

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

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

CORRESPONDENCE FROM THE CABINET SECRETARY

Thank you for your letter of 06 December 2010 advising me of your Committee's deliberations on the evidence session on the draft Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 on 10 November.

Firstly let me say how pleased I am at the level of support for the draft Order shown both by the Committee and those from whom evidence was taken. I fully intend to bring forward the Order early in the New Year. I should also wish to take the opportunity to join with you and your Committee in reiterating my thanks to Professor Maxwell and the Tenant Farming Forum for their diligence in advancing this package of proposals.

Upward only and landlord only rent reviews Succession rights of grandchildren

Whilst I appreciate that stakeholders clearly perceive the current position regarding rent review and near relative successors to be burdensome, the Order can only remove or reduce burdens of the nature described in section 17 of Public Services Reform (Scotland) Act 2010 ("2010 Act"). That section allows for the removal or reduction of a burden which results directly or indirectly for any person from any legislation and sets out the types of burden which may be removed.

I am advised that neither the absence of a prohibition on upward only rent reviews nor the exclusion of "grandchild" from the definition of "near relative" amounts to a burden resulting directly or indirectly from any legislation, within the meaning of the 2010 Act. Unfortunately, I am advised that they cannot be restored to the package. I support the Committee's point on the need to address these two proposals for preventing 'upward only' rent reviews and including grandchildren in the definition of 'near relative' of the package of measures. No one is more disappointed than I am that we are not able to implement these proposals immediately. Unfortunately I can find no means of implementing them other than by primary legislation; I am currently making arrangements for a short Bill comprising these two provisions to be consulted upon so that it can be brought forward at the earliest opportunity in the next Parliamentary session.

I am confident that the changes contained in the draft Order, although not the full package of measures proposed by the Forum, will still be seen by those across Scotland with an interest in the letting of agricultural land as being positive measures for the tenanted farming sector.

Fixing and reviewing agricultural rents

I share the Committee's and stakeholders' concerns over aspects of the procedures for fixing, and determining disputes over, rents - especially in relation to difficulties in the resolution of disputes at the Land Court. I have written separately to the Forum seeking their views on what could best be done to simplify the process for setting rents and determining disputes, including the terms of section 13 of the 2003 Act. I have asked for their views by early in the New Year. As you have noted, the Forum is working towards an agreed protocol

for rent review dispute resolution procedures and I understand that they will consider whether that protocol should be voluntary or statutory.

Impact of the 2003 Act on tenanted land

In relation to the amount of information available relating to tenanted land, we know (from information available on the Scottish Government website¹) that the use of Limited Duration Tenancies (LDTs) and Short Limited Duration Tenancies (SLDTs) has progressed since their introduction in the 2003 Act.

Information from the Annual June agricultural census shows that the numbers of LDTs and SLDTs continues to rise year on year. The most recent published figures show that between 2007 and 2008:

- there was an increase of 117 SLDTs (a 35% increase from 337 to 454); and
- there was an increase of 42 LDTs (a 25% increase from 166 to 208).

Whilst the percentages quoted above are large, there may have been some effect of 'take up' of the new tenancies following on their introduction. Overall, the percentage of agricultural holdings with an LDT or SLDT rose from 6.7% in 2007 to 9% in 2008.

Information for 2009 and 2010 has been collected but unfortunately is not yet available; it has been necessary for our statisticians to prioritise essential analytical work for the European Commission. We hope to be able to provide updated LDT and SLDT data (for 2009, 2010 and possibly 2011) by October 2011.

New entrants

Scottish Government / Agency land

While we are aware that an increasing number of people have been purchasing farms or rural agricultural land as lifestyle choices in recent years, tenant farming still remains the principle means for a prospective full time farmer to enter the industry.

Confidence is the key factor to a successful, profitable tenanted farming sector; that confidence cannot be provided by legislation alone. Landowners must have confidence to let their agricultural land and tenant farmers equally need the confidence and to access land on tenancy arrangements that allow them to plan for the future. An active entrepreneurial spirit is also necessary that creates the economic drive essential to rural stability and prosperity, and a tenanted sector in which agricultural land, capital and individual skills are all integrated to the maximum effect. Developing and maintaining a good working relationship between landlord and tenant is crucial to the successful achievement of the aspirations and objectives of both parties and therefore, of the sector. Being as open as possible and having a clear understanding of each others' short and long term objectives can remove uncertainty, build confidence and trust in each other and avoid the potential for conflict.

You asked what more the Scottish Government could do to release land, and whether I felt that it and its Agencies had performed well enough on this. The Scottish Government has only a small area of agricultural land that could generate agricultural tenancies - 5 farms covering a total area of land of 109ha - as most of the Scottish Government's agricultural

¹ - <http://www.scotland.gov.uk/Topics/Statistics/Browse/Agriculture-Fisheries/agtenancy>

land falls within crofting tenure and is let accordingly. I understand though that all of the Scottish Government agricultural land that is available for let is currently tenanted.

Separately, Forestry Commission Scotland (FCS) has an active programme of land acquisition for planting. This can often involve the purchase of more land than can be planted because of issues around land quality, landscape or biodiversity. It has previously been their policy to sell on any houses, steadings and sizeable areas of unplantable land which are not required to fulfil FCS's objectives. Following discussions with the Forum I have asked FCS to give active consideration to the possibility of creating agricultural tenancies where the scale and nature of any unused buildings and land would justify the creation of a full time or part time agricultural unit.

I hope that you and your Committee members find this response helpful.

Richard Lochhead
Cabinet Secretary for Rural Affairs and Environment
24 December 2010