

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

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

WRITTEN SUBMISSION FROM NFUS

NFU Scotland welcomes the opportunity to be able to comment on The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 by written evidence to the Rural Affairs and Environment Committee.

NFUS is a membership organisation representing the land-owning and tenanted sector with a membership of over 9,000. NFUS purpose is to promote and protect the interests of our members in order to secure a sustainable future for Scottish agriculture.

Over the last few years the Tenant Farming Forum (TFF) (of which NFUS is a member) has debated the future of the Agricultural Holdings (Scotland) Acts of 1991 and 2003 formulating a series of suggested amendments which were put to the Scottish Government and are being addressed under The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011. The purpose of the amendments to the existing legislation is to encourage the land-owning sector where possible let land and enhance communication between landlords and tenants. NFU Scotland fully supports all the provisional amendments, which the Tenant Farming Forum have put forward to the Scottish Government.

The provisions contained within the Agricultural Holdings (Scotland) Acts of 1991 and 2003 provide tenant farmers and their landlords with a framework for agreeing leasing arrangements for farm land in Scotland. NFUS believes that the proposed Scottish Government amendments to the current agricultural tenancy legislation could be a means of encouraging the release of more agricultural land onto the agricultural lettings market and improving the working relationships between a tenant farmer and their landlord.

NFUS are however disappointed that some elements of the total package for change as sought 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. NFUS understands that these amendments require a different legislative route to that offered by Section 17 of the Public Services Reform (Scotland) Act 2010. The 2010 Act provides for specific elements of existing legislation to be amended by a simplified procedure. More substantive amendments, such those referred to above, would require – according to the Scottish Parliament's parliamentary draftsmen – to be subject of wider consultation and debate. Nevertheless, NFUS wishes to emphasise that it continues to believe that the package of proposed amendments as a whole is necessary to give greater encouragement to the tenant sector and build upon the proposals for change contained within this Consultation. We will continue to press the Government to implement the rest of the agreed package at the earliest opportunity.

With regards to the questions specifically asked the NFUS responses are as follows.

Part One - Agricultural Holdings (Scotland) Act 2003 (asp 11)

Question 1 - Do you agree with the Scottish Government proposed amendment not to alter the maximum length of a tenancy term for a Short Limited Duration Tenancy (SLDT) but allowing for the conversion of the tenancy lease to a Limited Duration Tenancy (LDT)?

NFUS supports the proposed change suggested, that the length of a Short Limited Duration (SLDT) should remain at 5 years. However at the end of an SLDT provisions can be made to extend the lease into a Limited Duration Tenancy (LDT).

Question 2 - Do you agree with the Scottish Government proposed amendment that the minimum length of a tenancy term for a Limited Duration Tenancy (LDT) should be reduced from 15 years to 10 years?

NFUS supports the reduction of the minimum length of a tenancy term for a Limited Duration Tenancy (LDT) from 15 years to 10 years.

Question 3 - Do you agree with the Scottish Government proposed amendment to rewrite section 16 (Fixed Equipment etc) to the effect that clear agreement will be reached between landlord and tenant farmer and specified in the LDT or SLDT lease arrangement stating the exact nature of the farming enterprise to be conducted on the land to be let and any fixed equipment as provided or to be provided by the landlord under the lease?

NFUS supports the proposed amendment to rewrite section 16 (fixed equipment etc) to the effect that a clear agreement needs to be reached between a landlord and tenant regarding the nature of the farming enterprise (eg bare land, dairy, stock, mixed arable) and the fixed equipment being provided for by the landlord and specified in the LDT or SLDT lease agreement.

Part Two - Agricultural Holdings (Scotland) Act 1991

Question 4 - Do you agree with the Scottish Government proposed amendment that the statutory procedures set out in section 5 (Fixed equipment and insurance premiums) should be adjusted to ensure 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 rent is reviewed in accordance with the terms of the tenancy or is determined in accordance with section 13?

NFUS supports the proposed amendment. NFUS are anxious to ensure Fixed Equipment be determined by reference to the purpose of the lease. To this end a schedule of fixed equipment should form part of the lease.

Question 5 - Do you agree with the Scottish Government proposed amendment that for the purposes of clarification in section 13 (Variation of Rent) (1) after the word 'Act' the phrase 'following notice in writing served on the other party' should be inserted?

NFUS supports the proposed amendment. It is appropriate that provision is made

for a tenant to have a post lease agreement nullified. It is reasonable that the landlord is notified of that fact in writing (it is suggested that the notification be 6 months before the rent is reviewed). The provision will allow for consideration to be given to responsibility for fixed equipment at the next rent review.

Question 6 - Do you agree with the Scottish Government proposed amendment that all references to the 'two man unit' in Schedule 2 (Grounds for consent to operation of Notices to Quit a tenancy where section 25(3) applies) should be deleted where appropriate and replaced by a new definition 'viable unit'?

NFUS supports the Scottish Government proposed amendment to remove all references to the 'two man unit' in Schedule 2 and replaced by the new definition of 'viable unit' which means an agricultural unit which in the opinion of the Scottish Land Court is capable of providing fulltime employment for the individual occupying it, and of giving that individual the ability to pay a) the rent due under the lease and b) for adequate maintenance of the unit. The intention behind the two man unit is to assess the viability of the agricultural unit in question. The 'two man unit' is no longer an accurate measure of viability. It is therefore proposed to substitute a new test, which provides a more accurate measure of viability and gives better effect to the legislative intention.