and Agricultural Tenancies Act 1995 (ATA). Day in and day out the TFA advises its members on their rights and responsibilities in respect of these tenancies and often comes up against legislative or contractual issues which cause difficulty in making everyday land-use decisions or in responding to Government initiatives.
- 1.2 The TFA therefore welcomes the opportunity of providing evidence to the Select Committee on Land Use at what is a pivotal time for the farming industry in the context of Brexit, domestic policy change and global issues within the supply chains for agriculture and food. We would encourage the Select Committee to look at the importance of maintaining a sustainable and productive let sector within agriculture, well-positioned to deliver outcomes valued by the market and wider society.

Background

- 2.1 Success in achieving the outcomes set out above will lie in the extent to which there is balance between the interests of landlords and those of tenants given that both are required for a thriving and well-functioning landlord-tenant system within agriculture. Looking back at history, it would not be unfair to suggest that we have lurched from a system affording significant protection to tenants in comparison to landlords to a new environment, more recently, within which tenants are very much left vulnerable and exposed. Given the market failures that exist within the market for land and which provide a built in advantage to the landlord sector, the TFA would argue that Government intervention must always be more inclined to ensure that the needs of tenants are properly considered but not to the extent that landlords will be driven away from letting land.
- 2.2 The tenanted sector of agriculture is responsible for farming at least one third of the agricultural area of England and approaching half of that is now let under the ATA through Farm Business Tenancies (FBTs). In addition, the TFA is aware of a significant amount of informal letting arrangements where rent changes hands based on little more than a handshake. Adding this together with the

formally recorded tenanted sector could bring the total amount of land farmed by non-owners under some form of tenancy agreement to around 40% of the total agricultural area. It is therefore a very significant constituency of interest in its own account.

- 2.3 With the area of land let under AHA tenancies naturally declining year on year, the potency of FBT agreements within the tenanted sector will only become stronger. To that end, it was disappointing that changes to tenancy legislation introduced by the Agriculture Act 2020 focused predominantly on AHA agreements and hardly at all on FBTs. The FBT sector is characterised by lack of security, restrictive clauses and high levels of rent. This is not a great recipe for sustainability, resilience, high levels of productivity and great environmental outcomes.
- 2.4 As an example, in relation to environmental management, a great deal of attention has been given to concerns that soil health is generally under pressure. However, one of the greatest contributors to problems with soil health is the tendency towards short term interests in land which de-incentivises good practice for improving soil health. The TFA also asserts that the growth in contract farming arrangements is leading to problems in this respect. These issues should be addressed by encouraging longer lengths of term on tenancies and ensuring that new financial support arrangements focus on active farmers.
- 2.5 The TFA believes that the only sensible way of addressing lengths of term is to encourage good practice through alterations within the taxation framework within which decisions on land ownership and land occupation take place (see Section 4). It is disappointing that despite many years of lobbying by the TFA and the growing consensus that taxation is an important driver in this market, the Treasury continues to be disinterested in looking at serious reforms of taxation.

3. The Importance of Agricultural Tenancies

- 3.1 The tenanted sector of agriculture is of major significance to the wider industry and society as a whole. In its intrinsic separation of the functions of land ownership and land management it allows individuals to focus on their specific expertise. Landowners concerned about long-term capital values and sustainable land use can articulate those aspirations through the terms of the tenancy agreements they seek to agree with farm tenants, and tenants can use their business acumen and farming skills to invest in and use the land to create an annual profit from which they are able to pay a sustainable rent.
- 3.2 The landlord/tenant system provides liquidity to the most fixed factor of production in agriculture – land. Farm businesses looking

to expand or contract can use the flexibility of the landlord/tenant system to meet their objectives without having to be concerned about issues of land ownership. There are many individuals who wish to retain a long-term interest in owning land without wanting to have the responsibility to farm and manage it on a day to day basis. There are also many who lack the necessary capitalisation to acquire land outright in order to allow their businesses to expand. The landlord/tenant system provides the fluidity for the best economic outcomes to be achieved.

- 3.3 For most individuals who would seek to enter the business of farming from outside of the industry, agricultural tenancies remain the only viable route available to them. There has been much talk in recent years about the need to ensure that viable opportunities exist for new entrants. Whilst share farming, share partnership and contract farming arrangements are all helpful at the margin, it is only within the security of an agricultural tenancy that farm businesses without access to owned land can become established, remain sustainable and improve.
- 3.4 Against the background of the importance of the tenanted sector in agriculture, it is essential to consider the current condition of the sector and its future prospects. The conclusions of the TFA's analysis of the current position of the tenanted sector is that it has been adversely affected by short-term thinking from policy makers, landowners and those who seek to advise landowners.
- 3.5 1995 was a clear turning point for the tenanted sector of agriculture. The introduction the ATA represented a major deregulation of the legislative framework within which agricultural tenancies were governed. According to the free-market ethos of the time, it was believed that complete freedom of contract was the best way to ensure the most efficient outcomes for UK agriculture. There were three main objectives for the new legislation:
 - i. encourage more letting of agricultural land;
 - ii. increase opportunities for new entrants;
 - iii. promote economic efficiency in agricultural land use.
- 3.6 The pattern of decline in let agricultural land over the years preceding the 1995 legislation was replaced with net gains up to 2003. However, since that time we have entered a period of stasis with the area of land leaving the sector equating almost exactly to the area of land joining the sector each year. It has been surmised, and in the view of the TFA correctly, that much of the early success in achieving increases in the area of let land can be put down to the regularisation of informal agreements struck between parties before 1995. Previously, landlords were attempting to avoid the security of tenure that would have been afforded to farm tenants under the AHA and the ATA provided them with a robust architecture within

which they felt comfortable to let without the risk of creating secure agreements.

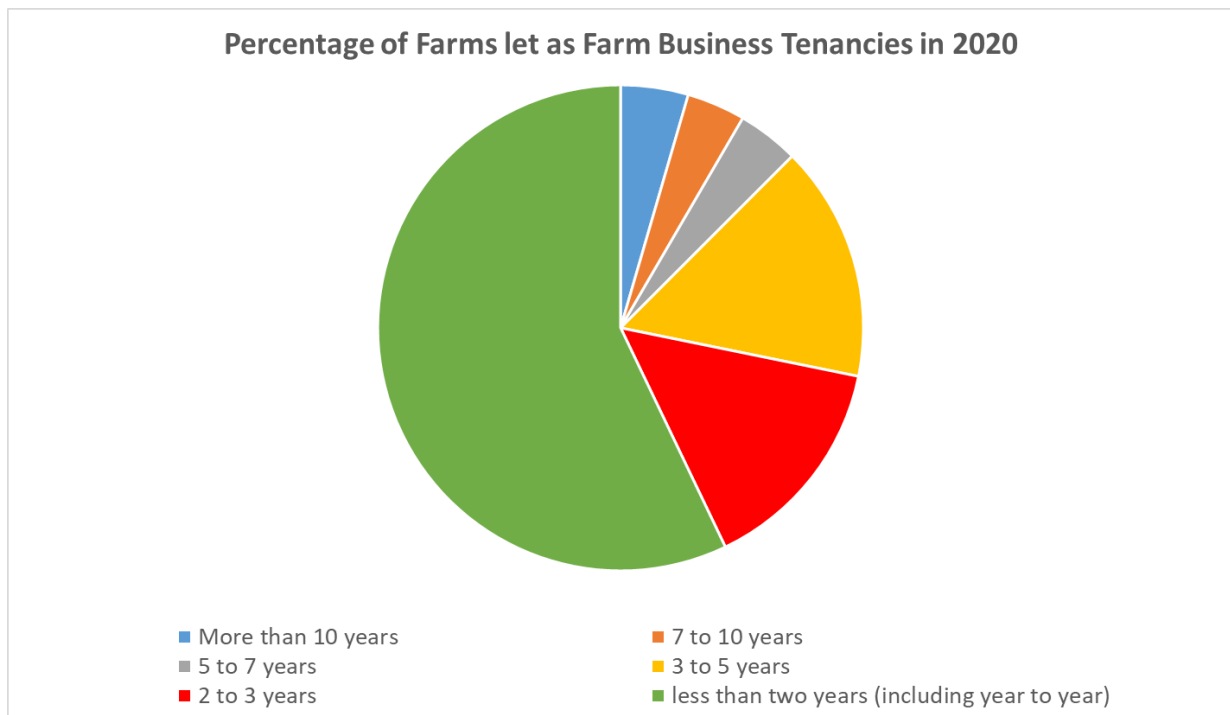
- 3.7 Turning to new entrants, the Central Association of Agricultural Valuers (CAAV) reports in its annual survey on agricultural land occupation for 2020, that around 6.6 per cent of all lettings and 21 per cent of those where there is a change in occupier, are going to new entrants. It is difficult to judge whether these figures can be viewed as a success. However, there is considerable unfulfilled demand for opportunities from new entrants. As far back as 2002 the University of Plymouth in its Government commissioned economic evaluation of the ATA, reported that new entrants felt excluded because of their inability to compete with established businesses and concluded that solutions around alternative fiscal and financial interventions should be looked at. It is a failure of Government that no adequate consideration has been given to this conclusion over the past 20 years.
- 3.8 On the third objective, it is difficult to see how FBTs have improved the efficiency of UK agriculture. Farming is a long-term endeavour, requiring significant capital investment, patience, good soil management and the ability to balance the profitable years against the bad. None of this is helped by the short terms offered in today's FBTs. In fact, over the history of the ATA the average length of term on FBTs has been consistently around the four-year mark. The table below provides greater detail from the CAAV on length of term

Average Length of Term on Farm Business Tenancies 2020 (years)

All Farms	3.24
Bare Land Only	2.86
Land and Buildings	5.22
Land, House and Buildings	9.84

depending on the nature of the tenancy and whether it includes land only or houses and buildings.

- 3.9 These figures alone provide a startling insight into the structure of the let sector of agriculture and further analysis of the CAAV results show that 87.5% of all FBTs are now let for periods of five years or less. If we are serious about creating the right environment for investment, productivity growth and good environmental management, this pattern of short termism must change. If the market will not deliver this, and the history of the last quarter of a century provides little evidence that it will, the Government has a role to play in facilitating this change. The chart below provides a breakdown of the proportion of agreements lets as FBTs by length of term.



- 3.10 The past 10 to 15 years have seen larger and more unpredictable swings in agricultural markets than had any time since the UK joined the European Union. A large part of that is the extent to which agriculture is now more exposed to market forces. This has been evidenced most recently as a result of the energy price spike beginning as various countries across the world emerged from coronavirus restrictions and has been exacerbated by the conflict in Ukraine. A resilient industry needs to have businesses with long-term security to balance the good years with the bad. Short term FBTs are not delivering this.
- 3.11 There is also much talk about long-term economic planning and the need for investment to create growth and drive productivity. However, what incentive is there to invest as a tenant farmer if

your agreement is less than five years or, on a rolling, year-to-year basis? Long-term security is needed for sustainable investment.

- 3.12 Short-term farm tenancies are bad for the environment. We have highlighted concerns about soil management but equally the same could be said for other environmental outcomes. The tenanted sector wants to play its full part in delivering the outcomes articulated within the Government's 25 Year Plan for the Environment, however, the lack of security of tenure provides little incentive to think long term and also causes major issues for farm tenants in wanting to take part in new public and private environmental and natural capital schemes which are understandably long-term in their approach.
- 3.13 The Government must have an eye to social objectives – there is little to be gained for families or communities from individuals operating within very short time horizons, particularly in rural areas.
- 3.14 The TFA argues that when landlords are reluctant to use the full flexibility of the statute but have gained considerably from the legislation and its associated tax changes, this represents a market failure. With much higher demand than supply, landlords can offer short terms for high rents at very little risk and obtain 100% Agricultural Property Relief from inheritance tax. By contrast, the short-term nature of tenancies is damaging progression, investment, sustainable land use and social cohesion in rural areas. The TFA believes that the best way of tackling these issues is through manipulation of the taxation environment within which landlords make decisions about land use and land occupation.

4. TFA Proposals for Reforms to Taxation

- 4.1 The TFA has been advocating the following fiscal changes to stimulate a more sustainable approach to letting land:

- 4.1.1 **Restricting the generous, 100% Agricultural Property Relief from Inheritance Tax (currently available to all landlords regardless of the length of time for which they are prepared to let land) only to those prepared to let for 10 years or more, or on new tenancies (eg successions) with security of tenure under the Agricultural Holdings Act 1986.**

This would be at least fiscally neutral for the Government should all landlords decide to remain in the letting market and let for 10 years or more and fiscally beneficial if a number of landlords continue to let for shorter terms than 10 years. This measure will not increase the number of lettings but will improve the quality of lettings currently offered within the marketplace. The impact of this could be further enhanced if

landlords were provided with the option of locking in their capital taxation position on day one of a new lease and for the duration of that lease. Landlords who have the security of knowing that their taxation status would not change for the duration of a lease would be prepared to let longer.

In order not to disturb the availability of land for high value crops which need to be part of a rotational system, there should be an exemption for any land let for up to 2 years where the land was not let at any time in the 12 months immediately prior to the letting.

4.1.2 Clamping down on those land owners who, through schemes promoted by agents and accountants, are using share farming, contract farming, share partnerships and grazing licences as thin veneers of trading activity and as vehicles for aggressive tax avoidance where they take no risk in the business, have little, if any, entrepreneurial input and lack any management control.

A raft of alternative mechanisms for splitting the ownership and use of land have come to the fore over the years. The list includes share partnerships, share farming arrangements, contract farming arrangements, profit of pasturage arrangements and farm management agreements. Whilst there is no doubt that in themselves they can be very useful tools to manage flexible business relationships, in many cases they are used today to circumvent the legislative provisions surrounding tenancies and to construct an environment within which the landowner is apparently able to access the same tax benefits as working farmers.

The TFA's concern is that whilst these arrangements have clearly been put together to create the appearance that the owner of the land is actively involved in land management decisions and taking risk, the reality can be and is often very different. The TFA believes it is wrong that landowners should have the benefit of the more favourable taxation environment that applies to trading entities where they are neither taking risk nor actively involved in the practical management of the holding.

This measure would be at least fiscally neutral for the Government should all affected landowners decide to remain in farming either by using the arrangements mentioned in a proper manner, farming fully in hand or letting their land on bona fide tenancy agreements. The measure could be fiscally beneficial if, as a result of the enhanced checking,

landowners were found to be in a position of having to pay more tax.

4.1.3 Offering landlords prepared to let land for 10 years or more the ability to declare their income as if it was trading income for taxation purposes.

Whilst this might have the potential to be fiscally negative for the Government it is more likely to be fiscally neutral as many more landowners using platforms including share farming, contract farming, share partnerships and grazing licences to avoid paying tax, will find letting land for a longer period of time to be more attractive. This could draw on the success of a similar measure used within the Republic of Ireland which has effectively created a landlord tenant system in that country from scratch since provisions were introduced within the last decade.

4.1.4 Reforming Stamp Duty Land Tax to end the discrimination against longer tenancies.

This is likely to be at least fiscally neutral for the Government as very few longer tenancies are being offered in the marketplace currently.

- 4.2 Alongside the taxation changes to encourage longer FBTs there is a further change which the TFA would advocate both to discourage inflationary pressures on land prices whilst, at the same time, providing greater scope for the provision of much needed fixed equipment on tenanted holdings. This is a change to the operation of Capital Gains Tax rollover relief.
- 4.3 Though not directly impacting upon the interests of TFA members, the TFA has been concerned about the inflationary impact on land prices caused by the extent to which Capital Gains Tax rollover relief is obtained following the investment of a capital gain into agricultural land. Such investments are popular because they are considered safe and provide taxpayers with access to further tax efficient ways to manage their wealth including in relation to inheritance tax.
- 4.4 However, it is a regret that landlords are unable to obtain rollover relief in respect of capital gains invested into fixed equipment on let holdings which would have a beneficial impact on farm productivity, profitability and resilience. The TFA believes that there is merit in considering a rebalancing such that items of fixed equipment on tenanted holdings are added to the list of assets that can be used for capital gains tax rollover relief and that this is paid for by abolishing rollover relief on land purchases (except where land has been lost through compulsory purchase). This rebalancing would ensure that this measure was fiscally neutral.
- 4.5 As can be seen, there is much more to be done to ensure the objectives of Government policy for the let sector of agriculture can

be achieved over and above changes to the legislative environment. Successive Governments have failed to address the fiscal environment within which decisions over land ownership and occupation take place in anything approaching a strategic way. The TFA would urge the Select Committee, to press the Treasury to come forward with a commitment to fully review how it might use its taxation levers to achieve the outcomes we all desire.

5. Tenant Farming and the Agricultural Transition Plan in England

- 5.1 In moving from a policy which relies predominantly on a direct payment system (The Basic Payment Scheme) coupled with a smaller agri-environment package to a new framework where agri-environment schemes will now play the dominant role, the TFA's principal concerns are to ensure that tenant farmers are not disenfranchised from taking part in the schemes due to the terms of their tenancies and that they do not become dislocated with their landlords resuming land to participate in schemes themselves. The latter will be particularly an issue as landlords position themselves to take advantage, not just of public schemes, but schemes in the private sector for carbon, biodiversity net gain and other ecosystem services.
- 5.2 In terms of farm tenant access to the new suite of schemes, it would assist greatly if it was not a requirement for tenants to have their landlords' consent unless their tenancy agreements require otherwise. However, where consent is required and landlords refuse on an unreasonable basis, whilst the Agriculture Act 2020 sets out a potential solution for tenants occupying under AHA agreements, there is no solution for tenants on FBT agreements.
- 5.3 Concern is also increasing that landlords with agricultural tenants may wish to resume land to enter it into the higher components of ELM - Local Nature Recovery (LNR) and Landscape Recovery (LR). Whilst this can be achieved by agreement, the TFA wants to avoid situations where tenants are forced to give up land or to leave their holdings so that their landlords can use the land to enter new schemes. We are already seeing situations where landlords are using the threat of taking land back for tree planting as leverage to require tenants to pay higher levels of rent for their continued occupation of land. In its recent publication on farm rents, DEFRA has also reported that there was a 3% reduction in the area of land let under FBTs between 2019 and 2020 - the first reported reduction in land let under FBTs since their introduction in 1995.

Whilst this is only data for one year, it should be taken as a wake-up call about potential contraction in the sector as landlords resume land to get themselves into pole position to take advantage of new schemes in both the public and private sector.

- 5.4 It is easy to see how landlords, incentivised by the availability of grant aid through ELM coupled with emerging schemes in the private sector, will be tempted to take land out of the tenanted sector so that they can be rewarded via the new schemes. This would not sit well with wider Government objectives for the support of the continued development of the landlord tenant system in agriculture and the promotion of longer-term agreements. To avoid this, the TFA argues that landlords should not have access to the Sustainable Farming Incentive (SFI) at all and should only have access to LNR or LR where they have the consent of either an existing tenant or a tenant who had been in occupation at any time in the 24 months prior to the application for the grant being sought. Land let on a short-term basis for high-value crops, which usually require rotation, or where the tenant was in breach of their obligations under the terms of the lease, should be excluded from this provision. This would mirror the same procedure already successfully applying within the Class Q Permitted Development Regulations which allows for the conversion of farm buildings into residential use.
- 5.5 Giving farm tenants greater rights in this respect should encourage landlords to be more willing to discuss LNR or LR schemes with their tenants rather than seeking to impose them. Without such rights being afforded to tenants, we fear that many will face eviction with consequential damage to their farm businesses, homes and family life and to the wider tenanted sector of agriculture.
- 5.6 At the same time, tenants on AHA tenancies who face the loss of land following landlords using notices to quit for development or environmental uses, should be entitled to receive compensation equivalent to the full extent of their loss rather than the current system which applies an arbitrary figure calculated as a multiple of the rent passing for land lost. The current system was put in place at a time when it would have been reasonable to assume that a tenant could acquire additional land in the marketplace to replace land that was removed, which is very different to the situation which applies today.

6. The Definition of Agriculture and the Rules of Good Husbandry

- 6.1 Although the production of food and issues around food security remain of high importance, with the growing interest in the use of agricultural land for wider outcomes including landscape, biodiversity, ecosystem services, carbon storage and carbon sequestration it would seem to be an opportune time for the legislative definition of agriculture, as it applies to agricultural tenancies, to be reviewed and updated to allow these wider outputs to be part of the use of land for agricultural purposes in the context of land sharing with activities related to food production.
- 6.2 Equally, there is a need to review the provisions relating to the rules of good husbandry which were written in 1947 and continue to apply to the way in which farm tenancies operate. These rules require tenants to maintain “a reasonable standard of efficient production” and make no reference to the ability for agricultural land to be used for wider environmental gain or public benefit.
- 6.3 Reform of these two key bits of history would certainly ease the extent to which farm tenants, restricted by their tenancy agreements to agricultural use only and subject to the rules of good husbandry, would be able to access new Government and private sector schemes targeting these wider benefits sitting alongside the production of high quality and much-needed food and fibre.

7. Tenancy Working Group

- 7.1 Although still very much in its early stages, the TFA has warmly welcomed the establishment by DEFRA Secretary of State George Eustice of the Tenancy Working Group with Baroness Kate Rock as its chair. The Secretary of State has given the Working Group a free hand to come forward with a set of recommendations around the design of new schemes being introduced through Environmental Land Management and the wider Agricultural Transition Plan, broader regulatory and legislative reform and matters for consideration by other Government departments which could include matters relating to the levelling up agenda and taxation.

- 7.1 The TFA hopes that the Working Group will be able to pick up many of the issues highlighted in this evidence. The working group has been given a period of 6 to 9 months to complete its work after which it will be up to DEFRA to implement whatever recommendations it provides. In that respect, it would be helpful if the Select Committee highlighted the need for DEFRA to do so.

8. Defra Knowledge

- 8.1 The TFA is concerned that there is an unconscious bias within DEFRA and wider Government towards assuming that all farmers are owner-occupiers and able to make their own decisions about how to respond to Government policy, schemes and initiatives. However, for those farming as tenants, decisions have to be made within a more complex set of circumstances. How the tenant farmer responds to policy will have much to do with the impact of tenancy legislation, the framework of the tenancy agreement in place and the ongoing relationship with the owner of the land being farmed. The TFA would argue that DEFRA, in particular, lacks the necessary breadth and depth of knowledge, not just of agricultural tenancies, but also of the plethora of arrangements used within the business of agriculture including other leases, common land, contract farming, grazing agreements, licences, partnerships, share farming and other joint ventures. There are many examples where, in the development of new schemes and initiatives, land occupation issues are best thought about as a secondary issue and was put into the “too difficult pile” and do not receive adequate attention. The TFA believes that it is time for DEFRA to establish a land-use directorate which will have cross departmental responsibility to look at ensuring that issues of land occupation are taken in consideration in all new policy development.

9. Summary and Conclusions

- 9.1 In light of the above, the following summarises the actions that the Government should be encouraged to take to ensure the resilience of tenant farming and its ability to meet the land-use objectives for this important sector.
- The Treasury should formally consider changes to the taxation framework within which land occupation agreements are made to encourage longer agricultural tenancies.
 - New financial assistance schemes introduced under the DEFRA Agricultural Transition Plan should not require farm tenants to

obtain landlords consent before taking part in a scheme. Tenants should be left to self-assess whether they are able to enter schemes under the terms of their tenancy agreements.

- Landowners should not be able to participate in new Government financial assistance schemes on land which has been resumed from a tenant farmer at any time in the previous 24 months unless the landowner has obtained the written consent of the previous tenant. Specific exclusions should apply as set out.
- If there is evidence to indicate a continuing problem for FBT tenants in accessing new Government financial assistance schemes, to extend the formal dispute resolution facilities established by Schedule 3 of the Agriculture Act 2020 to FBT agreements.
- Amending and modernising the definition of agriculture within section 96 (1) of the Agricultural Holdings Act 1986.
- To review and modernise the rules of good husbandry under section 11 of the Agriculture Act 1947.
- Implementing the recommendations of the Tenancy Working Group.
- Establishing a DEFRA directorate with specific and dedicated responsibility for overseeing the work of DEFRA within the context of land occupation issues including agricultural tenancies, other leases, common land, contract farming, grazing agreements, licences, partnerships, share farming and other joint ventures.

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