RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

24th Meeting, 2010 (Session 3)

Wednesday 10 November 2010

The Committee will meet at 10.00 am in Committee Room 3.

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Subordinate legislation:** The Committee will take evidence on the draft Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 and Executive Note (SG/2010/182) from—

   - Andrew Howard, Director, Scottish Rural Property Business Association;
   - Angus McCall, Chairman, Scottish Tenant Farmers Association;
   - Professor Jeff Maxwell, Joint Chairman, and David Sturrock, Legal Advisor, Tenant Farming Forum.

3. **Reservoirs (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

4. **Wildlife and Natural Environment (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

Peter McGrath
Clerk to the Rural Affairs and Environment Committee
Room T3.40
The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

**Agenda Item 2**

The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 & Executive Note SG/2010/182

Submissions Pack

Briefing Paper (Private Paper)

**Agenda Item 3**

Approach Paper (Private Paper)

**Agenda Item 4**

Draft Report (Private Paper)

**For Information**

Recent Developments
Proposed draft Order laid before the Scottish Parliament under section 26(2)(a)(i) of the Public Services Reform (Scotland) Act 2010 for the purposes of consultation required by section 26(1) of that Act.

**DRAFT SCOTTISH STATUTORY INSTRUMENTS**

2011 No.

REGULATORY REFORM

LANDLORD AND TENANT

The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011

Made - - - 2011
Coming into force - - 2011

The Scottish Ministers make the following Order in exercise of the powers conferred by section 17(1) of the Public Services Reform (Scotland) Act 2010 ("the Act") and all other powers enabling them to do so.

The Scottish Ministers consider that the relevant conditions in section 18(2) of the Act are satisfied.

The Scottish Ministers have consulted in accordance with section 26 of the Act.

The Scottish Ministers have laid a draft of this Order and an explanatory document before the Scottish Parliament in accordance with section 25(2)(b) of the Act.

In accordance with section 25(2)(c) of the Act, the draft of this Order has been approved by resolution of the Scottish Parliament.

**PART 1**

**INTRODUCTORY PROVISIONS**

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 and comes into force on the day after the day on which it is made.

(2) In this Order—
“the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991(a); and
“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003(b).

PART 2

AMENDMENT OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991

2. The 1991 Act is amended in accordance with articles 3 to 5.

Substitution of definition of “two-man unit” in Schedule 2

3. In Schedule 2 (grounds for consent to operation of notices to quit a tenancy where section 25(3) applies)—
   (a) in Part I (grounds for consent to operation of notices to quit a tenancy let before 1 January 1984) and Part II (grounds for consent to operation of notice to quit a tenancy let on or after 1 January 1984) in Cases 2, 3, 6 and 7, for “two-man unit” substitute “viable unit”;
   (b) in Part III (supplementary)—
      (i) in paragraph 1, for the definition of “two-man unit” substitute—
         “‘viable unit’ means an agricultural unit which in the opinion of the Land Court is capable of providing an individual occupying it with full-time employment and the means to pay—
         (a) the rent payable in respect of the unit; and
         (b) for adequate maintenance of the unit.”; and
      (ii) in paragraph 2, for “two-man unit” substitute “viable unit”.

Annulment of post lease agreements under section 5

4. For section 5(4B) (fixed equipment and insurance premiums)(c) substitute—
   “(4B) This subsection is complied with if—
   (a) the rent is reviewed in accordance with the terms of the tenancy or is determined by the Land Court in accordance with section 13 of this Act;
   (b) subject to subsection (4BA), no later than 6 months before the date from which any variation of rent will take effect, the tenant gave written notice to the landlord stating that the agreement is to be nullified on that date; and
   (c) on that date—
      (i) the buildings and other fixed equipment are in a reasonable state of repair; or
      (ii) if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then.

(4BA) Where a rent review can be initiated less than 6 months before any variation of rent would take effect, (4B)(b) is complied with if notice is given when it is initiated, or as soon as reasonably practicable thereafter.”.

(a) 1991 c.55.
(b) 2003 asp 11 ("the 2003 Act").
(c) Subsection (4B) was inserted by section 60 of the 2003 Act.
Amendment of section 13

5. In section 13(1) (variation of rent)(a), after “Act”, insert, “following notice in writing served on the other party,“.

PART 3

AMENDMENT OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

6. The 2003 Act is amended in accordance with articles 7 to 9.

Reduction in the minimum term of a limited duration tenancy from 15 years to 10 years

7.—(1) In section 5 (limited duration tenancies)—
(a) in subsection (1)(a), for “fifteen” substitute “10”; and
(b) in subsections (3) and (4), for “15” (wherever it appears) substitute “10”.
(2) In section 8(6) (continuation and termination of limited duration tenancies), for “fifteen” substitute “10”.

Conversion of a short limited duration to a limited duration tenancy by agreement

8. For section 5(2) (limited duration tenancies), substitute—
“(2) Where—
(a) at any time before the expiry of the term of a short limited duration tenancy, the landlord and tenant agree in writing to convert the tenancy to a limited duration tenancy; or
(b) the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of 5 years (including such a term fixed by virtue of section 4(2) or (3)) with the consent of the landlord,
the tenancy has effect as if it were for a term of 10 years commencing at the start of the term of the short limited duration tenancy, and the tenancy is, by virtue of this subsection, a limited duration tenancy.”.

Amendment to section 16 (fixed equipment)

9. For section 16(1) to (5) (fixed equipment etc.), substitute—
“(1) There is incorporated in every lease constituting a short limited duration tenancy or a limited duration tenancy an undertaking by the landlord that the landlord will—
(a) provide such fixed equipment as will enable an occupier reasonably skilled in husbandry to maintain efficient production as respects the purpose of the lease;
(b) at the commencement of the tenancy or as soon as reasonably practicable thereafter, put the fixed equipment so provided onto the land and into a thorough state of repair; and
(c) during the tenancy, effect such replacement or renewal of the fixed equipment as may be rendered necessary by natural decay or by fair wear and tear.
(2) Where a lease (other than a lease of bare land) constituting a short limited duration tenancy or a limited duration tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—

(a) Section 13(1) was amended by the 2003 Act, schedule 1, paragraph 15(a)(i) and (ii).
(a) the fixed equipment which the landlord is to provide in terms of subsection (1)(a); and

(b) the condition of the fixed equipment,

and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78 of this Act) the schedule of fixed equipment is deemed to form part of the lease.

(3) At any time after the commencement of the tenancy, the landlord and tenant may by agreement in writing amend the schedule of fixed equipment to vary the fixed equipment specified or its condition.

(4) There is also incorporated in every such lease a provision that the liability of the tenant in relation to the maintenance of fixed equipment extends only to a liability to maintain the fixed equipment on the land in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—

(a) immediately after it was put into a thorough state of repair as mentioned in subsection (1)(b); or

(b) in the case of equipment provided, improved, replaced, or renewed during the tenancy, immediately after it was so provided, improved, replaced or renewed.

(5) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.”.

PART 4
SAVINGS PROVISIONS

Savings

10.—(1) Articles 3, 4, 7, 8 and 9 are subject to paragraphs (2), (3), (4), (5) and (6) below, respectively.

(2) In respect of a notice to quit given to a tenant before this Order comes into force, section 25(3) and Schedule 2 of the 1991 Act shall continue to have effect as if the amendments made by article 3 had not been made.

(3) Where in respect of a review of rent the landlord or the tenant has served a written notice on the other party intimating his or her intention to have the rent payable for the holding reviewed before this Order comes into force, section 5(4B) of the 1991 Act shall continue to have effect as if the substitution made by article 4 had not been made.

(4) In respect of a limited duration tenancy commenced before this Order comes into force, sections 5 and 8 of the 2003 Act shall continue to have effect as if the amendment made by article 7 had not been made.

(5) In respect of a short limited duration tenancy that has converted to a limited duration tenancy before this Order comes into force, section 5(2) of the 2003 Act shall continue to have effect as if the substitution made by article 8 had not been made.

(6) In respect of a short limited duration tenancy or a limited duration tenancy commenced before this Order comes into force, section 16 of the 2003 Act shall continue to have effect as if the substitution made by article 9 had not been made.

(7) Terms used in paragraphs (4) to (6) of this article which are also used in the 2003 Act have the same meaning as in that Act.

A member of the Scottish Executive

St Andrew’s House,
Edinburgh

2011
EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the Agricultural Holdings (Scotland) Act 1991 ("1991 Act") and the Agricultural Holdings (Scotland) Act 2003 ("2003 Act").

Amendment of the 1991 Act

Two-man unit

Part III (supplementary) of Schedule 2 to the 1991 Act defines "two-man unit", a term which appears in Parts I and II of that Schedule which set out the grounds for giving consent to the operation of notices to quit a tenancy where section 25(3) applies.

Article 3(b)(i) replaces the definition of "two man unit" with "viable unit"; viability is predicated upon the capability of the agricultural unit to provide an individual occupying it with full time employment, the means to pay the rent and for adequate maintenance of the unit. Article 3(a) and (b)(ii) make changes consequent to that substitution.

Annulment of post lease agreements

Section 5(4A) to (4C) of the 1991 Act applies to agreements entered into under section 5(3) of the 1991 Act (which was repealed by the Agricultural Holdings Act 2003 ("2003 Act")) whereby the landlord and tenant agreed to alter their respective responsibilities in relation to fixed equipment ("post lease agreements"). Section 5(4A) and (4C) set out the general principle that such agreements continue to have effect but can be nullified if subsection (4B) is complied with.

Article 4 substitutes subsection (4B), to provide that a tenant who wishes to have a post lease agreement nullified must notify the landlord of that fact in writing no later than 6 months before the date from which any variation of rent will take effect. On the date the variation takes effect it remains a requirement that the buildings and other fixed equipment are in a reasonable state of repair; or if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then. Subsection (4BA) provides a shorter period of notice in cases where a rent review can be initiated at less than 6 months’ notice.

Minor amendment to section 13

Section 13(1) of the 1991 Act requires that a party wishing to have the rent reviewed may have the question of what rent should be payable for the holding with effect from the review date referred to the Land Court. Article 5 amends section 13 to reinstate the wording that was deleted by paragraph 15 of the Schedule to the 2003 Act, to clarify that intimation of intention to make such a referral to the Land Court must be made by written notice.

Amendment of the 2003 Act

Reduction in the minimum term of a limited duration tenancy from 15 years to 10 years

Section 5(1) of the 2003 Act defines a Limited Duration Tenancy ("LDT") as an agricultural tenancy (other than a 1991 Act tenancy) of at least 15 years duration. Article 7(1)(a) reduces the minimum term of an LDT from 15 years to 10 years. Article 7(1)(b) and (2) make amendments consequent to this provision.

Conversion of a short limited duration to a limited duration tenancy by agreement

Section 5(2) of the 2003 Act provides for conversion of a Short Limited Duration Tenancy ("SLDT") to an LDT where the tenant continues to occupy the land after expiry of the term of the let with the consent of the landlord. Article 8 substitutes a new 5(2) which continues to provide for the possibility of converting an SLDT to an LDT where the tenant remains in occupation with the consent of the landlord at the expiry of the term of the SLDT. In addition section 5(2) now gives parties the option to convert an SLDT to an LDT, in writing, prior to the expiry of the SLDT. In both cases, the resultant LDT has effect as if it had commenced at the start of the SLDT.
Fixed equipment

Article 9 substitutes subsections (1) to (5) of section 16 of the 2003 Act. Its replacement provides for the landlord’s obligations regarding the provision of fixed equipment to be determined by reference to the purposes of the lease. It introduces a new duty on tenants and landlords to agree in writing a schedule of fixed equipment specifying the fixed equipment the landlord is to provide, and its condition. The cost of preparing such a specification is to be borne by the parties equally, unless otherwise agreed. New section 16(3) makes provision for the parties to amend the schedule of fixed equipment. Section 16(4) describes the extent of the tenant’s duties as respects the maintenance of the fixed equipment provided.

Savings

Article 10 saves certain provisions of the 1991 Act and 2003 Act so that they continue to apply in the circumstances specified.
EXECUTIVE NOTE

THE PUBLIC SERVICES REFORM (AGRICULTURAL HOLDINGS) (SCOTLAND) ORDER 2011

Introduction

1. The above instrument ("the Order") is to be made by Scottish Ministers in exercise of the powers conferred by section 17 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act"). The instrument is subject to a super-affirmative procedure set out in sections 25 to 27 of the 2010 Act. Scottish Ministers are required to lay before the Scottish Parliament a copy of the proposed draft Order and the proposed Explanatory Document which accompanies it, and to consult on these for a period of 60 days. This Executive Note relates to the first stage of the Parliamentary process. Scottish Ministers must have regard to any representations made during the 60-day consultation period. Thereafter, the Order and the Explanatory Document are to be finalised for laying in the Scottish Parliament, where the Order will then be subject to affirmative resolution procedure.

Policy Objectives


3. In June 2007, the TFF was asked by the Cabinet Secretary for Rural Affairs to consider what aspects of the legislation were restricting the availability of agricultural land coming onto the market and provide recommendations for change. In response, the TFF recommended a package of measures to the Scottish Ministers including reducing the minimum term of limited duration tenancies to 10 years and allowing the conversion of short limited duration tenancies to limited duration tenancies at any time. Changes were also proposed to the law in relation to fixed equipment and post lease agreements.

4. The Cabinet Secretary considered the package and agreed to act on the changes suggested by revising the existing legislation. In order to make the changes recommended by the TFF and agreed by the Cabinet Secretary, various sections of the Agricultural Holdings (Scotland) Acts 1991 and 2003 require to be amended.

5. The Order makes amendments to the Agricultural Holdings (Scotland) Acts of 1991 ("the 1991 Act") and 2003 ("the 2003 Act"). There are 6 proposed amendments, namely:

Amendments to the 2003 Act

- amendment to section 5 to allow for conversion of a Short Limited Duration Tenancy to a Limited Duration Tenancy;
- amendment to section 5 to reduce the minimum term of a Limited Duration Tenancy from 15 years to 10 years;
- amendment to section 16 on fixed equipment.
Amendments to the 1991 Act

- changes to the requirements for the annulment of “post lease agreements” under section 5(4B);
- minor amendment to section 13, for the purposes of clarification;
- replacement of the definition of “two man unit” in Part II of Schedule.

6. The overarching policy objective is to remove or reduce burdens which are currently borne by landlords and tenants of agricultural tenancies and which result directly or indirectly from the aforementioned Acts. The main changes to the legislation focus around the two types of agricultural tenancies introduced by the 2003 Act and are aimed at removing restrictions on the availability of the letting of land with a view to encouraging the release of more agricultural land onto the agricultural lettings market and encouraging new entrants into the farming sector. The other amendments seek to remove ambiguity from the legislation with a view to reducing the potential for dispute.

Consultation

7. These proposed changes to the length of tenancy arrangements and other related provisions contained in the current agricultural tenancy legislation have already been subject of a wide ranging consultation by the TFF in July 2007 entitled “Helping New Entrants into Agriculture”. The TFF published the results of its consultation and its recommendations in a paper dated March 2008, "Assisting New Entrants into Scottish Farming - Recommendations to the Cabinet Secretary”.

8. The proposed draft Order and the accompanying Explanatory Document which were prepared following that industry-led consultation are now subject to a formal 60-day consultation period, in accordance with section 26 of the 2010 Act. The list of consultees is annexed.

Financial Effects

9. A Business Regulatory Impact Assessment has not been prepared for this instrument as no adverse impact on business, charities or voluntary bodies is foreseen.

Agricultural Holdings
Land Tenure Branch
Rural Communities Division
September 2010
ANNEX: LIST OF CONSULTEES

This consultation has been issued to a wide range of groups and individuals with an interest in this area. The organisations and groups of individuals consulted include:

- MSPs
- Scottish MEPs
- Scottish Estates Business Group (SEBG)
- Scottish Rural Property and Business Association (SRPBA)
- Scottish Tenant Farmers Association (STFA)
- National Farmers Union Scotland (NFUS)
- Royal Institute of Chartered Surveyors (RICS Scotland)
- Scottish Agricultural Arbiters and Valuers Association (SAAVA)
- Institute of Auctioneers and Appraisers in Scotland
- All Scottish Government Rural Payments and Inspectorate Directorate Local Area Offices
- COSLA and all Scottish Local Authorities
- Historic Scotland
- The Crown Estate
- Scottish Land Court
- Scottish Law Commission
- The Law Society of Scotland
- Scottish Natural Heritage (SNH)
- Scottish Wildlife Trust
- Scottish Gamekeepers Association
- Scottish Agricultural Colleges (SCA)
- MacAulay Institute
- Equality and Human Rights Commission
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

THE PUBLIC SERVICES REFORM (AGRICULTURAL HOLDINGS) (SCOTLAND) ORDER 2011 & EXECUTIVE NOTE SG/2010/182

SUBMISSIONS PACK

The following written submissions and news release have been received in advance of the Committee’s November 10 meeting:

WRITTEN SUBMISSION FROM SRPBA

Written evidence to the Rural Affairs and Environment Committee of The Scottish Parliament from the Scottish Rural Property and Business Association Limited (SRPBA) on the terms of the proposed The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011.

1. Introduction
The SRPBA is a membership organisation, uniquely representing the interests of landowners and land managers in Scotland. Our membership includes those who own or manage agricultural land held and farmed under a variety of tenures and contractual arrangements, as well as professional firms who advise rural land managers. We believe that the Association and its membership are key stakeholders and therefore the SRPBA welcomes the opportunity to comment on the content of this draft Order and to appear before the Committee on 10 November 2011.

2. General Comments
2.1. The SRPBA is a representative organisation on the Tenant Farming Forum (TFF), the purpose of which is fully explained in the Consultation Document relating to this proposed legislation. As such, the SRPBA has played a full part in the lengthy discussions within TFF which led to the recommendation being made by TFF to the Cabinet Secretary on an agreed package of measures which, it was hoped, would ease concerns within the industry stemming from the construction of certain key areas within the existing statutory framework for Agricultural Holdings.

2.2. The SRPBA remains firmly committed to that agreed package. However, it has concerns that the Scottish Government has, at a very late stage, decided to omit two issues from the agreed package and to introduce an Order which will not deal with the whole of the agreed package. Those two issues related to the inclusion of a grandchild in the category of near relatives for the purpose of succession to 1991 Act tenancies and the prohibition of landlord only/upward only rent reviews.

2.3. Notwithstanding this overriding concern, the SRPBA nevertheless believes that the provisions within the Order do improve the legislation in this area particularly by introducing greater flexibility within the statutory regime on the duration of tenancies and also in clarifying the requirements for provision of fixed equipment in tenancies of farm land (subject to detailed comments below).
3. Specific Comments

3.1. Subject to the general comment already made above that the SRPBA has concerns that the whole of the agreed package will not be introduced as one piece of legislation:

3.1.1. The SRPBA is in agreement with the objectives stated in the Consultation Document.

3.1.2. The SRPBA has no comments on sections 2 to 8 of the Order as we believe they reflect the recommendations of the TFF.

3.1.3. The SRPBA has some concern about the Drafting of section 9 of the Order (Fixed Equipment) as follows:-

3.1.3.1. The section, as drafted, does not reflect objective 5.14 on page 24 of the Consultation Document which stated “The key effect of this provision is that parties will have a schedule to refer to throughout the lease which states clearly what fixed equipment is or will be provided, and its condition at the start of the lease. It follows that there should be greater certainty regarding the extent of a landlord’s duty to provide fixed equipment and less scope for ill-grounded expectations of further fixed equipment on the part of the tenant.”

3.1.3.2. In particular, it considers that, as drafted, the section does not give “less scope for ill-grounded expectations of further fixed equipment on the part of the tenant.” The agreed intention was to make it clear that the provision of fixed equipment is not an ongoing obligation but the continued reference without elaboration to “the purpose of the lease” does not sit well with objective 5.14. The term “purpose of the lease” could be drafted more precisely. We restate that the SRPBA is fully supportive of the objective in 5.14 and that this is simply a technical drafting point. It is our understanding that TFF will be liaising with the Government on this point.

3.1.3.3. The SRPBA also has some concerns as to whether “bare land” (s 9(2)) should be defined. While those within TFF are fully familiar with the term (that is a lease of land with no house or buildings provided), the question is whether a definition would be preferable.

3.1.4. The SRPBA has no comments on Section 10 of the Order.

3.2. The SRPBA is concerned that the Scottish Government has indicated that it proposes to introduce a further Consultation in connection with proposals for primary legislation to deal with the other issues within the agreed package recommended by TFF to the Cabinet Secretary but omitted from the Order. The prospect of primary legislation being introduced further to amend Agricultural Holdings legislation will, in the view of SRPBA, dilute the intent behind the agreed package, namely to overcome some of the real barriers to the increased availability of land for letting. The prospect of primary legislation, with the recent history of retrospective legislation contained in The Agricultural Holdings (Scotland) Act 2003 and continuing concerns over the possible extension of the Right to Buy provisions, is likely to give real concern to landowners, who may prefer to await the outcome of the legislative process for primary legislation before deciding whether to make more land available for letting. Indeed, the mere prospect of the legislation being opened up and the debate which will inevitably ensue because of that will damage landowner confidence and could result in less land coming forward. In addition, a Bill following closely behind a Public Services Reform Order will result in piecemeal legislation in an already complex area of law. This means the law
will be even more difficult to comprehend by tenants and landlords alike and a complex legislative framework is not conducive to the good landlord and tenant relations which the TFF works so hard to promote.

3.3. The SRPBA has, on several occasions, asked the Scottish Government to consider the introduction of legislation to clarify the position following an English case MASON v BOSCAWEN. This gave rise to concerns whether a change in the rate of VAT would affect the three year cycle for agricultural rent reviews. This was clarified, in relation to England and Wales, through the Finance Act 2009 and it was agreed within TFF that it would be prudent for the Scottish Government to clarify the position in Scotland at the earliest possibility. It would, in the view of the SRPBA, have been helpful if this matter had been considered for legislative action and the SRPBA is disappointed that the opportunity has not been taken to deal with this contentious matter, particularly given that there will be another change in the rate of VAT within the next few months. This will be the third such change in recent years. It is believed that this could be dealt with relatively easily by adding an additional disregard (when calculating rental value) in section 13(3) of the Agricultural Holdings (Scotland) Act 1991 (as amended by s 63(b) of the Agricultural Holdings (Scotland) Act 2003.

Richard Blake WS
SRPBA Legal Adviser
3 November 2010

WRITTEN SUBMISSION FROM SCOTTISH TENANT FARMERS ASSOCIATION (STFA)

Summary of STFA Submission

- Increased flexibility in term lengths of SLDTs and LDTs should have a positive effect in encouraging landowners to let more land.
- STFA welcomes the clarification of the legislation governing fixed equipment in the 2003 Act.
- STFA welcomes the simplification of the procedure which allows tenants to annul post-lease agreements.
- STFA supports the modernisation of the Two Man Rule but its members question the need for a viability test.
- There is an urgent need to bring forward primary legislation to allow grandchildren to inherit agricultural tenancies.
- STFA believes that the current system of reviewing rents and resolving disputes is inhibiting the smooth operation of the tenanted sector.

Background

The Scottish Tenant Farmers Association (STFA) represents tenant farmers throughout Scotland. It’s stated aim is to support and enhance the tenanted sector and in that role
welcomes the opportunity to give evidence to the Rural Affairs and Environment Committee on the above order on amendments to agricultural holdings legislation.

The number of tenanted farms in Scotland has been declining steadily over the last seventy years; from 68% of farms tenanted in 1940 to 28% in 2008. Initially, much of this reduction in tenanted land has been through large estates being split up and farms sold to sitting tenants, but latterly, landowners have preferred to either take land back in hand, use contract farming arrangements or rent out on short term arrangements.

The Scottish Tenant Farmers Association (STFA) believes that, if the tenanted sector is to survive, action must be taken; firstly to encourage more land to be made available for rent to allow new entrants access to the industry and secondly to remove obstacles to succession to existing tenancies.

STFA, therefore welcomes the opportunity to address some of these issues through amendments to agricultural holdings legislation.

STFA is, however disappointed that two of the key elements of the package agreed by the Tenant Farming Forum are not to be included in the above order:

a) Changes to the definition of “near relative” which would allow a grandchild to inherit the lease of a tenanted farm from a grandparent and:

b) The move to outlaw “landlord only” and “upwards only” rent review clauses in Limited Duration Tenancies.

STFA would seek the agreement of Parliament to bring primary legislation forward to address these issues as soon as possible – see below.

Short Limited Duration Tenancies and Limited Duration Tenancies

STFA believes that the proposed changes to the term lengths of the new tenancies introduced in the AHA 2003 will introduce greater flexibility in letting land and should encourage landowners to let more land whilst giving tenant farmers greater confidence to forward plan and invest in their holdings.

SLDTs were initially conceived as short-term letting arrangements allowing land to be rented to the same person for more than a year without running the risk of security of tenure and without having to obtain secretary of State’s permission under S2 of the 1991 Act. SLDTs have, however, become the main vehicle for letting land and there have been major problems in continuing the letting agreement after the 5 year maximum term has expired. The proposed changes will now allow SLDTs to be used as “probationary” tenancies before being rolled into longer LDTs.

STFA believes that farming is a long-term occupation and tenants require a term length considerably longer that 10 years to develop a farming business, particularly if capital has to be borrowed. Landowners have consistently argued that 15 years minimum terms are too long, but, in order to encourage more land to be let, STFA are content to
reduce the minimum term of LDTs to 10 years. It is to be hoped that this will now encourage landowners to grant longer terms to suitable tenants.

Fixed Equipment

Section 16 of the 2003 Act has caused confusion and has been a factor in dissuading landlords from renting out land. STFA welcomes the proposal to clarify the intention of the act.

Annulment of Post Lease agreements

Post lease agreements allowing landlords to transfer their renewal and replacing obligations to their tenants were a common feature and were usually signed at the outset of the tenancy. This unfair burden of responsibility was recognised in the 2003 Act and Section 60 now allows tenants to annul their post lease agreements. Although welcome, Section 60 has been complex and confusing and difficult to implement in practice.

The proposed changes should simplify the procedure and make the tenant’s intention plain from the outset.

Two Man Rule

STFA supports the modernisation of the Two Man Rule but its members question the need for a viability test. With changing practices the size of a unit necessary to support two men has risen dramatically and there have been a number of occasions where a potential tenant has been in danger of being served a notice to quit even though his farm is a reasonable size. In this respect, the move from the “Two Man” unit to that of a “viable unit” is welcome.

However, it has to be pointed out to the Committee, that Cases 3 and 7, as specified in Parts I and 2 of Schedule 2 of the 1991 Act, will still allow a landlord to serve notice to quit on a tenant inheriting a tenancy if he is already in occupation of a “viable unit” which is separate from the holding. In effect this may, for example, deprive a young tenant from succeeding into the family farm if he is already farming on his own right. Conditions attached to the New Entrants scheme specify that new entrants must be operating a separate business to be considered for the scheme.

STFA’s would have preferred all reference to a “Two Man Unit” to be removed entirely from Schedule 2 thus entirely removing this obstruction to succession.

Succession

It is a great disappointment to STFA that for technical reasons, it is not possible to bring about the promised changes to the law which would allow a grandchild to inherit a family tenancy from his grandparent. The necessary alteration to the definition of a
“near relative” has the support of all stakeholders and it is deeply frustrating that this logical and commonsense change cannot be incorporated into this package of measures.

The issue was highlighted a few years ago when Simon Stephen (Cawdor Discretionary Trust vs Stephen) and Douglas Graham (Salveson vs Graham), were issued with notices to quit because they were not “near relatives” of their grandparents. After protracted and costly legal battles they both were able to retain their tenancies as extensively covered by the press in 2007 and 2008.

The Cabinet Secretary has expressed his willingness to bring forward primary legislation at the earliest opportunity to address this matter and STFA would urge this Committee to put this to the top of the agenda.

Rent Reviews

The TFF had agreed to introduce measures to prohibit “upward only” or “landlord only” initiated reviews, but this has also had to be omitted from this Public Services Reform Order. STFA would again ask that primary legislation be introduced to bring forward to the agreed change.

Obstacles to the success of the tenanted sector

STFA would draw the Committee’s attention to the current problem of rent reviews. It has become apparent that the current system is failing the tenanted sector in two respects; firstly the methodology of assessing rents has now become outmoded and is unnecessarily cumbersome and complicated. Secondly dispute resolution has become increasingly expensive and time consuming.

The TFF is in the process of developing some protocols and standards which it hopes will make dispute resolution easier and which will not require any legislative action. However, legislative change will be necessary to reform the way in which rents are calculated as laid down by S13 of the 1991 Act. STFA believes that the system of reviewing rents should be looked at as a matter of priority before more damage is done to the tenant farming community.

Conclusions

STFA fully supports the package of measures to amend agricultural holdings legislation as recommended by the TFF. STFA shares the belief of other members of TFF that the proposed amendments should help encourage landowners to make more land available for rent and it should address some of the anomalies inherent in any new legislation. STFA does, however, believe that there are still obstacles, such as the system of reviewing rents, which are inhibiting the smooth operation of the tenanted sector.
TENANT FARMING FORUM RESPONDS TO HOLDINGS
CONSULTATION – NEWS RELEASE

Issued on behalf of the Tenant Farming Forum

Scotland’s Tenant Farming Forum (TFF), which aims to promote a healthy tenanted farm sector in Scotland, has given its initial response to the publication of the Scottish Government consultation: “Proposals to Amend the Agricultural Holdings Act 1991 and 2003”.

The retiring chairman of the influential Forum, made up of organisations representing both landowners and tenants, is Professor Jeff Maxwell. Commenting on the consultation, he said:

“The initial reaction from the TFF is to welcome the proposals in this consultation which have the potential to deliver many of the positive changes to the Agricultural Holdings legislation that we sought. These have been discussed in some detail with Scotland’s Cabinet Secretary for Rural Affairs, Richard Lochhead.

“However, there is disappointment that some elements of the total package for change assought by the Forum have not been included in the proposed amendments to current legislation. The omissions are the Forum’s proposal to widen the class of beneficiary who may succeed to a tenancy to include a grandchild, and its proposal to amend the rent review provisions to prohibit ‘upward only’ and ‘landlord only’ initiated reviews.

“I would expect the TFF to debate the Government’s consultation and these omissions from it further in the near future, after which, a more detailed statement will be made.”

NOTES TO EDITORS

Professor Jeff Maxwell will be succeeded as Chairman of the TFF in October by Professor Phil Thomas

A copy of the Scottish Government consultation on proposals to change the Agricultural Holdings Act can be found at:

http://www.scotland.gov.uk/Publications/2010/09/23140726/0

The primary purpose of the Tenant Farming Forum is to help to promote a healthy farm tenanted sector in Scotland. It aims to fulfil this purpose by:

1. Providing a discussion forum among those representing groups/organisations with a direct involvement in the sector, and who are committed to consensus building through fair and equitable discussion and representation;
2. Contributing to an understanding of the significance, and the practical implications of implementing current legislation, (for example, at this time, the Agricultural Holdings
(Scotland) Act 2003), and any future proposed legislation governing the sector;
3. Identifying specifically, and raising awareness of issues that may inhibit or act as impediments to achieving effective relationships within the sector;
4. Formulating views and opinions as to how effective relationships and ‘best practice’ can be developed and secured;
5. Consulting and liaising with government departments, agencies and other bodies about matters that may directly affect relationships within the sector; and
6. Having a vision as to how the future well being of the sector can be assured in the context of proposed changes in European and UK agricultural and environmental policies, and their implications for the rural economy; and continually reviewing the implications for the sector of new initiatives, for example, such as contract farming, and rural planning developments.

The Tenant Farming Forum is made up of the following organisations: Scottish Tenant Farmers Association (STFA), Scottish Estates Business Group (SEBG), Scottish Rural Property and Business Association (SRPBA), Royal Institution of Chartered Surveyors (RICS), and NFU Scotland (NFUS). Observers on the group are the Scottish Government, the Law Society and the Scottish Association of Young Farmers Clubs (SAYFC). Details on the TFF can be found at its website: www.tenantfarmingforum.org.uk
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE’S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

Fleet Resilience Grant Scheme

The Cabinet Secretary has written to the Convener. The letter can be accessed using the following link:


Pack report

The Final Report of the Inquiry into future support for agriculture in Scotland has been published and can be accessed here:

Inquiry into Future Agricultural Support for Scotland

House of Commons Environment, Food and Rural Affairs Committee

The Select Committee has announced that it will be holding an inquiry on the impact of Common Agricultural Policy reform on UK agriculture and has issued the following press release:

“The Environment, Food and Rural Affairs Committee will undertake an inquiry into the European Commission’s proposals for reform of the Common Agricultural Policy (CAP) after 2013. The inquiry will consider the impact of the proposals on agriculture in the UK.

At a cost of about €57 bn in 2010, the CAP is the EU’s single largest item of expenditure. It affects almost 50% of the EU’s land area and nearly 14 million agricultural holdings. The CAP is due to be reformed by December 2013. The European Commission will outline their options for a new CAP framework in November, prior to issuing draft legislative proposals in summer 2011.

The Committee is seeking evidence from interested parties on the Commission’s proposals, including:

• How will the Commission’s proposals affect the ability of UK agriculture to be competitive in a global market?
• Do the proposals ensure fair competition for British agricultural products within the European Union?
• Will the proposals achieve the correct balance between productivity and sustainability?
• Do the proposals place the UK in a good position to help meet future food supply challenges?
• Will the proposals redress the imbalance in support to different sectors created by the historic basis of payments?
• What aspects of the proposals should be made a common policy, and which are best left to Member States?
• Can the proposals be implemented simply and cost-effectively, within a short time-scale?"