

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
THE PUBLIC SERVICES REFORM (AGRICULTURAL HOLDINGS) (SCOTLAND)
ORDER 2011

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 uncontentious matter, particularly given that there will be a further 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
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