



The Scottish Parliament  
Pàrlamaid na h-Alba

## **RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**

Cabinet Secretary for Rural Affairs  
and the Environment

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Dear Richard,

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

I refer to the evidence-taking session held by the Rural Affairs and Environment Committee on 10 November<sup>1</sup> regarding the above draft instrument.<sup>2</sup> The Committee took evidence from representatives from the Scottish Tenant Farmers Association (STFA) and the Scottish Rural Property and Business Association (SRPBA), as well as from the chair of the Tenant Farming Forum (TFF) and its legal adviser. The Committee agreed that we would write to you in order to set out our views whilst the draft order is in its consultation phase, and before a final version is laid.

We note that this is one of the first orders to have been brought forward under section 17 of the Public Services Reform (Scotland) Act 2010, with the purpose of removing or reducing any burden resulting directly for any person from any legislation. Our main focus was accordingly on ascertaining what legislative burdens existed in the sector and how well the draft order would address them. We also took the opportunity, in the limited time available to us, to discuss with witnesses the general state of the tenanted farm sector and whether the Agricultural Holdings (Scotland) Act 2003 has had a positive effect on it. Some of that more wide-ranging discussion is reflected below.

I should make clear at the outset that the Committee welcomes the draft order as a step forward for the tenant farming sector. The TFF are to be congratulated on their work in

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<sup>1</sup> [Scottish Parliament Rural Affairs and Environment Committee, Official Report, 10 November 2010](#)

<sup>2</sup> <http://www.scotland.gov.uk/Publications/2010/10/20120701/13>

devising the policy behind it and I pass on in particular our thanks to the retiring Chair, Professor Maxwell, for his time and effort in securing agreement from all parties. It would appear from the evidence gathered that the amendments the instrument would make to the Agricultural Holdings Acts of 1991 and 2003 are generally welcomed. However, there are omissions from the agreed package of measures recommended to you (principally, as discussed below, those on succession rights and on rent reviews), which we would like, if possible, to see restored in order to ease stakeholders' concerns

The Committee fully appreciates that any changes to be made to primary legislation by way of a section 17 order must satisfy the conditions laid down in that provision. However, we hope that in most cases a pragmatic solution can be found. For the avoidance of doubt, we strongly agree with the TFF that an affirmative order, containing as many as possible of the measures they agreed should be brought forward promptly in the New Year. In other words, nothing that we say below should be interpreted as advocating a delay in the implementation of agreed measures whilst more difficult issues are threshed out.

### **Rent reviews and referrals to the Land Court**

One of the two main concerns to emerge in evidence related to the absence of a provision to prevent so-called "upward only" or "landlord only" initiated reviews. Witnesses were united in expressing regret about the perceived "last minute" omission of a provision along these lines. It was noted that this was on the basis of concerns as to whether it would be technically possible to make such a change, rather than of any objection to the policy. The Committee would not want to enter into such a technical debate. Instead, we would simply observe that stakeholders clearly perceive the current position as a "burden" imposed on them, and one that arises from the wording of a statutory provision. You may also wish to note that, as far as the Committee is concerned, the political will clearly exists to see this change made.

**The Committee invites the Cabinet Secretary to consider our views on upward only and landlord only rent reviews, and to reflect on whether a way forward can be found that does not require a resort to primary legislation.**

More generally, it is clear that there is a difference of views as to the current laws on fixing rents. The Committee notes that the matter may be revisited by the TFF. There was, however, a clear consensus that provision in the 2003 Act requiring unresolved disputes about rent review (and other matters) to be referred to the Land Court has not been a success, with the Court becoming bogged down in a lengthy backlog of cases, causing inconvenience and frustration to all parties concerned. The Committee notes that the TFF are looking to create an agreed protocol to help mitigate these procedural difficulties. However it looks likely that a statutory solution might be required.

**The Committee would be interested to hear your response to these concerns over the role of the Land Court. Can provision be made in the short term to address them? It does appear to the Committee that there would be merit in reintroducing**

**some sort of arbitration or other provision as an intermediate stage before recourse to the Land Court becomes necessary.**

### **Succession rights of grandchildren**

The second main concern with the order related to the lack of any provision to classify grandchildren as “near relatives,” and therefore as entitled to inherit a tenancy directly from a grandparent. Again, this appeared to be purely for technical reasons.

Professor Maxwell remarked of this proposal that “the forum as a whole backed it whole-heartedly and without equivocation,”<sup>3</sup> whilst the STFA’s written submission made the important point that if the decline in numbers in the tenant farming sector is to be addressed, then there is a need to remove the obstacles that allow successions to existing tenancies. The Committee agrees, and observes that the current statutory rule on succession by grandchildren might be described not only as an “obstacle” to the effective operation of tenant farming law, but also as a “burden” on it.

**The Committee would ask you to note the unanimous and unequivocal support witnesses expressed for reforming the law on succession by grandchildren and invites you to consider how best to address this matter.**

### **Impact of the 2003 Act on tenanted land**

One of the main aims of the 2003 Act was to free up more agricultural land for rent. Figures the Committee obtained from the Scottish Parliament Information Centre, which I would be happy to share with you, demonstrate a steady decline in the amount of tenanted land in Scotland, which the 2003 Act does not appear to have arrested (29.9% of land was rented in 2004 against 25.8% in 2009).<sup>4</sup> It is of course possible that the decline may be partly explained by tenants buying their farms, and we received some anecdotal evidence to suggest that this may be the case. We also heard some mixed evidence about the new types of tenancy introduced by the Act; both that they were gradually becoming more accepted, but also that they were still perceived by many as being inflexible and restrictive.

Either way, statistics on the extent to which secure tenants have bought land or on how much land is being let either under Limited Duration Tenancies (LTDs) or Short Limited Duration Tenancies (SLDTs) are hard to obtain. It is therefore very hard to know whether the 2003 Act has succeeded in its main aim. Accordingly, **it would be helpful if you could reflect on whether there is a need to collect and make publicly available more detailed data on tenanted land and on its purchase in order to help determine the success or otherwise of current legislative and policy measures to make more farmland available for rent.**

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<sup>3</sup> [Scottish Parliament Rural Affairs and Environment Committee, Official Report, 10 November 2010, Cols 3374-3375](#)

<sup>4</sup> Calculated from the table on land tenure in the Abstract of Scottish Agricultural Statistics 2010 edition: <http://www.scotland.gov.uk/Publications/2010/03/16160036/4>

## **New entrants**

Taking on a tenancy is widely recognised as one of the traditional routes into farming. It was therefore worrying to hear witnesses remark on the difficulties new entrants now face in renting a farm, and of how this has contributed to a steady rise in the average age of farmers. Witnesses suggested that the main barrier for new entrants appears to be in finding land – training and, to some extent, financial assistance are available for new entrants, but the ability to secure land is a major problem, because it often tends to fall into the hands of more established farmers, or because some landowners, despite the 2003 Act, are still reluctant to release land to let.

Witnesses noted that the Government (which in this context should be taken to include arms-length bodies such as the Forestry Commission) is Scotland's biggest landowner and suggested that there was more that Government could do to make farmland available. It was also pointed out that there has been a steady rise in the number of owner-occupier landowners in the post-war years and that there should be more consideration of how to encourage them to rent out underused agricultural land. We note that, now that its current work on agricultural holdings reform is nearing fruition, the TFF may wish to turn its attention to considering how more public and owner-occupied land could be made available for letting. However, **it would be helpful to hear your views on promoting new entrants in the tenancy sector, in particular whether you accept that the Scottish Government and Government agencies have underperformed, and, if so, how you propose to address this. And is there more that the Government could do to encourage the owner-occupier sector?**

The Committee heard that some of the reluctance to lease out land might be caused by inflexibility inherent in the two new tenancy models, created under the 2003 Act, leading to landlords and tenants not always being able to agree to a length of tenancy that suits both parties. TFF members told the Committee that they generally supported the proposed changes contained in the order, which would enable greater flexibility over term lengths. It was very encouraging to hear this.

Subject to any minor or technical changes that might arise as a result of the current consultation, **the Committee strongly supports the proposed changes to the rules on SLDTs and LTDs set out in the draft order.**

Whilst the Committee intends that this letter be treated as our contribution to the current consultation, we would also be grateful for a response from you to the main points raised in it in due course. On behalf of the Committee, I look forward to further constructive and positive work with you on the progress of the order.

Yours sincerely

Maureen Watt MSP  
Convener