

Changes to AHA tenancy succession rules



Introduction

Changes to the Agricultural Holdings Act 1986 (AHA 1986) succession rules will come into effect in England and Wales on 1 September. These are the last changes to the AHA 1986 to be made due to the Agriculture Act 2020. They apply to all succession applications where the date of death or giving of the retirement notice is on or after 1 September 2024. This briefing note outlines the new rules.

Eligibility: Commercial unit test abolished

The commercial unit test has been abolished. It prevented succession by those who occupied an additional unit of agricultural land and, therefore, constrained the size of tenanted businesses and the ability of tenants to benefit from the economies of scale. Moving forward, successors must satisfy a two-stage eligibility test comprising the:

- close relationship test
- principal source of livelihood test.

Suitability: New suitability test introduced

A new suitability test that significantly alters the criteria against which the Agricultural Land Tribunal is directed to assess applicants is being introduced. In addition to agricultural skills and knowledge, it considers business competency and also reflects that environmental management is now important.

In determining the suitability of an applicant for succession, the old test directed the Tribunal to have regard to all relevant matters, including the following:

- a. applicant's extent of training and/or practical experience of agriculture
- b. applicant's age, physical health and financial standing
- c. views the landlord has on the applicant's suitability.

The new test directs the Tribunal to determine the applicant's suitability by considering the following:

- a. the person's likely capability and capacity to farm the holding commercially, with or without other land, taking into account the need for high standards of efficient production and care for the environment in relation to managing that holding
- b. the person's experience, training and skills in agriculture and business management
- c. the person's financial standing and their character
- d. the character, situation and condition of the holding
- e. the terms of the tenancy.

The Tribunal must be satisfied that "if the applicant had applied in an open competition for a tenancy of this holding, that is assumed to be available under the 1986 Act, a prudent and willing landlord could reasonably be expected to regard the applicant as among the candidates to whom they would be willing to grant the tenancy".

The other significant change to the test is that age and physical health are removed from the consideration; instead, the Tribunal must consider the applicant's 'likely capability and capacity to farm the holding commercially'. The new regulations direct the Tribunal to disregard the applicant's age and any rental offers in deliberations.

Conclusion

England and Wales's revised eligibility and suitability tests reflect the changing emphasis and demands upon farming businesses. The removal of the commercial unit occupation test weakens the landlord's position regarding recovering vacant possession following the death of their tenant. However, the new suitability test is mutually beneficial as it will help ensure the tenant has the broad range of skills and experience necessary to run a successful farming business, which is ultimately in the best interest of both parties. A degree of subjectivity and associated uncertainty remains because of the hypothetical letting test. Early discussions and planning for succession is essential for all farming businesses, but even more so for tenanted businesses.

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