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My Lords,

Lords Short Debate on the 21st January 2021. Baroness Rock: to ask Her Majesty's Government, further to their discussions with the Tenancy Reform Industry Group, what plans they have to reform (1) legislation, and (2) taxation, related to rural landlords and the letting of land.

I am grateful to noble Lords for their contributions on the 21st of January 2021 to this important debate. I said that I would write to follow up on several matters raised that I was not able to address fully in my closing speech due to time constraints.

Taxation issues

Baroness Rock raised the issue of tax reforms that have been proposed by the Tenant Farmers Association (TFA) and asked whether I will discuss these matters with Treasury colleagues. Taxation is a matter for the Chancellor. In preparation for this debate I have discussed these proposals with Treasury officials, and they have also discussed them directly with the TFA in recent years. On the specific concern that Baroness Rock raised regarding Stamp Duty Land Tax (SDLT) posing a deterrent to longer leases, the Treasury has clarified that it is the value of the lease, and not the length of the lease, which drives the requirements to pay SDLT. If the value of a lease of any length in any sector (commercial or agricultural) exceeds the £150,000 thresholds for the lease premium or the net present value of the rent, that is when the SDLT must be paid. This threshold is the same across all non-residential leases to ensure consistency and fairness across all business sectors. The Government is committed to a fair and sustainable tax system and keeps all taxes under review as a matter of course.

Extension of succession rights un the Agricultural Holdings Act 1986 (the 1986 Act) to nieces, nephews and grandchildren

Lord Bourne of Aberystwyth and Baroness Scott of Needham Market asked why the Government did not take forward proposals to extend succession rights under the 1986 Act to include a wider class of close relatives such as nieces, nephews and grandchildren and whether we will revisit this. The Government did consult on this issue in 2019 and found that responses were very divided. There were significant concerns that the proposal would have an unfair impact on landlord property rights by extending the tenant's rights over the land for another generation. Some landlords have been waiting many years to take the land back in hand or re-let it on the open market. I do understand the concerns raised that if tenants do not have a successor then this can be a significant barrier to retirement. However, there are examples of landlords and tenants finding negotiated solutions to aid retirement or facilitate an agreed succession to wider family members where they are the best candidate to take on the land. In the Government response to the consultation we decided not to take forward this legislative reform and instead work with Tenancy Reform Industry Group (TRIG) to explore how guidance and best practice can encourage negotiated solutions to retirement and succession to aid business continuity.

Percentage of land under the 1986 Act

Lord Bourne also asked what area of land and number of farms is subject to the 1986 Act. I did confirm in my closing speech that there are approximately 19,400 holdings subject to the 1986 Act and approximately 17,600 holdings with the more modern Farm Business Tenancy (FBT) agreements governed by the Agricultural Tenancies Act 1995. I would like to expand upon that to add that in England the area of land under 1986 Act agreements is now approximately 1.3 million hectares of land and the area of land under FBT agreements is now approximately 1.27 million hectares of land.

Longer term tenancies

During the debate Baroness Rock, Lord Bourne and Lord Cameron raised concerns about FBTs being too short and asked what the government will do to encourage longer term agreements. I would like to take the opportunity to provide a more detailed response on this issue here. The length of tenure a landowner is willing to offer is influenced by a wide range of factors including the size, quality, location of the land, and their personal motivations for owning land. It is also important to note that length of tenancy tends to increase with the size of the land so that, in 2019, lettings of less than 25 acres were for an average of 2.3 years but those over 200 acres for 7.5 years. Lettings of equipped farms with a house and buildings are also typically let for longer terms of between 8 to 12 years¹.

I do recognise the many benefits that long-term tenancies bring to enable investment in soil health, productivity and environmental improvements. Defra will continue to work with the TRIG to look at the role that industry-led guidance can play in setting out the options and benefits for landlords and tenants of longer-term agreements, and ways to encourage a change in the culture and practice of defaulting to a standard short term FBT agreement.

The Government will also monitor the impact that the transition towards new agricultural framework has on the tenanted sector including on length of tenure and how landlords and tenants can work in partnership. Moving to new framework may encourage a different

¹ Data from the 2019 CAAV Agricultural Land Occupation Survey

approach to the more traditional landlord and tenant arrangements leading to the development of more partnership and collaborative arrangements in future.

The Government wants to work with industry and key groups such as TRIG to encourage this shift towards greater collaboration, partnership working and longer-term tenancies whilst retaining flexibility for the parties to agree suitable terms and new arrangements to suit a range of different business needs. It is also of crucial importance that flexibility is retained so that landowners remain confident in letting their land, which will help to increase access and opportunities in future.

Access to future farming schemes

During the debate Baroness Rock, Lord Redesdale, Lord Berkeley of Knighton, Lord Carrington, the Earl of Caithness, Lord Greaves, Lord Curry of Kirkharle, Baroness McIntosh of Pickering, the Earl of Devon, Baroness Scott and Baroness Jones of Whitchurch raised concerns about how the Government's future farming schemes will work in relation to agricultural tenancies particularly in relation to long term environmental outcomes under Environmental Land Management and tree planting schemes. I provided a response to these concerns in my closing speech but due to a lack of time I was not able to address some of the specific questions raised and responses to these are now set out below.

The Earl of Devon asked for clarity on how Environmental Land Management payments might work within the current agricultural tenancies structure, what payments will be the landlord's and what will be the tenant's, and whether that will vary with length of tenure. Baroness McIntosh also asked for assurance that the beneficiaries of the new schemes will be the tenant who actively farms taking the entrepreneurial decisions. We envisage that the payments made for new schemes including Environmental Land Management will be made to the person delivering the outcomes of the scheme. Tenant and landlord arrangements vary between agreements and our aim is to design schemes to be flexible to work with these varied arrangements. I can also assure you that officials developing our new schemes are engaging with a wide range of different types of farmers and land managers to inform the development, including tenant farmers and landlords, to ensure schemes are designed in a way that works for all to maximise the delivery of environmental benefits.

Lord Greaves asked whether the pilots and the national pilot will consider small tenanted farms in Upland areas. We will involve a broad range of farmers, land managers and geographies in the Pilot, a representative mix of farm-types (e.g. upland/lowland/arable/livestock) and ownership (owned/tenanted/commoners) from all regions of England, and others such as woodland managers. It is very important that this includes those farmers and land managers with different forms of tenure arrangement as we know there are complex issues to understand and resolve.

Dispute regulations for a variation in terms

Baroness Rock and Baroness Jones raised concerns regarding parity between tenants under the 1986 Act legislation and the 1995 Act legislation in relation to challenging a

landlord's refusal to consent to a variation of terms or lift a restriction in order for them to enter a future financial assistance scheme. The issue of outdated restrictions in tenancy agreements and the proposal for a new dispute resolution process was raised by TRIG only in relation to agreements falling under the 1986 Act legislation (and not for those under the 1995 Act) because those agreements were often negotiated over 30 to 40 years ago in a very different policy and commercial environment and have often not been reviewed or updated for many years.

Agreements under the 1995 Act (FBTs) are modern commercial agreements, negotiated with freedom of contract, and within the context of environmental schemes being available. They are reviewed more regularly, giving tenants the opportunity to renegotiate terms if they deem it necessary, for example to enable diversifications or to enter future financial assistance schemes. When we consulted on this issue in 2019 most respondents commented that agreements under the 1995 Act do not need updating in the same way as many 1986 Agreements might. It is also the case that as FBTs have been agreed more recently as a commercial arrangement both parties have a vested interest to negotiate and agree any necessary changes to help the tenancy business succeed as we transition to new financial assistance schemes. This may not be the same in the Agricultural Holdings Act sector where in some cases those agreements have been handed down the generations and the current parties to the tenancy agreement may now have different objectives making negotiation more difficult and the need to resolve any issues through a fair dispute resolution process more necessary. The reforms in the Agriculture Act 2020 to enable a new dispute resolution process focus specifically on tenants under the 1986 Act.

Reforming rent arbitration

Baroness Rock and Baroness Scott raised concerns about the need for a faster system of dispute resolution particularly in relation to rent review disputes. The reforms we have made through the Agriculture Act 2020 to widen the list of organisations able to provide arbitration appointments we hope will go some way to improve this. Increased competition and more choice for tenants and landlords in the arbitration appointments service should drive improvements in the efficiency and quality of the service provided.

The reforms in the Agriculture Act 2020 have also enabled the option of third party expert determination as an alternative to arbitration for rent reviews to become operational for tenants and landlords and this can be a quicker and more cost effective way to resolve rent disputes. The government will be monitoring the impact of these reforms over the coming months and we will engage with TRIG on whether any further reforms to dispute resolution are necessary.

Consolidation

Baroness Bennett of Manor Castle raised concerns about the consolidation of land ownership and the impact of the increasing size of farms on the environment and rural communities. Our agriculture sector benefits from a wide diversity of sizes, structures and

farm types. It is often the behaviour, skill, and attitude of individual farmers that make the most difference to productivity and environmental performance, rather than the particular business size or model they choose to adopt. There will be a place in UK agriculture for all sustainable production systems that meet our high environmental and welfare standards. As we transition towards new policies based on public money for public goods, rather than on the area of land farmed as has been the case under the Common Agricultural Policy, the focus on the importance of environmental performance alongside food production will be improved.

Conservation covenants

The Earl of Devon asked how conservation covenants will work within the existing agricultural tenancies structure. Conservation covenants agreed by a tenant will apply to them in the same way as they do to freeholders, except that a conservation covenant cannot last beyond the period of the tenancy. A leaseholder must own a lease granted for more than seven years in order to be eligible to enter into a conservation covenant but there is no limit on the time that must be remaining on the lease. It is for the parties to be satisfied that the land can be managed for the duration of the tenancy to deliver the lasting conservation outcomes. I am copying this letter to all noble Lords who took part in this debate and I shall be placing a copy of this letter in the Library of the House.

Yours ever,
John